RESERVE

# MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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NOTICE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

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| In the matter of the proposed amendments of ARM 8.36.407 concerning unprofessional conduct and violations and proposed adoption of new rule concerning disciplinary actions. | NOTICE OF PROPOSED AMENDMENT OF ARM 8.36.407 UNPROFESSIONAL CONDUCT - VIOLATIONS, and PROPOSED ADOPTION OF A NEW RULE DISCIPLINARY ACTIONS |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 12, 1984, the Board of Optometrists proposes to amend rule ARM 8.36.407 concerning unprofessional conduct and violations and proposes to adopt a new rule concerning disciplinary actions.

2. The proposed amendment of 8.36.407 will add a new subsection (3) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is found at page 8-1073, Administrative Rules of Montana)

"8.36.407 UNPROFESSIONAL CONDUCT - VIOLATIONS (1)...

(3) For the purposes of setting standards of conduct for the profession and of supplementing the statutory designation of unprofessional conduct set forth in section 37-10-311, MCA, the board defines the following conduct as unprofessional:

(a) chronically or persistently using intoxicants, drugs or narcotics to the extent that the same impairs the ability to practice optometry;

(b) engaging in immoral conduct in practice related circumstances;

(c) being a menace to the public health by reason of having a serious communicable disease;

(d) persistently maintaining in the practice of optometry unsanitary offices, practices, or techniques;

(e) being mentally and/or physically incompetent to engage in the practice of optometry;

(f) failing to cooperate with an authorized investigation of a complaint;

(g) permitting unauthorized disclosure of information relative to the patient's records without the express permission of the patient;

(h) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or annual registration or in taking an examination required by the statutes and rules;

(i) testifying in court on a contingent fee basis;

(j) practicing optometry while the practitioner's license is supended, revoked, or not currently renewed;
(k) being convicted of a crime;
(l) violating the optometry practice act or rules of the board; or
(m) having other disciplinary actions taken against the licensee by another jurisdiction."
Auth: Sec. 37-1-131 (1), 37-10-202, MCA Imp: Sec. 37-10-311, MCA

3. The board is proposing to amend the rule to further identify those conducts which the board considers unprofessional. Experience of administering the act has shown certain kinds of conduct not contemplated by the statutes is detrimental to the public and unprofessional for practitioners to engage in.

4. The proposed new rule concerning disciplinary actions will read as follows:

"I. DISCIPLINARY ACTIONS (1) The board reserves the discretion to take appropriate disciplinary action provided for in 37-1-136, MCA, against a licensed optometrist violating any law or rules of the board, and to decide on a case by case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:
(a) the seriousness of the infraction;
(b) the detriment to the health, safety and welfare of the people of Montana; and
(c) past or pending disciplinary actions relating to the licensee."
Auth: 37-1-136, 37-10-202, MCA Imp: 37-1-136, MCA

5. The board is proposing to adopt the new rule to implement section 37-1-136, MCA which gives the board the authority to specify grounds for disciplinary action. The board is setting out the criteria it has determined should be used for judging what type and the extent of disciplinary action to be taken against a licensee.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments, and adoptions in writing to the Board of Optometrists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than February 10, 1984.

7. If a person who is directly affected by the proposed amendments and adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Optometrists,

1424 9th Avenue, Helena, Montana, 59620-0407, no later than February 10, 1984.

8. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public 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 21 based on the 212 licensees in Montana.

BOARD OF OPTOMETRISTS
ALVERNE S. KAUTZ, O.D.,
PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 3, 1984.

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE
STATE OF MONTANA

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| In the matter of the repeal of Rule 10.55.210 SCHOOL MORALE | ) | NOTICE OF PROPOSED REPEAL OF RULE 10.55.210 SCHOOL MORALE |
| | ) | NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On February 21, 1984 the board of public education proposes to repeal rule 10.55.210, SCHOOL MORALE.

2. Rule 10.55.210 proposed to be repealed is on page 10-774 of the Administrative Rules of Montana.

3. The board proposes to repeal this rule because it is not a rule but rather a guideline for schools to follow.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Harriett Meloy, Chairperson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 15, 1984.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Harriett Meloy, Chairperson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 15, 1984.

6. If the board receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 55 persons based on the 554 district chairpeople in the state of Montana.

7. The authority of the board to repeal this rule is Sec. 20-7-101, MCA and the rule implements Sec. 20-7-101, MCA.

Harriett C Meloy

Chairperson,
Board of Public Education

By: Hidde Van Duym

Hidde Van Duym

Certified to the Secretary of State, January 3, 1984.

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE
STATE OF MONTANA

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| In the matter of amendment of rules governing accreditation standards of the board of public education | NOTICE OF PROPOSED AMENDMENT OF ACCREDITATION RULES<br><br>NO PUBLIC HEARING CONTEMPLATED |

To: All Interested Persons

1. On February 21, 1984 the board of public education proposes to amend rules found in Chapter 55, Standards of Accreditation.

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

10.55.101 ACCREDITATION PERIOD. (1) Public and nonpublic schools are considered for accreditation by the board of public education in March prior to the adoption of their preliminary budgets for the ensuing school year. Recommendations for accreditation are determined by analyses of fall reports, five-year periodic onsite reviews by the Office of Public Instruction, ten-year periodic Northwest accreditation reviews, other reports and visitation observations by supervisory personnel from the office of public instruction.

(2), (3), (4), and (5) Remain the same.

(Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

10.55.202 BOARD OF TRUSTEES (1), (2), and (3) Remain the same.

(4) Each school district ~~will~~ shall have a written policy regarding student and parent due process rights.

(5), (6), (7) and (8) Remain the same.

(Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

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

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

(a) Any school with an enrollment of fewer than 150 students and not under the supervision of a district superintendent shall provide for supervision at a minimum average of two days per teacher per year through the office of the county superintendent.

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

(c) In any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, the

superintendent may serve as half-time elementary or half-time high school principal. The district must employ a half-time elementary or high school principal or administrative assistant for the other unit in the district. ~~The superintendent shall devote half-time as principal of the assigned school. Or, in any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, and where the superintendent serves as both elementary and secondary principal, the district must employ a half-time administrative assistant.~~ The administrative assistant shall be defined as a person who holds a bachelor's degree and presents evidence of working toward the administrator's certificate on a planned program to be completed within 5 years of first assignment. The administrative assistant shall not supervise or evaluate staff or curriculum.

(d) Any elementary or secondary school with an enrollment of 150 to 300 shall employ a principal (in addition to the superintendent) who shall devote half-time to supervision and administration.

(e) Any school with an enrollment exceeding 300 shall employ a principal (in addition to the superintendent) who shall devote full-time to supervision and administration.

(f) Any junior or senior high school with an enrollment of over 500 students shall employ an assistant principal who shall devote at least one-half of each school day to supervision and administration.

(g) Any elementary school with an enrollment of over 650 students shall employ an assistant principal who shall devote at least one-half of each school day to supervision and administration. (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

10.55.207 STUDENT RECORDS (1) Each school shall keep a permanent file of student records which shall include the name and address of the student, parent or guardian, birthday, academic work completed, level of achievement (grades, standardized achievement tests), immunization record as per 20-5-406 MCA, and attendance data of the student. Student records shall be kept in a fireproof file or vault in the school building or for rural schools, in the county superintendent's office. Each school district shall establish policies and procedures for the use and transfer of student records which are in compliance with state and federal laws which assure that an individual's privacy is respected.

(2) Remains the same.

(3) Special Education Records

(a) Each school shall maintain a separate records file for each student receiving special education and/or related services. As a minimum, each record will contain a current referral form, permission for evaluation, child study team report with accompanying evaluation data, individualized education program and permission for program placement.

(b) Records will be maintained in confidential manner to include secure storage.

(c) Each district shall establish written procedures for the destruction of confidential records. Records are to be kept for a minimum of five years after termination of special education services or after age 18 or legal age. (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

10.55.302 CERTIFICATES (1) All teachers shall hold valid Montana teaching certificates. Also, administrative personnel who teach shall hold teaching certificates. All supervisory personnel shall hold appropriate certificates. The term "all teachers" shall be interpreted to include teachers involved in the classroom instructional activities of any federally financed program or project. ~~School psychologist shall hold a valid Class 6 (Specialist) certificate. Those school psychologists who have been fully approved for funding by the special education unit of the office of public instruction by December 31, 1980, have had at least half time employment during a school year between September 1, 1975, and May 31, 1981, and hold a six year approval which expires prior to July 1, 1984, can continue to serve as a school psychologist until the expiration date of the approval when they must be certified with a Class 6 Specialist certificate. An emergency authorization of employment is not a valid certificate, it is granted to a district which, under emergency conditions, cannot secure the services of a certified teacher.~~ After July 1, 1984, all school psychologists must be certified with a class 6 specialist certificate. Neither study hall supervisors nor teacher aides need to be certified; however, an instructional aide assigned to a classroom shall be under the direct supervision of that classroom's teacher.

(2), (3), (4) and (5) Remain the same.

(Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

10.55.402 BASIC INSTRUCTIONAL PROGRAM: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) Remains the same.

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

(3), (4), (5), (6) and (7) Remain the same.

(8) The basic instructional program for each high school shall be at least 16 units of course work which shall include at least those given below:

(a) Language arts: 4 units. The basic minimum program in the four skills of communication (speaking, listening, reading and writing) is required each year.

(b) Social sciences: 2 units.

(c) Mathematics: 2 units.

(d) Science: 2 units.

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

(f) Fine arts: 1 unit. Fine arts includes music, art, and drama.

(g) Practical arts: ~~1~~ 2 unit s. Practical arts includes home economics education, industrial arts, business education and agriculture.

(h) Two electives.

(9) and (10) Remain the same.

10.55.404 LIBRARY MEDIA SERVICES, K-12 (1) and (2) Remain the same.

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

(a) In schools of 100 or fewer students, the librarian shall devote a minimum of 1½ hours or two periods per day in the library.

(b) In schools of 101 to 300 students the librarian shall spend a minimum of 3 hours or three periods per day in the library.

(c) In junior and senior high schools of 301 to 500 students, the librarian shall spend full-time in the library. One library aide shall be employed for each librarian, or the services of a student librarian or volunteer aide shall be available.

(d) Junior and senior high schools of 501 students shall have a full-time librarian and additional librarians at the following ratio:

| Enrollment | Librarian |
|---|---|
| 501 to 1,000 | 1.5 |
| 1,000 1 to 1,500 | 2.0 |
| 1,500 1 to 2,000 | 2.5 |
| 2,000 1 to 2,500 | 3.0 |

One library aide shall be employed for each librarian, or the services of a student librarian or volunteer aide shall be available.

(4) and (5) Remain the same.

(6) After a school library has assembled the minimum collection, the annual expenditure for the library collection, exclusive of textbooks and audiovisual materials, must meet the minimum expenditures given below:

Funding: high school, junior high school, middle school and 7th and 8th grade funded at high school rates

| | |
|---|---|
| 50 or fewer | $ 900 |
| 51-100 | 1,440 |
| 101-200 | 1,800 |
| 201-500 | 3,600 ( or $9.00 per student, whichever is greater.) |
| 501-1,000 | 5,400 ( or $7.20 per student, whichever is greater.) |
| 1,001-1,800 | 7,200 ( or $6.30 per student, whichever is greater.) |
| 1,801 + | 10,800 ( or $5.40 per student, whichever is greater.) |

A minimum of $1.80 per student shall be expended for media software.

Funding: Elementary

| | |
|---|---|
| 300 or fewer | $8.10 per student or $180, whichever is greater. |
| Over 300 | $2,430 plus $4.50 per student over 300 enrollment. |

A minimum of $1.80 per student shall be expended for media software.

(7) The staff shall provide students with instruction in the use of the media.

(8) Remains the same.

(9) The library shall be open on all instructional days for student and teacher use during all periods of the school day as well as immediately preceding and following regular school hours. (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

10.55.502 SITE AND GROUNDS (1) Remains the same.

~~(2) New and remodeled schools must comply with requirements outlined in School Environment Guide, Law and Regulations, published by the Montana state department of health and environmental sciences, 1962.~~

(2) New and remodeled schools must comply with requirements outlined in the Public Accommodations and Consumer Safety Section of Title 16, Chapter 10, Sub-Chapter 11 of the Administrative Rules of Montana.

(Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

10.55.503 SCHOOL PLANT AND FACILITIES (1), (2), (3) and (4) Remain the same.

(5) New construction, enlargement or remodeling of any building to be used for public school purposes must be approved

by the superintendent of public instruction ~~the Montana state department of health and environmental sciences and the state fire marshal.~~ and the Building Codes Division of the Department of Administration, which has the responsibility of coordination with other state agencies.

(6) Remains the same.

(7) All new or remodeled buildings shall be equipped with ~~at least a class "C"~~ fireproof vault adequate to handle school and student records.

(8), (9) and (10) Remain the same.

(Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

10.55.504 MAINTENANCE (1) Remains the same.

(2) Custodial service and heating, lighting, ventilation, water supply and lavatories shall be such as to assure hygienic conditions for students and staff. Standards of the ~~Montana state department of health and environmental sciences~~ Public Accommodation and Consumer Safety section of Title 16, Chapter 10, Sub-Chapter 11 of the Administrative Rules of Montana must be met. (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101, MCA.)

3. The rules are proposed to be amended to clarify language and to correct appropriate state agency titles.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Harriett Meloy, Chairperson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 15, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Harriett Meloy, Chairperson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 15, 1984.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental 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 55 persons based on the 554 district chairpeople in the state of Montana.

7. The authority of the board to amend these rules and implementing sections are noted at the end of each rule.

Harriett C Meloy

Chairperson,
Board of Public Education

BY: Hidde Van Duym

Hidde Van Duym

Certified to the Secretary of State, January 3, 1984.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the repeal of Rule 18.8.516 regarding haystack movers and Rule 18.8.1001 regarding mobile home oversize permits, and the amendment of Rules 18.8.502, 18.8.503, 18.8.513, 18.8.514, 18.8.601, 18.8.801, 18.8.1004 and 18.8.1007 regarding overdimensional loads and insurance requirements. | ) | NOTICE OF PROPOSED REPEAL OF RULE 18.8.516, HAYSTACK MOVERS-COMMERCIAL SELF-PROPELLED AND RULE 18.8.1001, OVERSIZE PERMIT, AND OF PROPOSED AMENDMENT TO RULES 18.8.502, 18.8.503, 18.8.513, 18.8.514, 18.8.601, 18.8.801, 18.8.1004 AND 18.8.1007, ALL CONCERNING OVER-DIMENSIONAL LOAD AND INSURANCE REQUIREMENTS.<br><br>NO PUBLIC HEARING CONTEMPLATED. |

TO: All Interested Persons:

1. On February 13, 1984, the Department of Highways proposes to repeal Rule 18.8.516, HAYSTACK MOVERS-COMMERCIAL SELF-PROPELLED, regarding movement of these vehicles.

2. The rule proposed to be repealed is on pages 18-295 and 18-296 of the Administrative Rules of Montana.

3. The department also proposes to repeal Rule 18.8.1001, OVERSIZE PERMIT, regarding mobile home oversize permits.

4. The rule proposed to be repealed is on page 18-303 of the Administrative Rules of Montana.

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

18.8.502 SINGLE TRIP (1) A Single Trip Permit shall be issued under the following conditions:

(a) The load, vehicle, combination of vehicles, or other thing exceeds any one of these dimensions: Width, 15 feet; Length, ~~85~~ 95 feet; or Height, 14 1/2 feet.

(b) Montana license for a powered vehicle is a Montana Temporary Trip Permit.

(c) Applicant is engaged in a single movement or does not specify otherwise.

(d) Permit is transmitted by telegram, telecopier, telex, or communication service, except mail.

(e) Truck, truck tractor, trailer, or semi trailer is unladen and of a width exceeding 120 inches (10 feet).

AUTHORITY: Implied 61-10-121 and 61-10-124, MCA.
IMPLEMENTING: 61-10-121 and 61-10-124, MCA.

18.8.503 TERM PERMIT (1) A Term Permit may be issued under the following conditions:

(a) Load, vehicle, combination of vehicles, or other thing is 15 feet or less in width, ~~85~~ 95 feet or less in length, or 14 1/2 feet or less in height.

AUTHORITY: Implied 61-10-121 and 61-10-124, MCA.
IMPLEMENTING: 61-10-121 and 61-10-124, MCA.

18.8.513 WIDTH (1) A Single Trip or Term Permit, ~~to and including 9 feet~~, may be issued for ~~a truck, truck tractor, trailer, or semi-trailer and~~ the following built up loads to and including 9 feet in width, if they are hauled by vehicles that do not exceed 8 feet 6 inches in width:

(a) Baled or loose hay - farm, ranch, or commercial.

(b) Forest products in natural state: logs, cants, ties, studs, pulp wood hauled crosswise.

(c) Culverts lengthwise.

(d) Tanks lengthwise.

(e) Beams.

(f) Logging equipment.

(g) Contractors equipment.

(h) Oilfield equipment.

(i) Christmas trees.

(2) The commodities listed in subsection (b) of section (1) above may also be hauled by vehicles equipped with log bunks not exceeding 9 feet in width.

~~(2)~~ (3) Permits for the above may be issued for travel night, Saturdays, Sundays, and holidays, provided load displays lights the full width.

~~(3) A Term Width Permit may be issued for equipment (S.M.) not exceeding 15 feet. The permit shall be for exact dimensions.~~

~~(4) A Term Permit may be issued for a truck, truck tractor, trailer, or semi-trailer up to and including 120 inches (10 feet) in width. Each vehicle qualifying for a term permit is to be issued a separate permit for the exact dimensions.~~

~~(5) Vehicles exceeding 120 inches (10 feet) in width are limited to single trip permits and may be issued by permission from the Helena G.V.W. Office.~~

~~(6) Vehicles 108 inches (9 feet) in width or wider may not carry reducible type loads.~~

~~(7) A permit for width is required when load traveling on the interstate exceeds 96 inches.~~

~~(8)~~ (4) A "Wide Load" or similar sign shall be displayed on all loads exceeding 10 feet in width.

(5) Maximum widths for nonreducible loads may be found in rules 18.8.502 and 18.8.503 regarding single trip and term permits.

AUTHORITY: Implied 61-10-121 and 61-10-122, MCA.
IMPLEMENTING: 61-10-121 and 61-10-122, MCA.

18.8.514 LENGTH (1) A Term Length Permit may be issued up to and including ~~85~~ 95 feet in length.

(2) A Term Length Permit shall not be issued to a single powered vehicle including load, in excess of 50 feet in length.

(3) A Trip or Term Length Permit may be issued for travel on Saturdays Sundays, holidays and at night, to and including ~~70~~ 75 feet in length, provided the load shall have lights full width at the extreme rear of the load and the vehicle and load do not exceed 8 feet in width and 14.5 feet in height.

(4) Trip or Term Length Permits may be issued for travel on Saturdays, Sundays, holidays and at night for car ~~carriers consisting of truck and semi-trailer with vehicle length~~ carrier combinations up to ~~70~~ 95 feet ~~and load~~ in length ~~up to 75 feet~~, including load.

(5) Violations of the permit will be recorded on the permit. Three violations and the permit will be confiscated and cannot be reissued, except by the Helena G.V.W. Office.

AUTHORITY: Implied 61-10-121 and 61-10-122, MCA.
IMPLEMENTING: 61-10-121 and 61-10-122, MCA.

18.8.601 OVERWEIGHT SINGLE TRIP PERMITS Subsections (1) through (7) remain unchanged and can be found on pages 18-296 and 18-297 of the Administrative Rules of Montana.

(8) Overweight permits for vehicles with maximum dimensions of ~~70~~ 75 feet in length, 9 feet in width and 14.5 feet in height, or such other dimensional restrictions as may be imposed, shall be allowed to travel during the hours of darkness, Saturdays, Sundays and holidays unless special speed restrictions are imposed. Overweight vehicles in excess of these dimensions shall be limited as provided for in such permit.

Subsections (9) through (12) remain unchanged and can be found on page 18-297 of the Administrative Rules of Montana.

AUTHORITY: Implied 61-10-121 and 61-10-122, MCA.
IMPLEMENTING: 61-10-121 and 61-10-122, MCA.

18.8.801 INSURANCE (1) Public Liability and Property Damage Insurance is required before a Special Size, Weight, or Restricted Route-Load Permit may be issued. The ~~following must be shown on the~~ permits must show the name of the insurance company.

~~(a) Name of Insurance Company~~
~~(b) Name of Insurance Agent~~
~~(c) Amount of Public Liability Insurance~~
~~(d) Amount of Property Damage Insurance~~

(2) Carriers with I.C.C. authority ~~shall~~ may show their I.C.C.M.C. number in lieu of the above insurance requirements.

(3) Carriers with Public Service Commission authority ~~shall~~ may show their Public Service Commission authority number on the permit in lieu of the above insurance requirement.

~~(4) Filing of a Certificate of Insurance with the Department of Highways is not required.~~

AUTHORITY: Implied 61-10-121, MCA.
IMPLEMENTING: 61-10-121 and 61-10-122, MCA.

18.8.1004 INSURANCE REQUIREMENTS (1) A minimum insurance of $25,000/50,000 public liability and $10,000 property damage shall be carried on all toters in combination with mobile homes of a maximum width of ten (10) feet.

(2) A minimum insurance of $100,000/300,000 public liability and $50,000 property damage shall be carried on all toters in combination with mobile homes exceeding ten (10) feet in width. ~~Proof of insurance is to be filed with the Department of Highways before a special permit for movement of mobile homes is issued.~~ Carriers registered with the Montana Public Service Commission and/or the Interstate Commerce Commission shall furnish their permit number or M.C. number in lieu of proof of insurance.

AUTHORITY: Implied 61-10-121 and 61-10-122, MCA.
IMPLEMENTING: 61-10-121 and 61-10-122, MCA.

18.8.1007 REGULATIONS COVERING MOVEMENT OF OVERSIZE MOBILE HOMES, SECTIONAL HOMES, SECTIONAL BUILDINGS, PORTABLE HOMES AND BUILDINGS, PREFAB HOMES AND BUILDINGS, NOT INCLUDING PRE-CUT PANELIZED HOMES OR BUILDINGS, AND HOUSE OR BUILDING MOVING, OVER ~~14~~ 12 FEET WIDE, INCLUDING EAVES (1) The issuance of all permits shall be coordinated through the Helena Office of the Gross Vehicle Weight Division of the Department of Highways.

(2) In the interest of safety and minimum disruption of other highway traffic, the G.V.W. Division shall have the authority to specify highway routings over which such buildings may be moved and the hours during which movements on the highway can be made.

(3) Widths shall not exceed 18 feet, including eaves.

~~(4) Overheight permits must be obtained in instances where the height of the building and the vehicle on which it is transported exceeds 13'6".~~

~~(5)~~ (4) Buildings must be of frame construction only, without concrete, bricks, blocks, or masonry.

~~(6)~~ (5) Convoys of more than one building will not be permitted.

~~(7)~~ (6) Traffic in either direction shall not be held up for more than five minutes.

~~(8)~~ (7) Maximum speed shall be 50 miles per hour and minimum speed shall be 20 miles per hour unless conditions require a lower speed.

~~(9)~~ (8) Oversize ~~permits are~~ movement is prohibited:

(a) During hours of darkness.

(b) When inclement weather prevails making travel conditions hazardous.

(c) On Sundays and after 12 noon on Saturdays.

(d) On Holidays. Holidays are New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

(e) On Friday preceding any above-named holiday, when holiday is on Saturday.

(f) On Monday following any above-named holiday, when holiday is on Sunday.

~~(10)~~ (9) Movements must be preceded by one flag car to warn and regulate traffic and all safety equipment must be installed to meet specifications, including flashing lights and wide load signs. No flag car is required for movement over completed sections of the Interstate System of Highways.

~~(11)~~ (10) The use of two-way radio communication between pilot cars and toter is required effective July 1, 1972.

AUTHORITY: Implied 61-10-121 and 61-10-122, MCA.
IMPLEMENTING: 61-10-121 and 61-10-122, MCA.

