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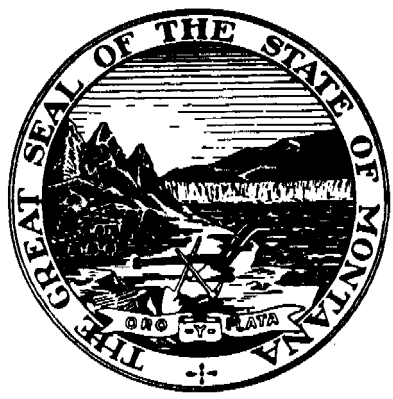
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MONTANA ADMINISTRATIVE REGISTER

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1984 ISSUE NO. 18
SEPTEMBER 27, 1984
PAGES 1398-1426



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 8.34.418) OF ARM 8.34.418 FEE SCHEDULE
concerning the fee schedule)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 27, 1984, the Board of Nursing Home Administrators proposes to amend ARM 8.34.418 concerning the fee schedule.

2. The rule as proposed to be amended will read as follows: (new matter underlined, deleted matter interlined) (Full text of the rule is located at pages 8-1042 and 8-1043, Administrative Rules of Montana)

"8.34.418 FEE SCHEDULE (1) ...

(2) Each person granted a license as a nursing home administrator shall pay an original license fee of ~~50~~ 65 if granted after the May exam and ~~75~~ 100 if granted after the November exam. The licenses granted at the May exam expire as of December 31 unless renewed. The licenses granted at the November exam remain in effect until December 31 of the following year and then must be renewed.

(3) Each person registered as an inactive nursing home administrator shall pay a registration fee of ~~25~~ 50.

(4) ...

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

(7) Each person applying for renewal of an inactive nursing home administrators registration shall pay ~~25~~ 50 annually on or before December 31 of each year.

(8) ...

(11) Requests for records of licensure shall require a fee of \$10.

(12) Renewal requests postmarked after December 31 will be considered delinquent and a penalty fee of \$50 shall be charged in addition to the regular annual license fee."

Auth: 37-1-134, 37-9-302, MCA Imp: 37-9-304, MCA

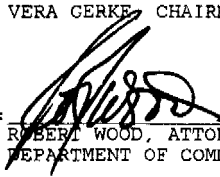
3. The board is proposing the fee changes to set fees commensurate with program area costs as mandated by section 37-1-134, MCA. These are the fees the board has determined necessary to cover the costs of administering these program areas.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Nursing Home Administrators, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 25, 1984.

5. If a person who is directly affected by the proposed amendment 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 Nursing Home Administrators, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 25, 1984.

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

BOARD OF NURSING HOME
ADMINISTRATORS
VERA GERKE, CHAIRMAN

BY: 
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 17, 1984.

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of a rule relating to approval) FOR ADOPTION OF A RULE
of certificates of need for) AND REPEAL OF A RULE
long-term care facilities,)
and the repeal of ARM 16.32.126) (Certificate of Need)

To: All Interested Persons

1. On October 30, 1984, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a rule which will set forth procedures for consideration of certificate of need applications for long-term care facilities, and the repeal of rule 16.32.126, which sets forth current criteria for approval of such facilities.

2. The proposed rule does replace ARM 16.32.126, which is proposed to be repealed. ARM 16.32.126 may be found at page 16-1438 of the Administrative Rules of Montana.

3. The proposed rule will provide as follows:

RULE 1 LONG-TERM CARE BEDS (1) Prior to January 1, 1986, no certificates of need will be issued for new long-term care beds or facilities, except for proposals which satisfy the requirements of 50-5-308, MCA.

(2) Applications for new long-term care beds which have been submitted as of the effective date of this rule, or are received prior to January 1, 1986, shall, with the concurrence of the applicant, be placed in a batch to be processed after January 1, 1986. If the applicant does not concur in writing with this extended review time, the application will be processed without batching in accordance with 50-5-302(4) through (6), MCA, and a decision will be issued consistent with section (1) of this rule.


