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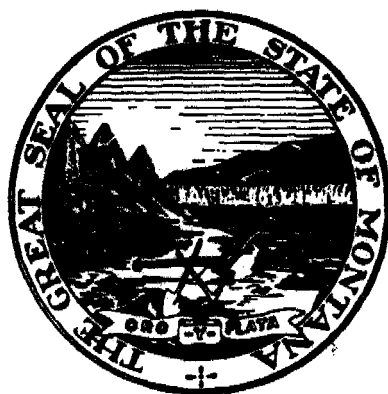
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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**1985 ISSUE NO. 14
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PAGES 996-1042**



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of rules defining long-term)	FOR PROPOSED ADOPTION OF
care, and relating to the)	RULES
provision of long-term care)	
and swing-bed services in)	
health care facilities)	(Certificate of Need)

To: All Interested Persons

1. On August 27, 1985, 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 rules defining long-term care, setting forth requirements for provision of long-term care services in health care facilities, and setting forth criteria for review of certificate of need applications for swing beds.

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

3. The proposed rule provides as follows:

RULE I LONG-TERM CARE -- DEFINITION: WHERE PROVIDED

(1) "Long-term care" means skilled nursing care, intermediate nursing care, intermediate developmental disability care, or personal care, as defined in 50-5-101(19)(b) through (e), which is provided to patients with chronic infirmities or disabilities necessitating the provision of such care for periods in excess of thirty days. The term does not include such regular inpatient hospital treatment of specific psychiatric, rehabilitative or acute medical problems under the direct and regular supervision of a physician as is ordinarily furnished by a hospital, the course of treatment of which extends beyond thirty days.

(2) A health care facility may provide long-term care only if:

(a) it is licensed as a long-term care facility; or

(b) it has received certificate of need approval pursuant to [RULE II] for the establishment of swing beds, is certified to provide long-term care in such swing beds, and the provision of long-term care is limited to such swing beds.

AUTHORITY: Sec. 50-5-103 MCA

IMPLEMENTING: Sec. 50-5-201, 50-5-301 MCA

RULE II SWING BEDS -- REVIEW CRITERIA (1) A "swing bed" is a hospital bed which is certified for the provision of long-term care for the purpose of medicare reimbursement pursuant to 42 U.S.C. 1395tt and 42 C.F.R. 405.1041.

(2) A certificate of need may be issued to a hospital to establish swing beds only if, in addition to compliance with all other applicable provisions of 50-5-304, MCA and ARM 16.32.110:

(a) existing licensed long-term care facilities in the service area, which provide the level of care proposed to be provided by the hospital, have an aggregate three-year average occupancy level of at least 95 percent; and

(b) no more than fifty percent of the hospital's excess bed capacity will be certified as swing beds. Excess bed capacity is the difference between the number of licensed hospital beds in the facility and the current three-year average acute care occupancy level of the facility.

(3) A long-term care patient occupying a swing bed must be transferred to a long-term care facility in the service area which provides the appropriate level of care as soon as such long-term care bed becomes available.

AUTHORITY: Sec. 50-5-304 MCA

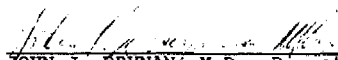
IMPLEMENTING: Sec. 50-5-304 MCA

4. The department is proposing RULE I to clarify the distinction between long-term care and acute hospital care. The department has learned of cases where hospitals have admitted long-term-care patients on a permanent or long-term basis, without having been licensed as a long-term care facility. The department considers this practice to be contrary to the intent of both the certificate of need law and the health care facility licensing law and regulations. The proposed rule is intended to clarify the department's position that hospitals are not authorized to provide long-term care unless specifically licensed to do so.

The department proposed RULE II to codify what have been informal criteria for review of certificate of need applications for swing beds. At present, there are no formal criteria either in the rules or in the Montana Health Plan.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, 59620, no later than August 27, 1985.

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


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 15, 1985

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of Rules I through IV establish-) FOR PROPOSED ADOPTION OF
ing a protocol for probation) RULES
and termination of local family)
planning programs) (Family Planning)

To: All Interested Persons

1. On August 27, 1985, at 9:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules establishing a protocol for probation and termination of local family planning programs.

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

3. The proposed rules provide as follows:

RULE I DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, Chapter 15, Part 21, MCA.

(2) "Local board" means a governmental unit or private contractor which administers a local family planning program and with which the department has entered into an agreement to provide family planning services.