6. The department proposes to repeal Rule 18.8.516 because it is repetitious of 61-10-123, MCA.

7. The department proposes to repeal Rule 18.8.1001 because it is repetitious of Rules 18.8.502 and 18.8.503 and of 61-10-124, MCA.

8. The department proposes the amendments for the following reasons:

(a) Rule 18.8.502, SINGLE TRIP, subsection (1)(a) and Rule 18.8.503, TERM PERMIT, subsection (1)(a) are proposed to be amended to conform to the amendment to 61-10-124, MCA enacted by the 48th Legislative Assembly of Montana.

(b) Rule 18.8.513, WIDTH, subsections (1) and (2) are proposed to be amended for clarification and ease in understanding.

Subsection (3) is proposed to be deleted because it is repetitious of Rule 18.8.503.

Subsections (4) and (5) are proposed to be deleted to clarify and resolve a conflict with Rule 18.8.503.

Subsection (6) is proposed to be deleted because it is now incorporated in subsection (2).

Subsection (7) is proposed to be deleted because the Federal law allows 102" (8'6") on interstate highways.

New subsection (5) is proposed to be adopted for clarification.

Subsection numbers are proposed to be renumbered because of the deletion of subsections (3) through (7).

(c) Rule 18.8.514, LENGTH, subsections (1), (3) and (4) and Rule 18.8.601, OVERWEIGHT SINGLE TRIP PERMIT, subsection (8) are also proposed to be amended to conform to the amendment to 61-10-124, MCA enacted by the 48th Legislative Assembly of Montana.

(d) Rule 18.8.801 INSURANCE, subsection (1)(a) is proposed to be amended for clarification and subsections (1)(b) and (d) and subsection (2) are proposed to be deleted because this information is not necessary for issuance of Special Permits. Subsections (2) and (3) are proposed to be amended to correct the wording since it is the practice to accept authority numbers as an alternate method of satisfying insurance coverage.

(e) Rule 18.8.1004, INSURANCE REQUIREMENTS, subsection (2) is proposed to be amended to delete the proof of insurance as it is not required by the Department of Highways.

(f) Rule 18.8.1007, REGULATIONS COVERING MOVEMENT OF OVERSIZE MOBILE HOMES, ETC. is proposed to amend the catchphrase to read "over 12 feet wide" rather than the present wording of "over 14 feet wide". This would conform to present practices.

Subsection (4) is proposed to be deleted because it is repetitious of 61-10-124(2)(a).

Subsection (9) is proposed to be amended to correct an error in grammar.

Other subsection numbers are proposed to be adjusted because of the deletion of subsection (4).

9. Interested parties may submit their data, views or arguments concerning the proposed repeal or amendments in writing to Donald R. Copley, Administrator, Gross Vehicle Weight Division, P. O. Box 4639, Helena, Montana 59604-4639, no later than February 10, 1984.

10. If a party who is directly affected by the proposed repeal or amendments wishes to express his/her data, views and arguments orally or in writing at a public hearing, he/she must make a written request for a hearing and submit this request along with any written comments to Donald R. Copley, Administrator, Gross Vehicle Weight Division, P. O. Box 4639, Helena, Montana 59604-4639, no later than February 10, 1984.

11. If the department receives requests for a public hearing on the proposed repeal or amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal or amendments; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be 59,800 persons based on the number of licensed Montana drivers.

12. The authority of the department to repeal and amend the rules is implied in 60-2-201, 61-10-121 and 61-10-122, MCA. The authority and implementing sections for the proposed amendments are stated at the end of those rules.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State January 3, 1984.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

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| In the matter of the proposed adoption of an interpretive rule relative to graphics and information required to be printed on ballot envelopes for electors in United States service. | ) ) ) ) ) ) | AMENDED NOTICE OF PROPOSED ADOPTION OF AN INTERPRETIVE RULE RELATIVE TO ABSENTEE BALLOT ENVELOPES<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons:

1. The notice of proposed adoption of an interpretive rule relative to graphics and information required to be printed on ballot envelopes, published on December 15, 1983 at pages 1802 & 1803, 1983 Montana Administrative Register, issue number 23 is hereby amended to include the following statement of reasonable necessity.

2. The proposed rule is reasonably necessary to insure that all persons responsible for the printing of ballot envelopes for electors in United States service have proper notice that certain graphics and information are required and where copies of such graphics and information are available.

3. The proposed rule and reason for the proposed adoption is the same as indicated in the original notice.

Dated this 30th day of December, 1983.

JIM WALTERMIRE
Secretary of State

STATE AUDITOR'S OFFICE
SECURITIES DEPARTMENT
HELENA, MONTANA

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| In the matter of the adoption of rules creating a registration exemption for Regulation D securities offerings and creating examination, reporting and record keeping requirements for investment advisors. | ) ) ) ) ) ) ) | NOTICE OF ADOPTION OF RULES 6.10.120 through 6.10.123 |

TO: All Interested Persons:

1. On November 10, 1983, the Department published notice of the adoption of proposed rules concerning a registration exemption for Regulation D securities offerings and creating examinations, reporting, and record keeping requirements for investment advisors. The notice was published at page 1582 of the 1983 Montana Administrative Register, issue number 21. A public hearing on the proposed rules was held on December 16, 1983.

2. The Department has adopted the proposed rules with the following changes:

6.10.120 (RULE I.) UNIFORM LIMITED OFFERING EXEMPTION. (1) By the authority delegated to the ~~securities~~ Commissioner in Section 30-10-105(16), MCA (1983), the following transaction is exempt from the registration provisions of the Securities Act of Montana:

(a) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501-230.503 and 230.505 and/or 230.506 as made effective in Release No. 33-6389 and which satisfies the following further conditions and limitations:

(i) All persons who offer or sell securities in this state to nonaccredited and/or accredited investors as defined in Securities Act of 1933, Regulation D~~,~~ Rule 230.501(a)(5)-(7) shall be ~~appropriately~~ registered in accordance with ~~this state's securities law~~ Section 30-10-201. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the ~~person who received a commission, fee or other remuneration~~ broker/dealer or salesman was not appropriately registered in this state.

(ii) No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.252 sections (c),(d),(e) or (f):

(A) Has filed a registration statement which is subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption.

(B) Has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

(C) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.

(D) Is subject to any state's administrative enforcement order or judgement which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(E) Is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.

(F) The prohibitions of paragraphs A-C and E above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgement was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.

(G) Any disqualification caused by this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that ~~that~~ the exemption be denied.

(iii) The issuer shall file with the Commissioner a notice on Form D (17CFR239.500):

(A) ~~Prior to any offer being made to a person in this state and no later than 10 days prior to the receipt of consideration or the delivery of a subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption~~ At least ten days prior to any offer or sale being made to a person in this state and at all such other times and in the form required under Regulation D, Rule 230.503 to be filed with the Securities and Exchange Commission.

(B) The notice shall contain an undertaking by the issuer to furnish to the ~~securities~~ commissioner, upon written request, the information furnished by the issuer to offerees, except where the Commissioner pursuant to regulation requires that the information be ~~filled~~ filed at the same time with the filing of the notice.

(C) Unless otherwise available, included with or in the initial notice shall be a consent to service of process.

(D) Every person filing the initial notice provided for in 1 above shall pay a filing fee of $200.00 for the first $100,000.00 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000.00, with a maximum of $1,000.00.

(iv) In all sales to nonaccredited investors in this state the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions ~~are~~ is satisfied:

A. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.

B. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.

~~2.~~ (b.) Transactions which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this act, however, nothing in this limitation shall act as an election. Should for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

~~3.~~ (c.) The Commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

~~4.~~ (d.) The Commissioner may, upon request, waive the examination requirements for an agent of the issuer offering and/or selling securities exempted by this Rule upon a showing of good cause.

~~5.~~(e.) In the case of offerings of direct participation programs as defined in Section 34 ~~or~~ of Article III of the National Association of Securities Dealers, ~~Inc.~~ Inc.'s Rules of Fair Practice, delivery of a disclosure document containing the information required by Rule 502(b) of Regulation D to individuals covered by subsections (5), (6), and (7) of Rule 501(a) of Regulation D is required.

~~6.~~(f.) The exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption"~~.~~ or "U.L.O.E."

Auth: 30-10-105(16) and 30-10-107, MCA; Imp: 30-10-105(16), MCA.

6.10.121 (RULE II.) REGISTRATION AND EXAMINATION. (1) In order to become licensed in this state as an investment advisor, the individual applicant, an officer, if the applicant is a corporation, or a general partner, if the applicant is a partnership, shall pass the NASD Uniform Securities Agent State Law Exam with a score of 70% or better. The applicant must also complete a Uniform Application Form ADV ~~and a Uniform Form U-2 for the Appointment of Attorney to Accept Service of Process for the State of Montana~~.

(2) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then a substitute officer or general partner must pass the examinations required in (1) above within two months in order to maintain the investment advisor license.

(3) ~~Investment advisors that are registered with the Securities Department prior to January 1, 1984 shall have until December 31, 1984 to pass the examination required in subsection 1. After December 31, 1984 the Commissioner shall deny any application to renew registration as an investment advisor if the applicant has not passed the examination required in subsection 1.~~ Upon the written request of any applicant, the Commissioner may waive the examination requirement specified in subsection 1 for good cause when, in the Commissioner's opinion, the requirement is excessively burdensome or is unnecessary in light of the applicant's circumstances.

Auth: 30-10-107(1) and 30-10-201(4-6), MCA; Imp: 30-10-107(1) and 30-10-201(4-6), MCA.

6.10.122 (RULE III.) REPORTING REQUIREMENTS. The Department has adopted the rule as proposed.

6.10.123 (RULE IV.) BOOKS AND RECORDS. The Department has adopted the Rule as proposed.

3. The following comments and testimony were received:

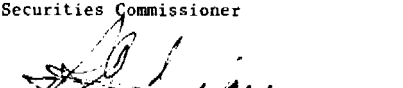
Comment: Two commentors expressed their support for the adoption of Rule I and noted typographical errors.
Response: The Department has corrected the typographical errors.

Comment: The International Association for Financial Planning, Inc. objected to the examination requirements specified in Rule II and objected to the reporting requirements specified in Rule III.
Response: The Department feels that these rules are necessary and appropriate in the public interest for the protection of investors.

Comment: The Investment Company Institute objected to the strict examination requirements specified in Rule II and suggested that the rule be more flexible.
Response: The Department concurs and has amended the rule to include a waiver provision to insure that the requirement is not excessively burdensome.

Comment: One commentor supported the adoption of Rule I, but suggested numerous changes including: expanding the exemption to include Rule 504 of Regulation D; reducing the filing fee; changing the time for filing the notice; and changing the language relating to salesmen's registration.
Response: The Department feels that it is not in the public interest or in the interest of investors to expand the rule to include Rule 504 of Regulation D. The Department can not change the filing fee because the bill which authorized the Department to adopt this rule clearly indicated that the exemption fee would be the same as the registration fee. The requirements for filing the notice have been modified to avoid possible confusion. The language relating to salesmen's registration has also been modified to avoid possible confusion. The Department declined to make other changes in order to preserve the basic uniformity of the rule.

E. V. "SONNY" OMHOLT
State Auditor & Ex Officio
Commissioner of Insurance and
Securities Commissioner



R. G. "RICK" TUCKER
Chief Deputy Securities Commissioner

CERTIFIED TO THE SECRETARY OF STATE 1-3-84

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

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| In the matter of the amendments of ARM 8.24.405 concerning examinations, 8.24.409 concerning the fee schedule. | NOTICE OF AMENDMENTS OF ARM 8.24.409 FEE SCHEDULE |

TO: All Interested Persons:

1. On November 25, 1983, the Board of Landscape Architects published a notice of amendments of the above-stated rules at pages 1695 through 1697, 1983 Montana Administrative Register, issue number 22.