4. The Department is proposing this rule in order to maintain consistency with the State Health Plan, as required by state and federal law. On September 27, 1984, the State-wide Health Coordinating Council (SHCC) will consider amendments to the State Health Plan which may establish a lack of need for new long-term care beds in Montana prior to 1986. The proposed rule is necessary to achieve consistency with that anticipated change in the SHP. Should the SHCC not adopt that change as anticipated, this proposed rule would be amended accordingly. The proposed rule replaces ARM 16.32.126 which sets forth the current criteria for review of long-term care beds. Rule 16.32.126 is therefore proposed to be repealed.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena,

Montana, 59620, no later than October 30, 1984.

6. Robert L. Solomon has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule and repeal is based on section 50-5-304, MCA, and the rule implements section 50-5-304, MCA.

By 
JOHN J. BRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State September 17, 1984

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

In the matter of the)
amendment of rule 16.16.304) NOTICE OF PROPOSED
concerning individual) AMENDMENT OF RULE
sewage treatment systems) (Sanitation in Subdivisions)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 29, 1984, the department proposes to amend rule 16.16.304 regarding individual sewage treatment systems.
2. The rule as proposed to be amended provides as follows:

16.16.304 INDIVIDUAL SEWAGE TREATMENT SYSTEMS (1) When the groundwater at a site proposed for subsurface sewage treatment at any time reaches six feet or less, from the natural ground surface, the use of a conventional subsurface sewage treatment systems system is precluded. A groundwater depth of more than six feet from the natural ground surface may be required when necessary to avoid subsurface water contamination. There shall be a minimum separation of at least four feet between the bottom of the subsurface sewage treatment system and the seasonal high groundwater elevation.

(2) through (19) Same as existing rule.

3. The Department is proposing the change to reinsert the reference to the "natural ground surface" which was inadvertently omitted in the recent general revision of the sanitary review of subdivisions. The reference to ground surface is needed to give meaning to the phrase "six feet or less" and is the same as the language in the second sentence. The added phrase will not change longstanding groundwater requirements for on-site sewage disposal systems.

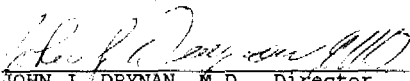
4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than October 26, 1984.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon at the address indicated above no later than October 25, 1984.

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

Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of persons engaged in and associated with development of subdivisions utilizing individual sewage treatment systems.

7. The authority of the department to make the proposed amendment is based on section 76-4-104, MCA, and the rule implements sections 76-4-104 and 76-4-125, MCA.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State September 17, 1984

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

In the matter of the adop-	)	NOTICE OF PUBLIC HEARING ON
tion of a rule and the amend-	)	THE PROPOSED ADOPTION OF A
ment of Rules 46.12.401,	)	RULE AND THE AMENDMENT OF
46.12.402, 46.12.403,	)	RULES 46.12.401, 46.12.402,
46.12.404 and 46.12.408 per-	)	46.12.403, 46.12.404 AND
taining to medical assist-	)	46.12.408 PERTAINING TO
ance; provider sanctions	)	MEDICAL ASSISTANCE; PROVID-
	)	ER SANCTIONS

TO: All Interested Persons

1. On October 23, 1984, at 10:30 a.m., a public hearing will be held in the 2nd Floor Conference Room, Room 207, of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of a rule and the amendment of Rules 46.12.401, 46.12.402, 46.12.403, 46.12.404 and 46.12.408 pertaining to medical assistance; provider sanctions.

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

46.12.401 GROUNDS FOR SANCTIONING Sanctions may be imposed by the department against a provider of medical assistance, provided under title 46, chapter 12, of the administrative rules of Montana, for any one or more of the following reasons:

Subsections (1) through (6) remain the same.

(7) Engaging in a course of conduct or performing an act which the department's rule, or the decision of the applicable professional peer review committee, or applicable licensing board, have determined to be improper or abusive of the Montana ~~medicaid~~ medical assistance program or continuing such conduct following notification that the conduct should cease.