(3) "Local family planning program" means a program administered by a local board which has entered an agreement with the department and is organized pursuant to the Family Planning Services and Population Research Act of 1970, as amended (42 U.S.C. Sec. 300 et seq.) and federal regulations governing grants for family planning services (42 CFR Part 59).

(4) "Project director" means the individual assigned by a local board to have responsibility for the day-to-day management and administration of a local family planning program on behalf of the local board.

AUTHORITY: Sec. 50-1-202(9), MCA

IMPLEMENTING: Sec. 50-1-202(9) and (16), MCA

RULE II INVESTIGATION OF COMPLAINTS (1) Upon receiving a written, signed complaint alleging that a local family planning program has violated federal regulations or has committed fraud, the department will conduct an investigation or audit.

(2) If the complainant requests confidentiality, the complainant's name will remain confidential during the department's investigation.

(3) The investigation may include unannounced site visits and interviews with local program staff, as appropriate.

AUTHORITY: Sec. 50-1-202(9), MCA

IMPLEMENTING: Sec. 50-1-202(9) and (16), MCA

RULE III INVESTIGATION AND AUDIT REPORTS; PROBATIONARY

STATUS (1) Within 45 days following completion of an investigation initiated pursuant to [RULE II], or of a routine program audit conducted by the department, the department will send a written report to the local board or project director. If the department's investigation has revealed significant program deficiencies, the report shall identify such deficiencies and notify the local board or project director that the local program has been put on probation.

(2) The local board and project director will be given one month to correct the deficiencies. The notice of probationary status will indicate that if the deficiencies have not been corrected by the end of the one month probationary period, termination procedures will be initiated.

AUTHORITY: Sec. 50-1-202(9), MCA

IMPLEMENTING: Sec. 50-1-202(9) and (16), MCA

RULE IV PROGRAM TERMINATION PROCEDURES (1) Except as provided in subsection (3), upon a finding of major uncorrected program deficiencies as set forth in [RULE III], the department will notify the local Board and Project Director of its intent to terminate the local program. This notice will identify the program deficiencies upon which the termination action is based, and will offer the opportunity for the local program to request an informal hearing before the department to contest the termination decision. Such request for a hearing must be received in writing by the department no later than two weeks after issuance of the notice of intent to terminate.

(2) If a timely request for a hearing is received, the hearing will be held within 30 days following the receipt of the request. Such hearing is not subject to the contested case provisions of the Administrative Procedures Act (Title 2, Chapter 4, MCA). The department's final decision on termination will be made within 30 days following the hearing. The final decision will be accompanied by a brief statement of the department's findings.

(3) Notwithstanding the provisions of [RULES III and IV], upon a determination by the department that serious program deficiencies constitute an imminent threat to the health, safety or well-being of the program's clients, the department may institute emergency termination procedures without first having completed the procedures set forth in [RULES III and IV]. In such a case, the notice of intent to terminate may, if appropriate, include notification that the

department will discontinue program funding within five days following receipt of the notice, pending final action on the termination decision.

AUTHORITY: Sec. 50-1-202(9), MCA

IMPLEMENTING: Sec. 50-1-202(9) and (16), MCA

4. The Department is proposing these rules to establish procedures for dealing with local family planning programs established pursuant to Title X of the Federal Public Health Services Act, 42 U.S.C. 300 et seq., which are in violation of the terms of their contracts with the department. Due process considerations require that local programs be given advance notice of the procedures which will apply to such situations, and that an opportunity for a hearing be provided before a program is terminated. These rules are being proposed in order to satisfy those due process requirements.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than August 27, 1985.

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

7. The authority of the Department to make the proposed rules is based on section 50-1-202(9), MCA, and the rules implement section 50-1-202(9) and (16), MCA.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 15, 1985

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of new rules concern-	)	ADOPTION OF NEW RULES FOR
ing licensing requirements for	)	LICENSING REQUIREMENTS FOR
construction blasters.	)	CONSTRUCTION BLASTERS
		(No Public Hearing
		Contemplated)

TO: All Interested Persons

1. On September 15, 1985, the Workers' Compensation Division proposes to adopt new rules concerning licensing requirements for construction blasters.

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

RULE I PURPOSE The workers' compensation division has the statutory duty to enforce the laws of Montana concerning the safety and protection of workers, and has the responsibility to license construction blasters and to promulgate rules to carry out the provisions of this statute including rules governing the use of explosives.