2. The board received a phone call from David Niss, Legal Counsel for the Administrative Code Committee questioning the wording in subsection (3) of rule 8.24.405 concerning examinations. He felt the wording could lead to confusion as to how many times the examination parts could be taken. Because of his concern the board is adopting the rule with the following change: (new matter underlined, deleted matter interlined)

8.24.405 EXAMINATIONS (1) ...

(3) Beginning with the June 1984 licensing examination, a first time candidate failing to pass any part(s) of the examination may repeat the part(s) failed ~~twice~~ at two consecutive examinations. Failure to pass the repeated part(s) ~~after the two attempts~~ will result in the candidate not being allowed to repeat the failed part(s) for a period of three years.

(4)..."

Rule 8.24.409 is being amended exactly as proposed.

3. No other comments or testimony were received.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

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| In the matter of the amendment of ARM 8.77.102 concerning fees for testing and certification. | NOTICE OF AMENDMENT OF ARM 8.77.102 FEES FOR TESTING AND CERTIFICATION |

TO: All Interested Persons:

1. On November 25, 1983, the Department of Commerce published a notice of amendment of the above-stated rule at

pages 1698 - 1699, 1983 Montana Administrative Register, issue number 22.

2. The board has amended the rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: _____
GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, 1/3/84.

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

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| In the matter of the amendment of rule 16.10.305 relating to sale of milk and milk products in food processing establishments) | NOTICE OF THE AMENDMENT OF RULE 16.10.305 (Milk, Milk Products) NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On November 25, 1983, the department published notice of a proposed amendment of rule 16.10.305 concerning sale of milk and milk products in food processing establishments at page 1701 of the 1983 Montana Administrative Register, issue number 22.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State January 3, 1984

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

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| In the matter of the amendment of rules 16.32.103 and 16.32.106, the repeal of rules 16.32.104 and 16.32.105, and the adoption of new rules I through VI (16.32.136 through 16.32.142) relating to certificate of need application forms and health care facility annual reporting forms | ) ) ) ) ) ) ) | NOTICE OF THE ADOPTION, AMENDMENT AND REPEAL OF RULES |

To: All Interested Persons

1. On November 10, 1983, the department published notice of proposed adoption of rules I through VI (ARM 16.32.136 through 16.32.142), amendment of rules 16.32.103 and 16.32.106, and repeal of rules 16.32.104 and 16.32.105 relating to certificate of need application forms and health care facility annual reporting forms, at page 1610 of the 1983 Montana Administrative Register, issue number 21.

2. The department has repealed rules 16.32.104 and 16.32.105 found on pages 16-1395 through 16-1410 of the Administrative Rules of Montana.

3. The department has amended rules 16.32.103 and 16.32.106 and adopted rules I through VI (16.32.136 through 16.32.142) as follows:

ARM 16.32.103 is amended to read as follows:

(1) Same as existing rule.

(2) Except as provided in subsection (1) of this rule, 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]~~ 50-5-309, MCA shall submit to the department a letter of intent as a prerequisite to filing an application for a certificate of need, except a health maintenance organization is excluded from submitting a letter of intent or application for a certificate of need for feasibility surveys or planning funded under 42 U.S.C. Sec 246.

(3) The letter of intent must contain the following information:

(a) Name of applicant

(b) Proposal title

(c) Estimated capital expenditure

(d) Estimated annual operating and amortization expenditure (for new services)

(e) A statement whether the proposal involves:

(i) a substantial change in existing services

(ii) acquisition of equipment (major medical equipment and/or other)

(iii) replacement of existing equipment

(iv) Renovation of existing structure

(v) addition to existing structure

(vi) other (explain)

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

(g)~~(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;

(h)~~(c)~~ anticipated methods and terms of financing the proposal;

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

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

(k)~~(f)~~ the proposed geographic area to be served.

(l) An itemized estimate of increases in annual operating and/or amortization expenses resulting from new health services.

(m) The location of the proposed project.

(n) A brief description of other facilities in the service area which provide similar services.

(4) The letter of intent must be dated and signed by an authorized representative of the applicant.

Renumber subsequent subsections.

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

ARM 16.32.106 is amended to read as follows:

(1) - (8) Same as existing rule.

(9) The application must contain, at a minimum, the ~~following~~ information ~~in such form as~~ specified by the department~~.~~ pursuant to ARM 16.32.136 and 16.32.137 [RULES I AND II].

~~(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) - (13) Same as existing rule.

AUTHORITY: Sec. 50-5-103, 50-5-302, 2-4-201 MCA
IMPLEMENTING: Sec. 50-5-302, MCA

16.32.136 [RULE I] CERTIFICATE OF NEED APPLICATION: INTRODUCTION AND COVER LETTER (1) It is suggested that the applicant contact the Bureau of Health Planning and Resource Development before completing and submitting the necessary information. It is possible that some information listed in 16.32.137 [RULE II] may not be required for a simple review,

or that additional information will be required for a complex review. If an early contact is made between an applicant and the appropriate review agency, the applicant will be made aware of what will be required in specific cases before a formal application is completed and submitted.

(2) The applicant must provide the information applicable to the project, and send the original and one copy to Bureau of Health Planning and Resource Development, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(3) The following information must appear in a cover letter accompanying the application proper:

(a) Name of applicant

(b) Proposal title

(c) Name of person to contact for additional information and his city, state, zip code, and telephone number

(d) Whether the project involves any of the following:

(i) The construction, development, or other establishment of a health care facility which did not previously exist or is being replaced.

(ii) The acquisition of equipment requiring a capital expenditure of more than $500,000.

(iii) The construction, remodeling, renovation or replacement of a health care facility requiring a capital expenditure of more than $750,000.

(iv) A change in bed capacity by more than 10 beds or 10% of the total licensed bed capacity, whichever is less.

(v) Addition of health services to be offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the previous 12-month period and which will result in additional annual operating and amortization expenses of $100,000 or more.

(vi) Acquisition by any person of major medical equipment.

(vii) The expansion of a geographic service area of a home health agency.

(e) A narrative description of the proposal.

(f) For existing facilities, a brief summary describing the existing institution.

(g) Estimated start and completion dates:

(h) Total proposed capital expenditure (principal and interest)

(i) Total proposed major medical equipment expenditure.

(j) Total new health service annual operating expenses.

(k) Any changes proposed in bed capacity or category.

AUTHORITY: Sec. 50-5-302, 2-4-201, MCA
IMPLEMENTING: Sec. 50-5-302 MCA

16.32.137 [RULE II] CERTIFICATE OF NEED APPLICATION -- REQUIRED INFORMATION The following information must be included in a certificate of need application, on forms

provided by the department:

(1) An explanation of the need for the facility or service, including the following information:

(a) The geographic area the proposed project will serve and the criteria being used for determining this service area.

(b) The current population of that service area. (Identify the source of information.)

(c) The 5-year projected population of that service area. (Identify the source of information.)

(d) The percent of the population in that service area expected to be served.

(e) In terms of age, ethnic background and economic status, a description of the specific population which will be served by the proposed new institution or service. The applicant shall indicate the number of people matching this description in the service area. (General public should be indicated if the facility is for non-specific population.)

(f) An explanation of current and projected future trends in health care which might affect facility usage which were given consideration in the development of this project. (Identify source of information.)

(g) A patient origin study for the last 3 years of operation.

(h) Why the service or institution is needed in the identified service area.

(i) The purposes and goals of the project.

(j) Whether there is a waiting list of persons desiring the proposed services. If so, a copy of the list must be provided.

(2) A description of the project's accessibility to the public. In particular, the following information must be included:

(a) The location of the proposed facility with respect to:

(i) Transportation routes.

(ii) Center of population in the service area.

(b) The manner in which the architectural plan promotes access for the physically handicapped.

(c) Other health care institutions which serve this area or portions thereof and provide similar services to those proposed in this application.

(d) If there are no similar services in the area, the nearest facility or facilities providing these services must be identified.

(3) A discussion of planning and environmental considerations, including the following information:

(a) An explanation of how the proposed service or facility is compatible with the current State Health Plan and Health Systems Plan. If it is not compatible, an explanation of why it should be approved.

(b) Whether a short, long-range, master plan or capital expenditure plan is available for the facility. If so, a copy must be provided. The applicant shall also provide applicable city, county or regional land use, zoning, transportation, utilities or parking plans.

(c) A description of existing or proposed working relationships or joint planning efforts with other providers or services in the community or service area. If there are no such efforts, an explanation must be provided.

(d) Whether the affected consumer/provider and related groups in the service area have indicated support for the proposal. (Agencies, groups, and their reactions must be listed.)

(e) A discussion of environmental considerations, including architectural compatibility, waste disposal, traffic impacts, economic and social impacts on the area, etc.

(4) A discussion of the organizational aspects of the project, including the following information:

(a) The type of organization or entity responsible for the day-to-day operation of the facility (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation).

(b) Whether the controlling organization leases the physical plant from another organization. If so, the name and type of organization that owns the plant.

(c)(i) Any changes in the ownership, board of directors or articles of incorporation of the applicant during the past year.

(ii) The names of the current chairman and members of the board of directors of the applicant.

(iii) The names of the corporate officers of the applicant.

(iv) The name and title of the chief administrator of the applicant's facility, and whether employed by the applicant or another organization as identified in paragraph (d) below.

(d) If the controlling organization has placed responsibility for the administration of the facility with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided.

(e) If the facility is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization.

(f) Whether the applicant's facility has received or intends to apply for any of the following accreditations or approvals, and the expiration dates and applicable conditions of accreditation of any such accreditations or approvals currently held (If none were held, provide explanation):

(i) State licensure

(ii) National association membership (specify)

(iii) JCAH accreditation

(iv) Medicare certification
(v) Other (specify)

(5) A discussion of the program staffing and operational capabilities of the project, including the following information:

(a) The number of full-time-equivalent staff positions (current and after completion of project), and estimated number of personnel available, in each of the following categories:

(i) administration
(ii) physician services
(iii) dental services
(iv) nursing services
(v) pharmacy
(vi) clinical lab services
(vii) dietary services
(viii) radiological services
(ix) rehabilitation services
(x) social services
(xi) medical records
(xii) other professional/technical
(xiii) housekeeping
(xiv) all other (specify)

(b) Expected sources from which the applicant will draw for filling the staff positions created by the proposed institution or service and the potential of those sources to fill the applicant's needs. The applicant shall include manpower development needs, training resources, etc.

(c) A discussion of the success of recruiting efforts in the area in the past.

(d) If the applicant operates an existing facility, whether it meets current staffing standards.

(6) A discussion of the physical structure and services to be provided, including the following information:

(a) A narrative description of the project, including:

(i) Size, type construction, floor space to be added or renovated, beds, square feet per bed, parking, etc.

(ii) Description of both old and new facilities where applicable.

(iii) Time frame(s) for construction.

(iv) A line drawing of proposal.

(b) A discussion of legal considerations, including:

(i) Whether the project will correct non-conforming conditions.

(ii) Whether the project is in conformance with local zoning laws. (city or county)

(iii) Whether the structures meet safety codes.

(c) A listing of current licensed beds, certified medicare or medicaid beds, average daily census, and beds to be added in each of the basic service categories, including medical, surgical, coronary care unit, intensive care unit, maternity, pediatric, neuro-psychiatric, chemical dependency,

orthopedics, rehabilitation, skilled nursing care, intermediate long-term care, and other (specify).

(d) A description of major medical equipment to be acquired, including current and proposed capacity.

(e) For outpatient centers, the current and proposed capacity for outpatient procedures.

(f) For home health agencies, the current and proposed number of visits and consultations, and the reporting period.

(g) For each of the following, the utilization levels which existed 3 years ago, 1 year ago and currently, and projections for 1, 2 and 3 years into the future, assuming both current capacities and capacities after construction or implementation of the proposal:

(i) average daily census
(ii) percent occupancy
(iii) average length of stay
(iv) total discharges
(v) emergency room visits
(vi) outpatient visits
(vii) home care visits
(viii) lab exams
(ix) radiology
(x) surgical procedures
(xi) respiratory therapy
(xii) other (specify)

(h) A listing of the major items of fixed and movable equipment anticipated to be purchased as part of the proposal.

(7) A discussion of capital expenditure requirements, including the following information:

(a) The approximate date that obligation of funds will be incurred for the proposal.

(b)(i) The source of funds. (Specify cash on hand, commercial or government loans, grants, net earnings and reserve, bequests and endorsements, charitable fund raising, revenue bonds, other.)