(8) Breach of the terms of the provider contract or failure to comply with the terms of the provider certification on ~~the-medicaid~~ medical assistance claim forms or the failure to comply with requirements imposed by the rules of the department.

(9) Over-utilizing the Montana ~~medicaid~~ medical assistance program by inducing, or otherwise causing a recipient to receive services or goods not medically necessary.

Subsections (10) through (13) remain the same.

(14) Conviction of a criminal offense relating to ~~perfor-~~
~~mance-of-a-provider-agreement~~ medical assistance programs
administered by the department or contract with the state or for negligent practice resulting in death or injury to patients.

Subsections (15) through (21) remain the same.

(22) Filing of Criminal indictment, information or complaint for fraudulent billing practices or negligent practice resulting in death or injury to the provider's patients.

Subsections (23) through (25) remain the same.

(26) Submitting claims for reimbursement of costs or services which the provider knows or has reason to know are not reimbursable costs.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111, and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112, and 53-6-111 MCA

46.12.402 SANCTIONS The following sanctions may be invoked against providers based on the grounds specified in ARM 46.12.401.

(1) Termination from participation in the medicare medical assistance program.

Subsections (2) through (4) remain the same.

(5) Required attendance at provider education sessions, the cost of which shall not be reimbursed by the medicare department or any of its programs.

Subsections (6) and (7) remain the same.

~~(8) -- Referral to the appropriate state licensing board for investigation, and/or for any action deemed necessary by the reviewing body.~~

(98) Referral to the department of revenue for any action deemed necessary.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111, and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112, and 53-6-111 MCA

46.12.403 FACTORS GOVERNING IMPOSITION OF SANCTION Subsections (1) and (2) remain the same.

(3) Where a provider has been found by a court of competent jurisdiction in either a civil or criminal proceeding to have defrauded the Montana medicare medical assistance program, or has been previously suspended due to program abuse, or has been terminated from the medicare program for fraud or abuse, the department may terminate the provider from the medicare medical assistance program.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111, and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112, and 53-6-111 MCA

46.12.404 SCOPE OF SANCTION Subsection (1) remains the same.

(2) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the department or its fiscal agents for any services or supplies provided to persons eligible for the Montana ~~medicaid~~ medical assistance program except for those services or supplies provided prior to the suspension or termination.

(3) No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the department or its fiscal agents for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the Montana ~~medicaid~~ medical assistance program except for those services or supplies provided prior to the suspension or termination.

Subsection (4) remains the same.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111, and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112, and 53-6-111 MCA

46.12.408 SUSPENSION OR WITHHOLDING OF PAYMENTS PENDING FINAL DETERMINATION Subsections (1) and (2) remain the same.

(3) Where the department has terminated or suspended a provider, the provider shall be eligible to bill for covered services for the period covered by the suspension or termination if an appeal is decided in the provider's favor.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111, and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112, and 53-6-111 MCA

3. The rule as proposed to be adopted provides as follows:

RULE I FAIR HEARING PROCEDURES (1) A provider who is aggrieved by an adverse action of the department shall be afforded an opportunity for a hearing as provided in this subchapter.

(a) A request for a fair hearing must be in writing and shall be mailed or delivered to the Department of Social and Rehabilitation Services, Hearings Officer, P.O. Box 4210, 111 Sanders, Helena, Montana, 59604.

(b) The request shall be signed by the provider or his designee.

(c) The fair hearing request must be postmarked or delivered to the department not later than the 30th calendar day following the date of receipt of the department's written determination.

(d) The fair hearing request shall identify the objections to the department's action, give the reasons for the disagreement, and furnish substantiating materials and information.

(e) The hearings officer will conduct the fair hearing and may hold a pre-hearing conference or require an administrative review, if requested by any party, as provided in ARM 46.2.208, and grant extensions of time as he deems necessary.