AUTH: 37-72-201 and 37-72-202, MCA
IMP: 37-72-101, et seq., MCA

RULE II DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Division" means the division of workers' compensation of the department of labor and industry.

(2) "Construction blaster" means that qualified person in charge of and responsible for the loading and firing of a construction blast.

(3) "Construction blasting" means the use of explosives to reduce, destroy, or weaken residential, commercial or other buildings; or excavate any trench, ditch, cut or hole, or reduce, destroy, weaken or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line.

(4) "Explosives" means and includes any chemical compound or mechanical mixture that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(5) "Magazine" means any building or other structure, other than a factory building, used for the storage of explosives.

14-7/25/85

MAR Notice No. 24-30-6

AUTH: 37-72-201 and 37-72-202, MCA
IMP: 37-72-101, et seq., MCA

RULE III CONSTRUCTION BLASTER LICENSE REQUIREMENTS

(1) No person shall engage in the practice of construction blasting unless licensed or working under the supervision of a person licensed by the division as a construction blaster, unless specifically exempt under section 37-72-303, MCA.

(2) The following construction blasters' licenses are issued under section 37-72-303, MCA:

(a) Class A -- all types of blasting.
(b) Class B -- blasting not exceeding 10 pounds of explosives and generally limited to single hole, single shot applications.

(3) The following fees must be paid to the division and are nonrefundable:

- (a) application fee - \$5.00,
- (b) examination fee - \$5.00,
- (c) license fee - \$15.00,
- (d) annual renewal fee - \$10.00,
- (e) reexamination fee - \$3.00.

(4) The division shall issue a construction blaster's license to each applicant who:

(a) submits a completed application form supplied by the division;

(b) meets the requirements of section 37-72-301, MCA;

(c) has successfully completed a training program approved by the division of not less than 24 hours for a Class A license, and 8 hours training for a Class B license, in accordance with Rule VI;

(d) has one year field experience in construction blasting; and

(e) achieves a grade of 80% or higher on an examination administered by the division based upon the adopted standards and regulations regarding the use of explosives. A copy of such standards and regulations shall be available at a reasonable fee from the division.

(5) Construction blasters' licenses are not transferable, expire at the end of each year, and must be renewed by request of the applicant and the fee paid on or 60 days before January 1 of each year.

(6) A license, certificate, or permit issued by another state or an agency of the United States will be recognized and an appropriate construction blaster's license issued if the division determines that the requirements are equivalent to those in sections 37-72-302 and 37-72-303, MCA.

AUTH: 37-72-201, MCA; IMP: 37-72-301 to 37-72-306, MCA

RULE IV USE OF EXPLOSIVES -- INCORPORATION OF STANDARDS OF NATIONAL ORGANIZATIONS AND FEDERAL AGENCIES (1) The

division hereby adopts and incorporates herein by reference, as they read on the effective date of this rule, the following national standards and regulations regarding the use of explosives:

(a) 29 CFR, 1926.860, Selective Demolition by Explosives, Construction Safety and Health Regulations, U.S. Department of Labor, Occupational Safety and Health Administration.

(b) 29 CFR, 1926.900 through 1926.914 inclusive, Blasting and the Use of Explosives, Construction Safety and Health Regulations, U.S. Department of Labor, Occupational Safety and Health Administration.

(c) 29 CFR, 1910.109, Explosives and Blasting Agents, General Industry Safety and Health Regulations, U.S. Department of Labor, Occupational Safety and Health Administration.

(2) Copies of the national standards and regulations referred to in (a), (b) and (c) above, may be inspected at the Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana 59601, and obtained at cost from the U.S. Department of Labor, Occupational Safety and Health Administration, Washington, D.C. 20402.

AUTH: 37-72-201 and 37-72-202, MCA; IMP: 37-72-201, MCA

RULE V VARIANCES (1) A variance request must be as follows:

(a) The request must be on an affidavit of a licensed construction blaster who is an employee of the state of Montana or one of its political subdivisions and is requesting a variance for public work.

(b) The request must show that compliance with specific rules concerning the use of explosives would be impractical.

(c) The request must show the specific method to be utilized regarding the use of explosives and that this method will not constitute a danger to property or public safety.