(ii) Amount available
(iii) Amount to be borrowed

(c)(i) A complete debt service cash flow schedule for each year of repayment.

(ii) Term of loan
(iii) Interest rate of loan

(d) Copies of the following financial operating statements for the last 3 years.

(i) Audited balance sheets.
(ii) Audited revenue and expense statements.
(iii) Changes in net working capital.
(iv) Any other financial operating statements.

(e) Copies of the following:

(i) Projected revenue and expense statements with supportive population and utilization assumptions both during construction and the first two years of operation.

(ii) Projected cash flow schedule for proposed project during construction and the first two years of operation.

(iii) Projected balance statements with statistical assumptions during construction and first two years of operation.

(iv) Utilization projections demonstrating need for the project.

(8) Estimated project costs for each of the following:

(a) consultant, legal, architect, engineering, and construction supervision

(b) financing fees

(c) feasibility study (include a copy)

(d) interest, principle to be borrowed, reserves related to public bond issue

(e) land acquisition, site development, and construction

(9)(a) Effect of project on costs and charges for room rates or specific services.

(b) Discussion of operating fund demands and budget factors, including the following:

(i) The sources of operating revenue in percentages. (Specify medicare, medicaid, private pay or insurance)

(ii) If grant support is provided for the project, how the service will be financed upon termination of this support.

(iii) Whether depreciation will be funded.

(iv) Explanation of plans for meeting possible operating deficits.

(c) Effect the proposed capital expenditure will have on annual operating costs. Whether the operating costs will be increased or decreased and by how much.

(10) A discussion of cost containment factors, including the following information:

(a) How the architectural plan promotes economy in the delivery of service.

(b) How the proposal demonstrates superior community cost-benefit or community cost-effectiveness.

(c) Description of shared services which are available as an alternative to duplication. (Explain in detail.)

(d) Alternatives which have been considered to provide the service proposed by the project.

(11) The application must be dated and signed by a responsible representative of the applicant, indicating the title of the signator.

AUTHORITY: Sec. 50-5-302, 2-4-201 MCA
IMPLEMENTING: Sec. 50-5-302 MCA

16.32.138 [RULE III] ANNUAL REPORTS BY HOSPITALS Every hospital shall submit an annual report to the department no later than January 31 of each year on forms provided by the department. The annual reports must be signed by the hospital administrator and must include the following information:

(1) Whether the hospital has received JCAH accreditation, and if so, for what period.

(2) Beginning and ending dates of the hospital's reporting period, and whether the facility has been in operation for 12 full months at the end of the most recent reporting period.

(3) A discussion of the organizational aspects of the project, including the following information:

(a) The type of organization or entity responsible for the day-to-day operation of the hospital (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation).

(b) Whether the controlling organization leases the physical plant from another organization. If so, the name and type of organization that owns the plant.

(c)(i) Any changes in the ownership, board of directors or articles of incorporation during the past year.

(ii) The name of the current chairman of the board of directors.

(d) If the controlling organization has placed responsibility for the administration of the hospital with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided.

(e) If the hospital is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization.

(4) Whether the hospital provides primarily general medical/surgical services, or specialty services. (specify)

(5) Specific facilities and services provided by the hospital, bed capacities for each service (where applicable), and whether such services are provided full or part-time, by hospital personnel, or by contracting providers.

(6) Newborn nursery statistics, including:

(a) Number of bassinets set up and staffed

(b) total number of births

(c) total new born days

(d) neonatal intensive care admissions and inpatient days

(7) Surgery statistics, including:

(a) number of inpatient and outpatient surgery suites

(b) number of inpatient and outpatient operations performed

(c) number of adult and pediatric open-heart surgical operations performed

(d) total adult and pediatric cardiac catheterization and intracardiac and/or coronary artery procedures

(8) Number of beds set up and staffed and total inpatient days (excluding newborns) in each basic inpatient service category

(9) Inpatient statistics, including:

(a) number of licensed hospital beds (excluding bassinets and long-term care beds)

(b) number of admissions (excluding newborns)
(c) number of discharges (including deaths)
(d) number of deaths (excluding fetal deaths)
(e) census on last day of reporting period (excluding newborns)

(10) Information on other services, including number of rooms or units, number of inpatient and outpatient procedures, and number of outpatient visits in at least the following areas:
(a) emergency room
(b) organized outpatient department
(c) x-ray, ultrasound, nuclear medicine, cobalt therapy, CT scans
(d) physical therapy
(e) respiratory therapy
(f) renal dialysis
(g) other ancillary services

(11) Information on changes in total number of beds during the reporting period

(12) Whether there is a separate long-term care unit, and if so, how many beds.

(13) Patient origin data, including every town of origin and number of discharges.

(14) Total medicare and medicaid admissions and inpatient days.

(15) Size of medical and non-medical staff, including number of active and consulting physicians, medical residents and trainees, registered and licensed professional or vocational nurses, and all other personnel.

(16) Name of person to contact in the event the department has questions concerning the information provided in the annual report.

AUTHORITY: Sec. 50-5-103, 2-4-201 MCA
IMPLEMENTING: Sec. 50-5-106 MCA

16.32.139 [RULE IV] ANNUAL FINANCIAL REPORTS BY HOSPITALS Every hospital shall submit an annual financial report to the department no later than January 31 of each year on forms provided by the department. The annual financial report must be signed by the hospital administrator and must include the following information:

(1) Hospital revenues for both acute and long-term care units, including:
(a) gross revenue from inpatient and outpatient service
(b) deductions for contractual adjustments, bad debts, charity, etc.
(c) other operating revenue
(d) nonoperating revenue (such as government appropriations, mill levies, contributions, grants, etc.)

(2) Hospital expenses for both acute and long-term care units, including:

(a) Payroll expenses for all categories of personnel
(b) nonpayroll expenses, including employee benefits, professional fees, depreciation expense, interest expense, others
(3) Detail of deductions for both acute and long-term care units, including:
(a) bad debts
(b) contractual adjustments (specifying Medicare, Medicaid, Blue Cross or other)
(c) charity/Hill Burton
(d) other
(4) Medicaid and Medicare program revenue for both acute and long-term care units
(5) Unrestricted fund assets, including dollar amounts of:
(a) current cash and short-term investments
(b) current receivables and other current assets
(c) gross plant and equipment assets; deductions for accumulated depreciation
(d) long-term investments
(e) other.
(6) Unrestricted fund liabilities, including dollar amounts of:
(a) current liabilities
(b) long-term debts
(c) other liabilities
(d) unrestricted fund balance
(7) restricted fund balances, with identification of specific purposes for which funds are reserved, including plant replacement and expansion, and endowment funds.
(8)(a) Capital expenditures made during the reporting period, including expenditures, disposals and retirements for land, building and improvements, fixed and moveable equipment, and construction in progress.
(b) Whether a permanent change in bed complement or in the number of hospital services offered will result from any capital acquisition projects begun during the reporting period (Specify)
(c) Whether a certificate of need or Section 1122 approval was received for any projects during the reporting period, and if so, the total capital authorization included in such approvals.
AUTHORITY: 50-5-103, 2-4-201 MCA
IMPLEMENTING: Sec. 59-5-106 MCA

16.32.140 [RULE IV] ANNUAL REPORTS BY LONG-TERM CARE FACILITIES Every long-term care facility shall submit an annual report to the department no later than January 31 of each year on forms provided by the department. The annual report must be signed by the facility administrator and must include the following information:

(1) The facility's reporting period, and whether the facility was in operation for a full 12 months at the end of the reporting period.

(2) A discussion of the organizational aspects of the project, including the following information:

(a) The type of organization or entity responsible for the day-to-day operation of the facility (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation).

(b) Whether the controlling organization leases the physical plant from another organization. If so, the name and type of organization that owns the plant.

(c)(i) Any changes in the ownership, board of directors or articles of incorporation of the facility during the past year.

(ii) The name of the current chairman of the board of directors of the facility.

(d) If the controlling organization has placed responsibility for the administration of the facility with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided.

(e) If the facility is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization.

(3) utilization information, including:

(a) licensed bed capacity (skilled and intermediate)

(b) whether the facility is certified for Medicare or Medicaid

(c) number of beds currently set up and staffed

(d) total patient census on first day of reporting period; total admissions, discharges, patient deaths, and patient-days of service during the reporting period

(e) patient census on last day of reporting period, broken down by sex and age categories

(4) financial data, including:

(a) total annual operating expenses (payroll and non-payroll)

(b) closing date of financial statement

(c) sources of operating revenue, indicating percent received from Medicare, Medicaid, private pay, insurance, grants, contributions, and other

(5) Staff information, including number of full and part-time registered and licensed professional nurses.

(6) Patient origin data, including patients' counties of residence, and number of admissions from state institutions and from out-of-state.

(7) Name of person to contact should the department have any questions regarding the information on the report.

AUTHORITY: Sec. 50-5-103, 2-4-201 MCA
IMPLEMENTING: Sec. 50-5-106 MCA

16.32.141 [RULE V] ANNUAL REPORTS BY HOME HEALTH AGENCIES Every home health agency shall submit an annual report to the department no later than January 31 of each year on forms provided by the department. The report must be signed by the administrator of the agency and must include the following information:

(1) Whether the agency has Medicare certification, and if so, the term of such certification.

(2) The agency's reporting period, and whether the agency was in operation for a full 12 months at the end of the reporting period.

(3) A discussion of the organizational aspects of the project, including the following information:

(a) The type of organization or entity responsible for the day-to-day operation of the agency (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation).

(b) Whether the home health agency is owned by the same organization that controls it. If not, the name and type of organization that owns the agency.

(c)(i) Any changes in the ownership, board of directors or articles of incorporation of the agency during the past year.

(ii) The name of the current chairman of the board of directors of the agency.

(d) If the controlling organization has placed responsibility for the administration of the agency with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided.

(e) If the agency is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization.

(4) A listing of specific services provided by the agency, and the number of people served and number of visits made for each service.

(5) A description of the geographic area served by the agency.

(6) The number of persons served by the agency and the number of new cases acquired by the agency during the reporting period.

(7) Financial data, including:

(a) payroll and non-payroll expenses

(b) closing date of financial statement

(c) sources of operating revenue, indicating percentage received from Medicare, Medicaid, private pay, insurance, grants, contributions, other

(8) Staff information, including number of full, part-time and contracted registered and licensed professional nurses, home health aids, student nurses, and others.

(9) The name of the person to contact should the department have questions regarding the information on the report.
AUTHORITY: Sec. 50-5-103, 2-4-201 MCA
IMPLEMENTING: Sec. 50-5-106 MCA

16.32.142 [RULE VI] ANNUAL REPORT BY ALCOHOL AND DRUG TREATMENT FACILITIES Every alcohol and/or drug treatment facility shall submit an annual report to the department no later than January 31 of each year on forms provided by the department. The report must be signed by the facility administrator and must include the following information:

(1) The facility's reporting period, and the number of days the facility was open during the period

(2) Type of licensure (hospital, long-term care facility, other)

(3) Duration of inpatient treatment program

(4) The type of organization or entity responsible for the day-to-day operation of the facility (e.g., state, county, city, federal,hospital district, church related, nonprofit corporation, individual, partnership, business crporation).

(5) Utilization information, including number of inpatient beds, admissions and patient-days, and number of outpatient clients and service contacts.

(6) Total inpatient and outpatient alcohol unit revenues

(7) Number of first admissions, listed by age, race, sex and education

(8) Percent of revenue received from Medicare, Medicaid, insurance, private pay, CHAMPUS, Indian Health Service, and other sources.

(9) Number of clients who have received previous treatment.

(10) Discharge data, including number of clients who completed treatment or were referred elsewhere.

(11) Patient origin data, indicating number of patients from each county or out-of-state.
AUTHORITY: Sec. 50-5-103, 2-4-201 MCA
IMPLEMENTING: Sec. 50-5-106 MCA

4. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State January 3, 1984

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

| | | |
|---|---|---|
| In the matter of the adoption of rules setting standards for administration of a program to pay treatment costs for victims of end-stage renal disease | ) ) ) ) | NOTICE OF THE ADOPTION OF RULES 16.35.101 THROUGH 16.35.113 (End-Stage Renal Disease Program) |

To: All Interested Persons

1. On November 10, 1983, the department published notice of a proposed adoption of rules I through XIV (16.35.101 through 16.35.113) concerning standards for an end-stage renal disease program at page 1603 of the 1983 Montana Administrative Register, issue number 21.