(f) The hearings officer will render a written proposed decision within thirty calendar days of final submission of the matter to him.

(2) In the event the provider or department disagrees with the hearing officer's proposed decision, opportunity for appeal is provided in accordance with ARM 46.2.211.

AUTH: Sec. 53-6-113 and 53-2-201 MCA

IMP: Sec. 53-6-111, 53-6-141 and 53-2-201 MCA

4. These amendments are needed to clarify the department's intent to apply these rules to all providers of medical assistance for which payment is received from the State of Montana under the Medicaid program.

A section was added at 46.12.408(3) to clarify our intent to allow a provider the right to bill for covered services if he should prevail in an appeal of a suspension or termination.

Subsection (8) of ARM 46.12.402 is being deleted because the department as well as any individual has the right and in some instances the duty to report inappropriate actions to state licensing boards (Sections 37-3-401 et seq., MCA) independently of any formal action taken by the department under this section.

A rule is being adopted to allow providers the right to appeal any action taken under subchapter 4, chapter 12, Title 46 of the Administrative Rules of Montana.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than October 31, 1984.

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


Director, Social and Rehabilitation Services

Certified to the Secretary of State September 17, 1984.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.12.304 and	)	THE PROPOSED AMENDMENT OF
46.12.305 pertaining to	)	RULES 46.12.304 AND
third party liability for	)	46.12.305 PERTAINING TO
medical assistance	)	THIRD PARTY LIABILITY FOR
	)	MEDICAL ASSISTANCE

TO: All Interested Persons

1. On October 23, 1984, at 9:30 a.m., a public hearing will be held in the 2nd Floor Conference Room, Room 207, of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rules 46.12.304 and 46.12.305 pertaining to third party liability for medical assistance.

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

46.12.304 THIRD PARTY LIABILITY Subsections (1) through (2) (a) remain the same.

(b) Prior to billing the Montana medicaid program for services rendered to a medicaid-eligible individual, the provider shall bill any other source of payment identified by means of the provider's usual and customary inquiry procedures, and which has been properly assigned by the individual to the provider if the provider requires assignment, ~~except that the provider is not required to bill or to pursue in any way any potentially liable tortfeasor.~~ The provider shall not be required to send to an identified source of payment more than one billing statement.

Subsections (2) (c) through (5) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-111 and 53-6-141 MCA

46.12.305 THIRD PARTY LIABILITY/ATTORNEYS' FEES SCHEDULE

~~(1) In administering "prior approval of the department"~~
If the department grants prior approval of attorney fees, pursuant to section 53-2-612(4) MCA, as a result of services rendered in legal proceedings or settlement of a third party recovery case, the department sets forth the amount approved will not exceed the amounts set forth in the following schedule for payment from total amount recovered on behalf of the department.

(a) When recovery is made prior to filing of suit, the attorney will receive 25 percent of total amount recovered.

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MAR Notice No. 46-2-418

(b) When recovery is made after filing of suit and substantial legal research or investigation has been performed but before trial commencement, the attorney will receive 33 1/3 percent of total amount recovered; however, if clear liability exists as determined by client and attorney, the attorney will receive 25 percent.

(c) When recovery is made after actual trial commencement, the attorney will receive 40 percent of total amount recovered.

(d) When recovery is made from a case tried in an appellate court, the attorney will receive 50 percent of total amount recovered.

(2) The only exception to the above payment schedule is when a written agreement is entered into by the attorney and client before trial commencement and recovery cost is predetermined. In this event, the attorney will be paid the lesser amount between the price set out in agreement and percentage set out in above provisions.

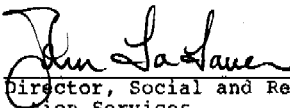
AUTH: Sec. 53-2-201 and 53-2-612 MCA

IMP: Sec. 53-2-612(4) MCA

3. The department is amending the rule to clarify medical provider's responsibility for obtaining payments from third parties; further, to clarify that the department does not in every instance enter into agreements for the payment of attorneys' fees for the collection of third party claims. In those instances where an attorney is hired to represent the department the amount of attorneys' fees approved by the department will not exceed those set out in this rule and that the simple act of filing a suit without the performance of substantial legal work is not sufficient for an attorney to receive 33 1/3 percent of the amount of recovery.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than October 31, 1984.