(2) A variance will be granted or denied by letter to the requestor for variance after a determination is made by the division based on (1) above. If the variance is approved, restrictions and time of variance must be stated if applicable; and if denied, reasons for denial must be stated. The letter must be signed by the division administrator or his designated representative.

(3) A variance request from a licensed construction blaster who is not an employee of the state of Montana or one of its political subdivisions requesting a variance for public work must be directed to the Occupational Safety and Health Administration for processing.

AUTH: 37-72-201 and 37-72-202, MCA; IMP: 37-72-201, MCA

RULE VI TRAINING PROGRAMS (1) Training programs in construction blasting must be recognized by the explosives and construction industry and approved by the division. The training program must offer comprehensive instruction in safe use of explosives, methods and purposes of their use, and safety procedures for storage.

(2) The following construction blasting training courses are approved by the division:

(a) For Class A License:

Northwest Laborers Employers Training Program
Laborers - AGC Training Program for State of Montana

(b) For Class B License:

Kinepak Blasting Seminar
Dupont Blasting Seminar

(3) Training courses in use of explosives that are not on the division's approved list will be determined to be acceptable or nonacceptable based on the division's judgment of content and quality of the course.

AUTH: 37-72-202, MCA; IMP: 37-72-302, MCA

RULE VII SUSPENSION, REVOCATION, OR REFUSAL TO RENEW CONSTRUCTION BLASTER'S LICENSE (1) The division may reprimand, suspend, revoke, or refuse to renew the license of any person violating the provisions of section 37-72-203, MCA.

(2) Upon receipt of an affidavit charging a violation of section 37-72-203, MCA, the division shall investigate and must either make a determination that the charges are unfounded or notify the person charged within 6 months of the date the affidavit was filed with the division.

(3) Upon the finding by the division that the construction blaster did engage in willful conduct in violation of section 37-72-203, MCA, the division may reprimand, suspend, revoke, or refuse to renew such license. The division shall notify the person of the final decision in writing and include the appeal right for a contested case hearing under ARM 24.29.207(2).

AUTH: 37-72-202, MCA; IMP: 37-72-203, MCA

3. The division is proposing to adopt new rules to carry out the intent of Senate Bill 194 passed by the 49th Legislature. Sections 9 and 10 of this bill require the adoption of rules governing the use of explosives, providing variances regarding the use of explosives, implementing training and experience requirements, prescribing the amount of application, license, examination and renewal fees, providing for licenses, and providing for conduct of business of the division under this statute.

4. Interested parties may submit their data, views or arguments concerning these proposed rules in writing to

William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South East Chance Gulch, Helena, Montana 59601, by September 6, 1985.

5. If a person who is directly affected by the proposed rules wishes to express data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to William R. Palmer, address above, no later than September 6, 1985.

6. If the division receives requests for a public hearing on the proposed rules from 25 persons who are directly affected by the proposed rules or ten percent of the population of the state of Montana, 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. The rule will affect each and every individual in the state. Notice of hearing will be published in the Montana Administrative Register.


WILLIAM R. PALMER
Acting Administrator

CERTIFIED TO THE SECRETARY OF STATE: July 15, 1985

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)
of Rule I relating to the)
waiver of assessment of late)
payment penalty fees for)
liquor license renewals.)

NOTICE OF PUBLIC HEARING on
the Proposed Adoption of Rule
I relating to the waiver of
late payment penalty fees for
liquor license renewals.

TO: All Interested Persons:

1. On August 14, 1985, at 9:30 a.m., a public hearing will be held in 4th Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, at Helena, Montana, to consider the adoption of Rule I relating to the waiver of assessment of late payment penalty fees for liquor license renewals.
2. The rule as proposed to be adopted provides as follows:

RULE I ASSESSMENT OF LICENSE RENEWAL LATE PAYMENT PENALTY

FEE - GROUNDS FOR WAIVER (1) The department will assess a license renewal late payment penalty fee in all cases where a licensee fails to pay the license renewal fee prior to July 1 of the license year. The renewal application and fee is timely filed and paid if mailed in an envelope postmarked by the United States postal service prior to July 1. If June 30 falls on a Saturday, Sunday, or state legal holiday, a postmark for the following business day or a payment received at the liquor division on the following business day is timely.