2. The department has adopted the rules with the following changes:

16.35.101 [RULE I] DEFINITIONS Same as proposed.

16.35.102 [RULE II] APPLICATION PROCEDURES

(1) - (4) Same as proposed.

(5) The claimant must make a new application for the continuation of program benefits at the end of the period during which he is entitled to benefits, as determined in ~~Rule III~~ 16.35.103.

(6) Same as proposed.

16.35.103 [RULE III] TIME PERIOD FOR BENEFITS Same as proposed.

16.35.104 [RULE IV] RIGHT TO HEARING Same as proposed.

16.35.105 [RULE V] NON-FINANCIAL ELIGIBILITY REQUIREMENTS Same as proposed.

16.35.106 [RULE VI] FINANCIAL ELIGIBILITY REQUIREMENTS Same as proposed.

16.35.107 [RULE VII] ELIGIBLE SERVICES AND SUPPLIES; GENERAL The department, to the extent of its appropriation for ESRD, will pay for the costs listed in ~~Rules VIII and IX~~ 16.35.108 for approved ESRD-eligible individuals only if each service or supply is directly related to end-stage renal disease, medically necessary, ordered by a physician, and provided after the time the individual in question first contacts the department (in person, by mail, or by phone) to apply for ESRD benefits, with the exception noted in 16.35.108(3)(b) for renal transplant patient transportation costs.

16.35.108 [RULE VIII] ELIGIBLE SERVICES AND SUPPLIES ~~FOR PARTICIPANT NOT RECEIVING MEDICAID BENEFITS~~ The ESRD will pay for the balance of the cost of the following services and supplies which remains after all available third-party benefits have been utilized to pay for them: ~~may be paid by ESRD for individuals who are not receiving Medicaid benefits:~~

(1) For home or center dialysis:

(a) Insertion ~~of~~ and maintenance of access site;

~~(b) Training the patient to implement and maintain home dialysis (excluding room, board, and travel expenses);~~

~~(c) Rental and/or purchase of dialysis machine and supplies;~~

~~(d) Repairs to dialysis equipment;~~

~~(e) Modification of existing plumbing and wiring, at the cost represented by the lowest of three bids submitted to the department;~~

~~(f) Supplies for home dialysis;~~

~~(g)~~ (b) Physician and hospital service for ~~maintenance of home~~ dialysis care.

~~(2)~~ (c) The following medications:

~~(a)~~ (i) Hepatitis vaccine;

~~(b)~~ (ii) Gamma globulin;

~~(c)~~ (iii) Whole blood;

~~(d)~~ (iv) Hyperphosphatemia (phosphate binders) drugs;

~~(e)~~ (v) Hypocalcemia drugs;

~~(f)~~ (vi) Vitamins, ~~with~~ iron, ~~and/or~~ and folic acid;

~~(g)~~ (vii) Vitamin D preparations;

~~(h)~~ (viii) ~~Steroids (transplant patients only);~~ Hypertensive drugs;

~~(i)~~ (ix) ~~Immunosuppressants (transplant patients only);~~ Diuretics;

~~(j)~~ (x) Antibiotics for peritonitis associated with peritoneal dialysis ~~(CAPD)~~.

(2) For home dialysis patients only:

(a) Training the patient to implement and maintain home dialysis (excluding room, board, and travel expenses);

(b) Modification of existing plumbing and wiring, at the cost represented by the lowest of three bids submitted to the department, or, if three bidding sources are not reasonably available to the patient, the lowest of those bids available;

(c) For those patients choosing to let a facility provide and maintain dialysis supplies and equipment (Medicare Method I), the charge per run by that facility;

(d) For those patients choosing to obtain and maintain their own home dialysis supplies and equipment (Medicare Method II):

(i) Rental and/or purchase of dialysis machine and supplies;

(ii) Repairs to dialysis equipment.

(3) For a renal transplant patient: ~~patients, only if ESRD is notified within 72 hours after the patient is admitted to a hospital for the transplant:~~

(a) Preliminary medical work-up for donor/donee match; ~~and medical costs of the transplant;~~

(b) If ESRD is notified within 72 hours after the patient is admitted to a hospital for the transplant, transportation ~~Transportation~~ of the patient to and from the site where the transplant takes place, in the ~~cheapest~~ least expensive manner medically appropriate, taking into account necessary time constraints in each individual case (e.g., emergency transport may be necessary in place of commercial carrier if the transplant deadline is imminent)~~;~~ ;

(c) Physician and hospital care related to transplant surgery;

(d) The following medications:

(i) Immunosuppressants;

(ii) Steriods;

(iii) Hypertensives;

(iv) Diuretics.

(e) Medical follow-up services which are directly related to maintenance or monitoring of the transplanted kidney.

~~(4) Center dialysis, if its use in place of home dialysis is medically justified in writing by a physician.~~

~~RULE IX--ELIGIBLE SERVICES AND SUPPLIES FOR PARTICIPANT RECEIVING MEDICAID BENEFITS If an ESRD-eligible individual is also receiving Medicaid benefits, ESRD will pay only for the cost of the following medications:~~

~~(1) Hyperphosphatemia (phosphate binders) drugs;~~

~~(2) Vitamins with iron and/or folic acid;~~

~~(3) Vitamin D preparations.~~

16.35.109 [RULE X] NON-ELIGIBLE SERVICES The cost of the following services and supplies is not eligible for payment from ESRD:

(1) Attendant or "back-up" person;

(2) Drugs not specifically listed in 16.35.108 ~~Rule VIII~~ as eligible medications;

(3) - (6) Same as proposed.

16.35.110 [RULE XI] DOCUMENTATION OF CLAIMS A claim for ESRD reimbursement, in order to be reimbursable, must contain, or be accompanied by, the following documentation:

(1) Each claim for any reimbursable service or supply must contain:

(a) The patient's name and address; and

(b) The provider's federal tax identification number.

(2) A physician service claim must be:

(a) Submitted and itemized on a completed universal health insurance claim form approved by the American Medical Association's Council on Medical Services~~,~~. ~~with the assignment box checked yes to indicate that the physician agrees not~~

~~to bill the ESRD patient for any portion of the cost of the service which exceeds the Medicare allowance for that service.~~

(b) Accompanied by a completed Medicare EOB and an EOB from any private insurance which the patient might have which covers the service in question.

(3) - (6) Same as proposed.

16.35.111 [RULE XII] CONDITIONS OF CLAIM PAYMENT Payment of a claim will be made only:

(1) To the provider of the service or supply for which a claim is made.

~~(2) To a provider of a service or supply who refrains from billing the ESRD patient for any portion of the cost of the service or supply which exceeds the Medicare allowance for that service or supply.~~

~~(3)~~ (2) After all other reasonably available sources of payment for that service or supply, such as Medicare or private insurance, have either paid in part or denied payment for the service or supply in question.

~~(4)~~ (3) For the portion of the cost of an ESRD-eligible service or supply which does not exceed the amount allowed by Medicare for that service or supply.

16.35.112 [RULE XIII] PRIORITY OF PAYMENT Same as proposed.

16.35.113 [RULE XIV] NOTICE OF END OF ESRD BENEFITS Whenever it appears that the ESRD appropriation for the fiscal year in question will be used up before the end of that fiscal year, the department will provide a news release to each major wire service serving Montana announcing the imminent cessation of benefits and individual notice of the cessation to each person approved for ESRD participation and to each renal dialysis center within Montana.

3. The following comments and testimony were received.

Drs. Donald Hicks (Billings Clinic) and Faust Alvarez (Helena) objected to the requirement (Rules XI and XII) that a physician, in order to receive ESRD payments, make a commitment to refrain from billing a renal disease patient for any more than Medicare would allow for the service in question, because, in Dr. Hicks' case, the Billings Clinic refuses to limit its charges to the Medicare allowance, which would effectively bar Dr. Hicks' patients from the ESRD program, and in Dr. Alvarez' case, that his constitutional right to freedom of choice was violated. In view of the limited numbers of physicians in Montana who treat renal-disease patients, the department deleted the requirement in order to allow the participation of all of them in the program.

Mr. Bud Coats, Missoula, expressed general support for the rules, but requested that the time periods for eligibility

be uniformly on a fiscal year basis, rather than in one-year periods dating from the initial application date of each individual program participant, to make it simpler for participants to remember when to renew their applications and to simplify state record-keeping. The department did not accept the suggested change, largely because those who apply close to the end of a fiscal year would have to reapply within a short period of time; however, the proposal will be considered for the future.

Mr. Coats also noted that the rules should be expanded to allow payment per run to a facility which provides the machinery and supplies for home dialysis, recognizing that participants now have the option to use facility-provided services rather than having to obtain their own equipment supplies, due to recent changes in Medicare rules. The department added the requested language.

He suggested, in addition, that the phrase in Rule VIII (3)(b), "in the cheapest manner", be revised to read "in the most economical manner." The department agreed to eliminate the word "cheapest", but because "most economical manner" is fairly vague, substituted "least expensive".

Mr. Coats pointed out that since center dialysis cost is no longer any greater than the cost of home dialysis, there is no need or justification for the provision that program payments for center dialysis are available only if the center dialysis is physician-certified to be medically justified. The department agreed and deleted the provision.

Finally, Mr. Coats pointed out that the proposed payment for "vitamins with iron and/or folic acid" does not take into account those patients who take folic acid separately from vitamins or who cannot take iron. The department changed the language accordingly.

Chaplain Jimmie Harrold; Diane Kersten, Social Worker; and Marcia Mack, Patient Service Representative (Dialysis); all of Billings Deaconess Hospital, suggested that it may be cost-effective for the ESRD program to pay premiums for private insurance providing dialysis coverage and supplemental Medicare policies. Since the data is not yet available to determine if such premium payments would indeed save the program money or deplete it, the proposal was not adopted at this time but will be considered carefully for the future.

Ms. Mack and Ms. Kersten also requested consideration of payment of special transportation needs, especially during winter. Since the department at present has no clear idea of how costly such transportation may be and ESRD funding is severely limited, the suggestion was rejected, but data will be collected for a possible future amendment to cover additional transportation.

Ms. Kersten expressed approval of the proposed application process as efficient and protective of patient dignity. She also suggested direct notification of participants, in addition to a news release, whenever it appears program funds

are coming to an end, to facilitate their future planning. Dr. Gary Buffington (Great Falls) expressed a similar concern that patients be kept informed about the amount of funding remaining available, in order to prevent them from becoming so dependent upon the program that they drop other insurance, etc. The department agreed and amended Rule XIV accordingly.

Jack Dorner, from the Medicaid Financing Bureau of the Department of Social and Rehabilitation Services, suggested that listing services eligible for ESRD payment if the patient receives Medicaid benefits (Rule IX) separately from those services which may be paid by ESRD if the recipient does not receive Medicaid benefits (Rule VIII) was confusing in that it implied that such services would be paid for by the ESRD program even if third-party payments from sources other than Medicaid were available for those services. In response, the department meshed both rules together in Rule VIII, eliminated Rule IX, and added clarifying language.

Several doctors requested clarification concerning whether the 72-hour notification requirement for transplant patients was intended to apply just to transportation costs or to other transplant costs as well. Since only transportation costs were intended to be subject to the 72-hour notice restriction, the language was amended to correctly state that fact.

The department noted that in small towns or remote areas of the state a home dialysis patient might not have access to three plumbers or electricians to submit the required three bids for plumbing and wiring modifications, so an amendment was made to Rule VIII to allow for that situation.

The department also added language eliminating an apparent conflict between Rules VII and VIII concerning whether transportation costs relating to renal transplants can be covered if they are incurred before a patient contacts the ESRD program.

In addition, the department added hypertensive drugs and diuretics to the list of covered medications after an analysis of actual bills showed ESRD patients commonly needed them.

Finally, the department generally edited the rules to clarify their meaning.