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



Director, Social and Rehabilitation Services


Certified to the Secretary of State September 17, 1984.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of Rule 12.3.104	)	RULE 12.3.104 - ESTABLISH-
relating to the establish-	)	MENT OF PRIORITY FOR
ment of priority for land-	)	LANDOWNERS IN ISSUANCE OF
owners in issuance of	)	ANTELOPE OR DEER HUNTING
antelope or deer hunting	)	LICENSES
licenses)	

TO: All Interested Persons:

1. On July 12, 1984, the Montana Fish and Game Commission published notice of the proposed amendment of Rule 12.3.104 regarding the establishment of priority for landowners in issuance of antelope or deer hunting licenses at pages 1021 and 1022 of the 1984 Administrative Register, Issue No. 13.
2. No comments or testimony were received.
3. The agency has adopted the amendment as proposed.


SPENCER S. HEGSTAD, Chairman
Montana Fish and Game Commission

Certified to the Secretary of State September 17, 1984.

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

In the matter of the)
amendment of Rule 46.5.116) NOTICE OF THE AMENDMENT OF
pertaining to protective) RULE 46.5.116 PERTAINING TO
services information system) PROTECTIVE SERVICES INFORMA-
operation.) TION SYSTEM OPERATION
)

TO: All Interested Persons

1. On August 16, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.5.116 pertaining to protective services information system operation at page 1108 of the 1984 Montana Administrative Register, issue number 15.

2. The Department has amended Rule 46.5.116 as proposed.

3. No written comments or testimony were received. However, the Montana Legislative Council recommended that the Department change the rulemaking authority set out in the proposed amendment notice as Section 53-5-205 MCA pertains only to adult services and is not an appropriate authority for ARM 46.5.116. The authority of the Department to amend ARM 46.5.116 is corrected to read:

AUTH: Sec. 41-3-208 MCA
IMP: Sec. 41-3-202(4) MCA

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

In the matter of the)
amendment of Rules 46.5.501,) NOTICE OF THE AMENDMENT OF
46.5.502 and 46.5.503 and) RULES 46.5.501, 46.5.502
the adoption of Rules) AND 46.5.503 AND THE
46.5.513 and 46.5.517) ADOPTION OF RULES 46.5.513
pertaining to procedure for) AND 46.5.517 PERTAINING TO
obtaining substitute care) PROCEDURE FOR OBTAINING
services, eligibility) SUBSTITUTE CARE SERVICES,
requirements, services) ELIGIBILITY REQUIREMENTS,
provided and foster care) SERVICES PROVIDED AND
maintenance payments.) FOSTER CARE MAINTENANCE
) PAYMENTS

TO: All Interested Persons

1. On August 15, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.5.501, 46.5.502 and 46.5.503 and the adoption of rules pertaining to procedure for obtaining

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substitute care services, eligibility requirements, services provided and foster care maintenance payments at page 1110 of the 1984 Montana Administrative Register, issue number 15.

2. The Department has amended Rules 46.5.501, 46.5.502 and 46.5.503 as proposed.

3. The Department has adopted Rules 46.5.513, FOSTER CARE MAINTENANCE PAYMENTS, and 46.5.517, RIGHT TO FAIR HEARING, as proposed.