(2) The department may waive a license renewal late payment penalty fee assessment upon receipt of a written request by the licensee. The request must state the reason for late payment and be supported by documentation. A waiver of the license renewal late payment penalty fee assessment shall be granted under the following conditions:

- (a) a department error;
 - (b) the department mailed a license renewal notice less than two weeks prior to July 1;
 - (c) a delay in payment caused by the death or serious illness of the licensee;
 - (d) a United States postal service error; or
 - (e) a renewal application and fee was erroneously mailed to the internal revenue service.
- (3) A licensee's neglect, lack of funds, or ignorance of the law are not sufficient reasons for waiver of a license renewal late payment penalty fee assessment.

3. The Department proposes to adopt Rule I to implement § 16-4-501, MCA, which empowers the Department to assess a late payment penalty fee for the delinquent payment of an alcoholic beverages license renewal fee. Rule I will inform alcoholic beverages licensees of the grounds required by the Department to waive the assessment of a late payment penalty fee.

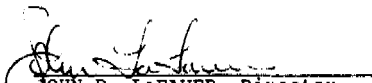
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Matt Gilson
Department of Revenue
Legal Bureau
Mitchell Building
Helena, Montana 59620

no later than August 22, 1985.

5. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to adopt the proposed rule is based on § 16-1-303, MCA, and implements § 16-4-501, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 7/15/85

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 46.12.601,	)	THE PROPOSED AMENDMENT OF
46.12.602 and 46.12.605 per-	)	RULES 46.12.601, 46.12.602
taining to dental services	)	AND 46.12.605 PERTAINING TO
	)	DENTAL SERVICES

TO: All Interested Persons

1. On August 15, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.601, 46.12.602 and 46.12.605 pertaining to dental services.

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

46.12.601 DENTAL SERVICES, DEFINITION Dental service is the treatment of the teeth and associated structures of the oral cavity and treatment of disease, injury or impairment which may effect the oral and general health of the individual. The services must be provided by a licensed dentist, or a licensed dental hygienist under the direct supervision of a licensed dentist, or a denturist, when the full or partial denture services are prescribed by a dentist. The services must be within the scope of their professions, as defined by law.

AUTH: Sec. 53-6-113 MCA

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

46.12.602 DENTAL SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

Subsections (1) through (4)(j) remain the same.

(k) ~~alveolectomy~~, not in ~~conjunction~~ conjunction with extractions;

Subsections (4)(l) through (4)(v) remain the same.

(w) ~~facial surgery~~, oral surgery procedures performed by a dentist and specifically listed in ARM 46.12.2003-2008 are coverable when performed in a medical emergency and authorized by the designated review organization.

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

(6) All full dentures must be prior authorized by the designated review organization. Requests for full dentures must show the approximate date of the most recent extractions, and/or the age of the present dentures. Dentures less than ten years old must be considered for relining or jumping. Tissue conditioners are considered a part of treatment. The

following full denture services are benefits of the medicaid program when provided by a dentist or prescribed by a dentist and provided by a licensed denturist.

Subsections (6) (a) through (6) (j) remain the same.

(7) The following partial denture services are benefits of the medicaid program when provided by a dentist or prescribed by a dentist and provided by a licensed denturist; and all partial dentures must be prior authorized by the designated review organization:

Subsections (7) (a) through (13) remain the same.

AUTH: Sec. 53-6-113 MCA

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

46.12.605 DENTAL SERVICES, REIMBURSEMENT The department will pay the lowest of the following for dental services not also covered by medicare: the provider's actual (submitted) charge for the service or the department's fee schedule found in this rule.

The department will pay the lowest of the following for dental services which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

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

(o) palliative (emergency treatment of dental pain; includes only minor procedures, i.e., temporary fillings, incision and drainage, topical medicaments, irrigation, pericoronitis, etc.) - 8.54;

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

(7) Prosthodontics:

(a) complete maxillary denture, acrylic, plus necessary adjustment - 369.60+ when provided by a dentist or 184.80 when provided by a denturist;

(b) complete mandibular denture, acrylic, plus necessary adjustment - 369.60+ when provided by a dentist or 184.80 when provided by a denturist;

(c) acrylic upper or lower partial denture with cast chrome clasps and rests replacing at least 4 posterior teeth plus adjustments - 286.00+ when provided by a dentist or 146.00 when provided by a denturist;

(d) maxillary or mandibular cast chrome partial denture, acrylic saddles, 2 clasps and rests, replacing missing posterior teeth and one or more anterior teeth, plus adjustments - 357.50+ when provided by a dentist or 178.75, when provided by a denturist.