JOHN J. DRYNAN, M.D., Director

By _____
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State January 3, 1984

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the repeal of Rule 18.5.106, relating to design requirements for access driveways. | ) ) ) ) | NOTICE OF THE REPEAL OF RULE 18.5.106, RELATING TO DESIGN REQUIREMENTS FOR ACCESS DRIVEWAYS. |

TO: All Interested Persons:

1. On November 10, 1983, the Department of Highways published notice of a proposed repeal of Rule 18.5.106 concerning design requirements for access driveways at pages 1618 and 1619 of the 1983 Montana Administrative Register, issue number 21.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

Gary J. Wicks
Director of Highways

By: _____

Certified to the Secretary of State January 3, 1984.

VOLUME NO. 40 OPINION NO. 28

CONFLICT OF INTEREST - Public contracts, local officials and employees;
CONTRACTS - Conflict of interest, public contracts, local officials and employees;
COUNTIES - Public contracts, conflict of interest, county commissioners, county officers and employees;
COUNTY COMMISSIONERS - Public contracts, conflict of interest;
COUNTY OFFICERS AND EMPLOYEES - Public contracts, conflict of interest;
EMPLOYEES, PUBLIC - Local officials and employees, conflict of interest, public contracts;
MUNICIPAL GOVERNMENT - Public contracts, conflict of interest, municipal officers and employees;
PUBLIC OFFICERS - Local officials and employees, conflict of interest, public contracts;
MONTANA CODE ANNOTATED - Sections 1-2-202, 2-2-102(5), 2-2-121, 2-2-125, 2-2-131, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, 7-5-4109;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 104 (1978), 38 Op. Att'y Gen. No. 55 (1979).

HELD: 1. The definitions of "be interested in" and "contract" contained in section 2-2-201, MCA, are incorporated into sections 7-5-4109 and 7-5-2106, MCA.

2. Disclosure under section 2-2-131, MCA, is purely voluntary and may be done prior to taking any official action, as defined by section 2-2-102(5), MCA.

3. Even though an interest may be permissible under the exceptions listed in section 2-2-201, MCA, an official who has a substantial interest in the affected business must comply with sections 2-2-125 and 2-2-131, MCA.

4. If the interest is not permissible under the exceptions listed in section 2-2-201, MCA, then the contract is voidable, and abstinence from voting will not exonerate the official.

14 December 1983

Natasha J. Morton
Hardin City Attorney
631 North Center
Hardin MT 59034

James E. Seykora
Big Horn County Attorney
Big Horn County Courthouse
Hardin MT 59034

Dear Ms. Morton and Mr. Seykora:

You have requested my opinion concerning three questions which I have phrased as follows:

1. Do the definitions of "be interested in" and "contract" contained in section 2-2-201, MCA, apply to sections 7-5-4109 and 7-5-2106, MCA, which prohibit conflicts of interest for local officials?

2. Does the voluntary disclosure provided by section 2-2-131, MCA, only apply if a local official is forced to vote to effect a decision?

3. Are the provisions of sections 7-5-4109 and 7-5-2106, MCA, satisfied by the abstinence of the local official from voting on any contract in which he has an interest?

Your first question addresses potential conflict of interest situations where a local official owns a minority interest in a business, where a relative of a city council member owns a majority share of a business, and where a local official owns the only business of its kind in the locality. If the definitions of section 2-2-201, MCA, apply to sections 7-5-4109 and 7-5-2106, MCA, then under certain circumstances the local government may enter into contracts with these businesses. All three of these statutes deal with conflicts of interest for local officials.

Section 7-5-2106, MCA, applies solely to the board of county commissioners and provides:

> Control of conflict of interest. No member of the board must be directly or indirectly interested:
>
> (1) in any property purchased for the use of the county;
>
> (2) in any purchase or sale of property belonging to the county; or
>
> (3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

This section was enacted in 1895 and has never been amended. Section 7-5-4109, MCA, applies to city and town officials and provides:

> Control of conflict of interest. The mayor, any member of the council, any city or town officer, or any relative or employee thereof must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

This section, enacted in 1887, was amended in 1895 to its present form. Related statutes applicable to alternative forms of municipal government appear in sections 7-3-4256 and 7-3-4367, MCA. The latter two statutes do not mention relatives of officials.

Section 2-2-201, MCA, is codified within a comprehensive chapter on standards of conduct for public officers and employees and provides:

> Public officers, employees, and former employees not to have interest in contracts. Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of

which they are members or employees. A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment. In this section the term:

(1) "be interested in" does not include holding a minority interest in a corporation;

(2) "contract" does not include:

(a) contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(b) merchandise sold to the highest bidder at public auctions;

(c) investments or deposits in financial institutions which are in the business of loaning or receiving money;

(d) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

The section as enacted in 1895 consisted of the first sentence. The definitions in subsections (1) and (2)(a) to (2)(c) were added in 1973, and subsection (2)(d) was added in 1981.

The sections in Title 7 appear to conflict with section 2-2-201, MCA, since the former sections appear to be an absolute prohibition of any interest in any contract while the latter section recognizes exceptions to the

definitions of "contract" and "interest." In resolving the apparent conflict between the statutes, the intention of the Legislature is to be followed. § 1-2-202, MCA. It is to be presumed that the Legislature does not pass useless or meaningless legislation. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981); State ex rel. City of Townsend v. D.A. Davidson, Inc., 166 Mont. 104, 531 P.2d 370 (1975); State ex rel. Irvin v. Anderson, 164 Mont. 513, 525 P.2d 564 (1974). Where statutes relate to the same general subject, they should be construed together and harmonized, giving effect to each. Id.; City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971). Where one statute deals with a subject in general terms and another deals with the same subject in a more minute and detailed way, the latter will prevail over the former to the extent of any inconsistency. City of Billings v. Smith, supra.

In determining the intent of the Legislature, the legislative history may be examined. There were no relevant committee records for the 1973 amendment to section 2-2-201, MCA, which added the definitions. The 1981 amendment adding subsection (2)(d) pertaining to geographical restrictions was discussed by the Local Government Committee of the Senate on March 17, 1981. The minutes of that meeting reflect the following:

> Representative Neuman, District No. 33, said this is an act to amend conflicts of interest provisions to allow contracts whenever geographical restrictions would make a contract otherwise unavailable to a local government. The bill arises from a problem in small communities. As populations decline and businesses close, there is little competition in the towns. Local governments are precluded from obtaining services from businesses owned by people serving on the town council, etc. This bill would allow them--where because of geographical distance it is impractical for the local government to have to contract with an out-of-town business because of this statute--to contract with those local businesses.
>
> ....

> Representative Neuman, in closing, said if there were two businesses in the same town, the local government would be required to purchase items from the business where there was no conflict of interest.

The legislative history of section 2-2-201(2)(d), MCA, clearly indicates an intent to have the geographical exception apply to local government officials, including county commissioners and city council members.

The Legislature is presumed to enact legislation with existing legislation in mind. Teamsters, etc., Local 45 v. Montana Liquor Control Board, 155 Mont. 300, 471 P.2d 541 (1970). Sections 7-5-4109 and 7-5-2106, MCA, were on the books when the amendments to section 2-2-201, MCA, were passed in 1973 and 1981 to specifically define "interest" and "contract" to exclude certain situations. If sections 7-5-4109 and 7-5-2106, MCA, are interpreted as an absolute prohibition and the definitions of section 2-2-201, MCA, do not apply, then the Legislature would have performed a useless act in amending section 2-2-201, MCA. In order to give life to all of the statutes dealing with conflicts of interest in public contracts, the definitions of section 2-2-201, MCA, must be incorporated into sections 7-5-4109 and 7-5-2106, MCA.

Thus, it is permissible for a local entity to contract with a corporation even though a local official owns a minority interest in that corporation. It is also permissible for a city or town to award a contract to the lowest responsible bidder in a competitive bidding process, even if the business is owned by a relative of a city or town council member or by the official. As a final example, it is permissible for a local entity to contract with a local business owned by an official if the local entity cannot reasonably afford to procure the contract elsewhere due to geographical restrictions as defined in section 2-2-201(2)(d), MCA.

Your next question concerns the application of the voluntary disclosure provision of section 2-2-131, MCA, which is a part of the Code of Ethics for public officials and employees. Section 2-2-131, MCA, provides for voluntary disclosure of a private interest which may create a conflict or impinge upon the fiduciary duty of public officials or employees. As disclosure is purely

voluntary, it may be done at any time by anyone prior to performing an official act as defined by section 2-2-102(5), MCA. However, disclosure does not operate to excuse or to exonerate a potential violation of the Code of Ethics, except as provided in sections 2-2-121(3) and 2-2-125(3), MCA. 37 Op. Att'y Gen. No. 104 at 431 (1978). Thus, as applied to your fact situation, the statutes operate together as follows. A contract may be awarded to the lowest responsible bidder which may be a business in which a local official owns a majority interest. § 2-2-201(2)(a), MCA. The local official who owns the business is prohibited from performing any official action directly and substantially benefiting his business. § 2-2-125(2)(b), MCA. Therefore, the official should not vote or make a recommendation or in any way participate in the award of the contract (§ 2-2-102(5), MCA), unless he is a member of the governing body and his participation is necessary to obtain a quorum or to enable the body to act and he has complied with the disclosure provisions. §§ 2-2-125(3) and 2-2-131, MCA. See 38 Op. Att'y Gen. No. 55 at 190 (1979).

Your last question is whether the provisions of sections 7-5-4109 and 7-5-2106, MCA, can be satisfied by the abstinence of the official from voting on any contract in which he has an interest. If the interest in the contract is not permitted by the exceptions listed in section 2-2-201, MCA, as discussed above, then the contract is voidable under section 2-2-203, MCA. Abstinence of the interested official from voting will not serve to cure a prohibited interest in a contract, since according to section 2-2-201, MCA, officers "must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees."

THEREFORE, IT IS MY OPINION:

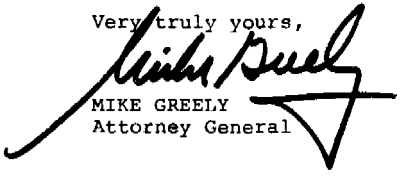
1. The definitions of "be interested in" and "contract" contained in section 2-2-201, MCA, are incorporated into sections 7-5-4109 and 7-5-2106, MCA.

2. Disclosure under section 2-2-131, MCA, is purely voluntary and may be done prior to taking any official action, as defined by section 2-2-102(5), MCA.

3. Even though an interest may be permissible under the exceptions listed in section 2-2-201, MCA, an official who has a substantial interest in the affected business must comply with sections 2-2-125 and 2-2-131, MCA.

4. If the interest is not permissible under the exceptions listed in section 2-2-201, MCA, then the contract is voidable, and abstinence from voting will not exonerate the official.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 29

COUNTIES - Eligibility for emergency grant-in-aid;
COUNTIES - Procedures for transferring monies into depletion allowance reserve fund;
COUNTIES - Use of poor fund monies for county nursing home;
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES - Required to approve improvements of certain county facilities;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Required to approve improvement of certain county facilities;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Scope of inquiry into county finances for determining emergency grant-in-aid eligibility;
MONTANA CODE ANNOTATED - Sections 1-2-101, 7-6-2326, 7-6-2512, Title 7, chapter 34, part 24, 53-2-101(2), Title 53, chapter 2, part 3, 53-2-801, 53-2-802, 53-2-811, 53-2-812.

HELD: 1. Title 53, chapter 2, part 3, MCA, does not authorize a county to set aside monies in the poor fund to be unavailable for supporting public assistance activities in the county.

2. Section 7-6-2326, MCA, permits transfer of a poor fund cash balance to another fund at the end of the fiscal year only when there is an excess of the amount budgeted for the poor fund for the next fiscal year.

3. Section 7-34-2402, MCA, permits poor fund monies to fund a depletion allowance reserve fund only to the extent that they represent actual excess of expenses incurred from or for indigent patients in the county facility.

4. Transfer of monies into a depletion allowance reserve fund is not subject to the requirements in section 7-6-2326, MCA.