4. No written comments or testimony were received. However, the Montana Legislative Council recommended that the Department add Section 41-3-1103(1) and (3) MCA to its implementing authority of the proposed rules and delete, because Montana statutes are to be used, 42 USC 672 from the implementing authority set out in the proposed notice. The authority of the Department to amend or adopt the rules is corrected to read:

ARM 46.5.501, 46.5.502, 46.5.503

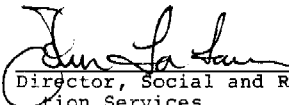
AUTH: Sec. 41-3-1103(2)(c) MCA

IMP: Sec. 41-3-301, 41-3-302 and 41-3-1103(1) & (3) MCA

ARM 46.5.513 and 46.5.517

AUTH: Sec. 41-3-1103(2)(c) MCA

IMP: Sec. 41-3-302 and 41-3-1103(1) & (3) MCA



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 17, 1984.

VOLUME NO. 40

OPINION NO. 66

CITIES AND TOWNS - Costs of medical examinations of victims of alleged sexual intercourse without consent;
COUNTIES - Costs of medical examinations of victims of alleged sexual intercourse without consent;
MONTANA CODE ANNOTATED - Section 46-15-411;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 77 (1980).

HELD: The local law enforcement agency that directs that a medical examination be conducted pursuant to section 46-15-411, MCA, and within whose jurisdiction the alleged sexual offense occurred, is responsible for bearing the costs of the examination.

12 September 1984

J. Fred Bourdeau
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

Whether the city or the county bears the financial responsibility for the costs of a medical examination of a victim of alleged sexual intercourse without consent, when such examination is performed pursuant to section 46-15-411, MCA.

Section 46-15-411, MCA, concerns payment by a "local law enforcement agency" of the costs associated with certain medical examinations. The complete statute provides:

Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such

agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

Your question involves the meaning of the word "local" in the phrase "local law enforcement agency," i.e., whether it refers to the city or to the county. No definition of the term is provided in the statute itself.

The fundamental rule of statutory construction is that the intent of the Legislature controls. State Bar of Montana v. Krivec, 38 St. Rptr. 1322, 1324, 632 P.2d 707, 710 (1981). If possible, legislative intent must be inferred from the plain meaning of the words contained in the statute. Link v. School District No. 6, 39 St. Rptr. 1448, 1453, 649 P.2d 1263, 1267 (1982).

The language of section 46-15-411, MCA, identifies the party responsible for bearing the costs of the medical examination as the "local law enforcement agency within whose jurisdiction [the] alleged incident of sexual intercourse without consent occurs...when the examination is directed by such agency..." (Emphasis added.) The plain meaning of the underscored language would require the county to bear the expenses of the medical examination if the alleged crime occurs within the county's jurisdiction and the examination is directed by the county. By contrast, if a city law enforcement agency directs that the examination be conducted, and the alleged crime occurred within the city's jurisdiction, the city would bear the costs of the examination.

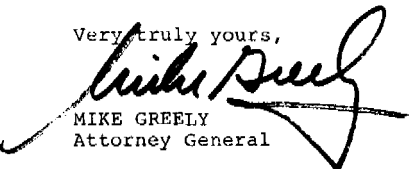
This opinion should not be regarded as inconsistent with 38 Op. Att'y Gen. No. 77 (1980), which concluded that counties are responsible for paying the costs incurred after arrest by city police in the investigation of felony offenses. That opinion dealt with the law concerning general costs associated with the detection, investigation, and prosecution of felonies, and it applies to the great number of felonies which are not

otherwise addressed by special statutes. See 1A Sutherland, Statutes and Statutory Construction § 23.16 (1972). Section 46-15-411, MCA, concerns a special area of the criminal law and represents an exception to the general rule espoused in 38 Op. Att'y Gen. No. 77 (1980). Section 46-15-411, MCA, and for that matter Title 46, chapter 15, part 4, MCA, in its entirety, deal only with evidence in cases involving sexual offenses.

THEREFORE, IT IS MY OPINION:

The local law enforcement agency that directs that a medical examination be conducted pursuant to section 46-15-411, MCA, and within whose jurisdiction the alleged sexual offense occurred, is responsible for bearing the costs of the examination.

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

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1984. This table includes those rules adopted during the period July 1, 1984 through September 30, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1984, this table and the table of contents of this issue of the MAR.

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