(8) Relines and repairs, etc.:

(a) cured resin reline, lower - 95.10+ when provided by a dentist or 47.55 when provided by a denturist;

(b) cured resin reline, upper - 95.10+ when provided by

a dentist or 47.55 when provided by a denturist;

(c) broken denture repair, no teeth, metal involved - 42.24; when provided by a dentist or 21.12 when provided by a denturist;

(d) denture adjustment - only where dentist did not make dentures - 8.58; when provided by a dentist or 4.29 when provided by a denturist;

(e) replacing broken tooth on denture, first tooth - 26.40; when provided by a dentist or 13.20 when provided by a denturist;

(f) each additional tooth after procedure (e) and (g) - 7.15; when provided by a dentist or 3.58 when provided by a denturist;

(g) adding teeth to partial to replace extracted natural teeth, first tooth - 35.75; when provided by a dentist or 17.88 when provided by a denturist;

(h) replacing clasp, new clasp - 50.05;

(i) repairing (welding or soldering) palatal bars, lingual bars, metal connectors, etc. on chrome partials - 92.95; when provided by a dentist or 46.48 when provided by a denturist;

(j) duplicate (jump) upper complete denture - 121.55;

(k) lower jump or duplicate - 121.55; when provided by a dentist or 60.78 when provided by a denturist;

(l) placing name on new, full or partial dentures - 11.00; when provided by a dentist or 5.50 when provided by a denturist.

Subsections (9) through (11)(q) remain the same.

(r) ~~facial surgery---usual-and-customary---charges-which are-reasonable.~~ emergency oral surgery procedures not listed in this rule will be reimbursed in accordance with ARM 46.12.2008, when authorized by the designated review organization.

Subsections (12) through (16)(m) remain the same.

AUTH: Sec. 53-6-113 MCA

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

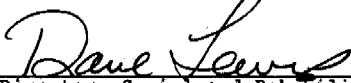
3. This rule is being amended to allow denturists to be reimbursed by Medicaid for dentures, partial dentures, re-aligns of dentures, duplication of dentures and repair of dentures when these services are prescribed by a dentist. Inclusion of denturists as Medicaid providers is based upon Initiative 97. Although the Initiative does not require Medicaid coverage, the federal definition of dentures includes dentures "provided by or under the direction of a dentist". The federal interpretation of the term "under the direction of a dentist" would include dentures provided by a licensed denturist when prescribed by a dentist. Therefore, the State Medicaid regulations regarding dental services has been

amended to provide for reimbursement for denturists consistent with the federal interpretation.

The rules are further amended to include emergency oral surgery services in certain circumstances. The reason for this amendment is that oral surgeons, rather than physicians, frequently treat accident victims in emergency situations. Because the specific procedures they perform are not listed in the dental services rule, the oral surgeons have not been reimbursed for these procedures. The rule is being amended to allow for payment for these emergency services performed by an oral surgeon.

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 August 22, 1985.

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 _____ July 15 _____, 1985.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule 46.10.403	)	THE PROPOSED AMENDMENT OF
pertaining to AFDC lump sum	)	RULE 46.10.403 PERTAINING
payment penalties.	)	TO AFDC LUMP SUM PAYMENT
	)	PENALTIES.

TO: All Interested Persons

1. On August 14, 1985, at 9 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.10.403 pertaining to AFDC lump sum payment penalties.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) through (3)(a)(i) remain the same.

(ii) the assistance unit incurs, becomes responsible for, and pays medical expenses in a month of ineligibility; or

(iii) the funds are unavailable for reasons beyond the family's control.

Subsections (3)(b) through (4)(b) remain the same.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 and 53-4-241 MCA

3. The Deficit Reduction Act of 1984 (DEFRA) allowed states three options for shortening the AFDC lump-sum payment penalty period. Montana chose two options (an event occurs which would have changed the payment amount and the incurrment and expenditure of funds for medical expenses). The third option of "funds unavailable for reasons beyond the family's control" was delayed awaiting clarification. We would now like to include the third option which will result in a small but direct savings to General Assistance funds.

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 August 23, 1985.

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 July 15, 1985.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA
WHEAT RESEARCH AND MARKETING COMMITTEE

In the matter of the adoption) NOTICE OF THE ADOPTION OF
of emergency rules pertaining) EMERGENCY RULES RELATING TO
to setting the annual) THE ANNUAL ASSESSMENT ON
assessment on wheat and barley) WHEAT AND BARLEY

TO: All Interested Persons.