5. Section 53-2-322(7), MCA, permits use of poor fund monies to build a new nursing home, but not to improve an existing one. The county is subject to the requirements in this section before expending poor fund monies to build or improve county facilities.

6. Under section 53-2-323, MCA, the inquiry into a county's fiscal activities by the Department of Social and Rehabilitation Services is limited to the fiscal year in which the county applies for emergency grant-in-aid.

30 December 1983

John D. LaFaver, Director
Department of Social and
Rehabilitation Services
P.O. Box 4210
Helena MT 59604

Dear Mr. LaFaver:

You have requested my opinion regarding the following questions relating to use of poor fund monies and the creation of a depletion allowance reserve fund:

1. Does Title 53, chapter 2, part 3, allow a county to set aside certain monies in a separate account within the poor fund, which would be unavailable for supporting the activities of the welfare department in administering public assistance in the county?

2. Does section 7-6-2326, MCA, prohibit the transfer of a poor fund cash balance to another fund when the cash balance is less than the amount to be expended by the county welfare department for public assistance activities in the next year?

3. If a county nursing home is operated by the county welfare department and if the operating expenses incurred in the care of the indigent patients in the nursing home exceed the revenue earned for the care of those patients in any one year, can other poor fund monies be transferred to a depletion allowance reserve fund for that nursing home?

4. Is a county subject to the requirements of section 7-6-2326, MCA, when making a transfer from the county poor fund to the depletion allowance reserve fund?

5. Is the transfer of poor fund money to a fund established to build or improve a nursing home facility lawful under the terms of section 53-2-322, MCA, and is approval from SRS necessary?

6. If the sole reason that a county cannot meet its obligation to perform public assistance activities is an improper transfer of a poor fund cash balance in a prior year, is the Department of Social and Rehabilitation Services required to provide such county with an emergency grant-in-aid?

Your first question is whether a county has the authority under Title 53, chapter 2, part 3, MCA, to set aside certain portions of the poor fund in a separate account which would not be available for supporting public assistance activities in the county.

Section 53-2-322, MCA, provides in part:

> The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. [Emphasis added.]

In construing Montana's welfare statutes I recognize that they are entitled to a liberal construction with a view toward accomplishing their highly beneficial objectives. State ex rel. Florence-Carlton School District v. Ravalli County, 180 Mont. 285, 590 P.2d 602, 605 (1978). In addition, the rules of statutory

construction prohibit omission of matter in the statute, and insertion of matter omitted. § 1-2-101, MCA.

The language of section 53-2-322, MCA, authorizes the board of county commissioners to expend monies from the poor fund only for "public assistance purposes." Those public assistance purposes are: (1) to pay the general relief activities of the county, and (2) to reimburse SRS for public assistance activities carried on jointly by the State and county. Express mention of a certain power or authority implies the exclusion of nondescribed powers. State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355, 357 (1975). Therefore, all monies within the poor fund must be used for public assistance activities within the definition of that term in section 53-2-101(2), MCA.

Your second question is whether the transfer of a poor fund cash balance to another fund is prohibited by section 7-6-2326, MCA, when the cash balance of the poor fund is less than the amount to be expended by the county welfare department for public assistance activities in the next year.

Section 7-6-2326(1), MCA, provides:

> Transfer of cash balance in fund at close of fiscal year. (1) After a public hearing, if the cash balance remaining at the end of a fiscal year in any of the several county funds except the school fund, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county. [Emphasis added.]

This section states that only "excess" may be transferred to other funds at the end of a fiscal year. County commissioners can transfer this excess only when the cash balance at the end of the fiscal year exceeds the amount to be budgeted to that fund in the next fiscal year. The statute must be construed by its plain language. State ex rel. Woodahl v. District Court of Second Judicial District In and For Silver Bow County, 162 Mont. 283, 511 P.2d 318, 323 (1973). Therefore, transfer of a poor fund cash balance to another fund is allowed only when there is an excess of the amount budgeted for the poor fund for the next fiscal year.

Your third question relates to the sources of money for a depletion allowance reserve fund. Title 7, chapter 34, part 24, MCA, establishes the authority of the board of county commissioners to create such a fund and its appropriate sources of money.

Section 7-34-2402, MCA, provides:

> Sources of money for depletion allowance reserve fund. Money for the depletion allowance reserve fund may be derived from:
>
> (1) public and private grants;
>
> (2) money collected by the hospital or nursing home for which the fund is created, from or for indigent patients, that are in excess of the expenses incurred for the care of such patients. [Emphasis added.]

This statute clearly limits the sources of revenue for a depletion allowance fund. Subsection (2) explicitly states that money collected by a nursing home from or for indigent patients must be in excess of the expenses incurred for their care in order to be allocated to a depletion allowance reserve fund. On this basis counties operating hospitals or nursing homes must use accounting methods which clearly demonstrate the sources of those revenues and that the revenues are in excess of the expenses incurred from or for indigent patients before they may be allocated to a depletion allowance reserve fund for the hospital or nursing home. The county does not have authority to place any poor fund monies into the depletion allowance reserve fund if those monies do not represent cash balance excesses retained by the nursing homes as described in subsection (2).

Your fourth question is whether the county is subject to the requirements in section 7-6-2326, MCA, when transferring monies from the poor fund into a depletion allowance reserve fund. That section pertains to transfers of remaining cash balance from one fund to another. The question is whether a depletion allowance reserve fund is a "fund" within the meaning of the statute. The term "fund" is not expressly defined in the county finance statutes. Generally, a "fund" is "an independent fiscal and accounting entity with a

self-balancing set of accounts recording cash and/or other resources together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations." Lynn and Freeman, Fund Accounting Theory and Practice, 30-31 (1974).

Section 7-6-2326, MCA, is part of the county budget law statutes, Title 7, ch. 6, pt. 23. These statutes provide for the budgeting procedure for counties and the method of determining tax levies based on the budget for the coming fiscal year. The monies in the funds contemplated in section 7-6-2326, MCA, come from this budgeting and tax levy process. The county budget laws attempt to restrict the use of these monies to the purposes for which they were budgeted and the taxes levied. For example, section 7-6-2325, MCA, limits transfer of monies among the various expenditure classes; and section 7-6-2326, MCA, limits transfer of the monies among funds so that they can be transferred only at the end of the year, after a hearing, and only an amount exceeding the next year's budget for that fund.

Sections 7-34-2401 to 2404, MCA, authorize establishment of depletion allowance reserve funds. These funds are strictly limited as to their sources of monies and their uses. A depletion allowance reserve fund exists solely for replacement and acquisition of a county hospital or nursing home and its property and equipment. Its funding is not budgeted, nor is it derived from tax revenues. This fund's monies are solely contingent upon grants, and excess cash balance retained by the county facility. Thus, the purposes for which section 7-6-2326, MCA, exists do not pertain to a depletion allowance reserve fund. It is my opinion that depletion allowance reserve funds established under section 7-34-2401, MCA, are not subject to the requirements in section 7-6-2326, MCA.

Your fifth question is whether poor fund money may be transferred to a fund established to acquire a new nursing home facility, and if approval from the Department of Social and Rehabilitation Services is necessary.

Section 53-2-322(7), MCA, provides:

> (7) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services. [Emphasis added.]

This subsection clearly prohibits the use of poor fund moneys to improve county nursing homes. This subsection was amended in 1983 to exclude improvements of county nursing homes and hospitals from county poor fund expenditures. At the same time the Legislature has enacted section 7-6-2512, MCA, which permits the county to levy up to ten mills for erection, maintenance, and operation of county-owned or county-operated hospitals and nursing homes. Although this tax levy can be used for the "erection" of nursing homes, section 53-2-322, MCA, as amended, does not expressly prohibit use of poor fund monies for "erection" of the nursing homes. The first part of subsection (7) permits use of county poor fund monies for the erection of any county building, so long as the fund is not needed for general relief expenditures or for the county's share of public assistance. This subsection distinguishes between use

of poor fund monies for "erection" which denotes the construction of new facilities, and for "improvement" which denotes the enhancement of existing facilities. A county is subject to two specific requirements before it can expend poor fund monies for improving county facilities used for the poor (except county hospitals and county nursing homes): (1) it must get some kind of certification from the Department of Health and Environmental Sciences that such improvements are needed to bring the institution up to that Department's legal standards, and (2) it must get a determination from the Department of Social and Rehabilitation Services that the poor fund monies are not owed to the State for the county's proportionate share of any public assistance activities that may be carried on jointly by the State and the county. These two requirements do not, however, exist for erection of county buildings. In the event the county wishes to build a new facility, it may use poor fund monies so long as the county determines that the monies are not needed for general relief expenditures or its proportionate share of public assistance activities, including those shared with the State.

It is therefore evident that poor fund monies can lawfully be used for erection of a county nursing home but not improvement of one. At this point I must add that prior to the 1983 amendment to section 53-2-322, MCA, counties were not prohibited from using poor fund monies to improve county nursing homes and county hospitals. The counties were, however, subject to the requirements in that section, before they could use poor fund monies for such improvements. I also observe that section 53-2-322, MCA, does not prescribe the method by which poor fund monies are to be expended for building a nursing home. The county is thus able to expend the monies by placing them in a separate account for the specific purpose of building the facility.

Your last question is whether the Department of Social and Rehabilitation Services can deny emergency grant-in-aid to a county that made an improper transfer of monies out of the poor fund in a prior fiscal year.

Section 53-2-323, MCA, provides for emergency grants-in-aid from the Department of Social and Rehabilitation Services to counties for public assistance. Such grant-in-aid is available only to

counties that have not transferred their public assistance and protective services responsibilities to the Department of Social and Rehabilitation Services under sections 53-2-801, 802, 811 and 812, MCA. Section 53-2-323, MCA, contains criteria for counties to qualify for emergency grant-in-aid, including requirements "(b) that all lawful scurces of revenue and other income to the county poor fund will be exhausted;" and "(c) that all expenditures from the county poor fund have been lawfully made."

It is my opinion that this section limits the inquiry of the Department of Social and Rehabilitation Services into a county's fiscal activities to the fiscal year in which the county applies for the emergency grant-in-aid. Section 53-2-323(2), MCA, requires the county to transfer all money credited during the current fiscal year to the depletion allowance reserve fund to be transferred to the poor fund to be used up before the grant-in-aid money can be received. Subsection (7) requires the county to return all unspent money in the poor fund and the emergency fund account (the grant-in-aid money) at the close of the fiscal year. The language throughout the statute focuses on the current fiscal year only. Furthermore, there is no direction in the statute as to how many past years the Department of Social and Rehabilitation Services may consider. I construe the language in this section as disclosing a legislative intent that the Department of Social and Rehabilitation Services inquire into the county's fiscal activities during the current fiscal year only. The inquiry is to make certain that expenditures from the poor fund within that year are lawful and to assure that any grant-in-aid money requested by the county is needed because of a genuine emergency. It is not to explore the possibility of unlawful expenditures or improper management of the poor fund by the county in prior years.

THEREFORE, IT IS MY OPINION:

1. Title 53, chapter 2, part 3, MCA, does not authorize a county to set aside monies in the poor fund to be unavailable for supporting public assistance activities in the county.

2. Section 7-6-2326, MCA, permits transfer of a poor fund cash balance to another fund at the

end of the fiscal year only when there is an excess of the amount budgeted for the poor fund for the next fiscal year.

3. Section 7-34-2402, MCA, permits poor fund monies to fund a depletion allowance reserve fund only to the extent that they represent actual excess of expenses incurred from or for indigent patients in the county facility.

4. Transfer of monies into a depletion allowance reserve fund is not subject to the requirements in section 7-6-2326, MCA.

5. Section 53-2-322(7), MCA, permits use of poor fund monies to build a new nursing home, but not to improve an existing one. The county is subject to the requirements in this section before expending poor fund monies to build or improve county facilities.

6. Under section 53-2-323, MCA, the inquiry into a county's fiscal activities by the Department of Social and Rehabilitation Services is limited to the fiscal year in which the county applies for emergency grant-in-aid.

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend 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

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

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

Use of the Administrative Rules of Montana (ARM):

| | |
|---|---|
| Known Subject Matter | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute Number and Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

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To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1983, this table and the table of contents of this issue of the MAR.

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