1. The Montana Wheat Research and Marketing Committee established its budget and entered into contractual obligations in the spring of 1985 based upon previous years' revenue and calculated estimates. As a result of unforeseen disastrous drought conditions, emergency level grasshopper infestations, and poor grain market conditions, the 1985 grain crop will be one of the worst crops in recent years. This will have a serious negative impact on the revenue collected by levies on grain sold. The Committee, in order to meet its financial obligations, must increase the levy assessed upon grain. The increase must be made immediately to ensure proper revenue generation. Any delay in the increase may result in undue financial burdens on the Committee. The increase in the levy remains well within the statutory limitations found in 80-11-206, MCA, and is clearly within the discretion of the Committee.

2. The text of the rule is as follows:

RULE 1 WHEAT AND BARLEY ASSESSMENT AND REFUND

- (1) There shall be levied an annual assessment of:
(a) 6 mills per bushel upon all wheat grown in the State of Montana;
(b) 12 mills per hundredweight on all barley grown in the State of Montana.

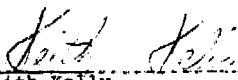
AUTH: 80-11-205, MCA

IMP: 80-11-206, MCA

3. The reason for the proposed amendment is to specify the annual assessment on wheat and barley in order to reflect the costs of the program.

4. These rules are authorized under Section 80-11-205, MCA. They implement Section 80-11-206, MCA.

The emergency action is effective July 15, 1985.



Keith Kelly
Director

Certified to the secretary of state July 15, 1985.

Montana Administrative Register

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

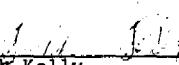
In the matter of the adoption) NOTICE OF THE ADOPTION
of new rules creating a Rural) OF RULES 4.3.601,
Assistance Loan Program) 4.3.602, 4.3.603 and
4.3.604

TO: All Interested Persons:

1. On May 30, 1985 the Department of Agriculture published a notice of hearing on the adoption of the above-stated rules at pages 527 through 530 of the Montana Administrative Register, issue number 10.

2. The hearing was held on June 25, 1985. No comments or testimony were received.

3. The agency has adopted the rules as proposed.



Keith Kelly
Director

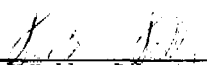
Certified to the Secretary of State July 15, 1985

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE MONTANA AGRICULTURAL LOAN AUTHORITY
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules concerning applicant) RULES 4.14.305 AND
eligibility and tax deduction) 4.14.601 CONCERNING THE
MONTANA AGRICULTURAL LOAN
AUTHORITY AND THE
BEGINNING FARM LOAN
PROGRAM

TO: All Interested Persons:

1. On June 13, 1985, the Montana Agricultural Loan Authority published notice of the proposed amendment of Rules 4.14.305 and 4.14.601 relating to applicant eligibility and tax deduction of the Beginning Farm Loan Program at pages 628 and 629 of the 1985 Montana Administrative Register, issue number 11.
2. The Montana Agricultural Loan Authority has amended rules 4.14.305 and 4.14.601 as proposed.
3. No written comments or testimony were received.



Keith Kelly, Director
Department of Agriculture
and Member Montana
Agricultural Loan
Authority

Certified to the Secretary of State July 15, 1985

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the	)	NOTICE OF AMENDMENT
amendment of 8.40.1215 con-	)	of 8.40.1215 AND ADOPTION
cerning additions, deletions,	)	OF 8.40.405A, 8.40.406A,
& rescheduling of dangerous	)	8.40.408A, 8.40.501,
drugs, adoption of	)	8.40.502 and 8.40.503.
new rules under sub-chapter 4)	
concerning prescription re-)	
quirements, records of dis-)	
persing, and transfer of pre-)	
scriptions, and new rules)	
under sub-chapter 5 computer)	
regulations concerning de-)	
finitions, automated data)	
processing systems, and)	
security)	

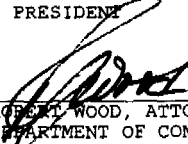
TO: All Interested Persons:

1. On June 13, 1985, the Board of Pharmacy published a notice of amendment and adoption of the above-stated rules at pages 630 through 636, 1985 Montana Administrative Register, issue number 11.

2. One letter of comment was received from Del Steiner, R.Ph., making suggestions for changes in the rules. These suggestions were responded to in writing and by phone by Wayne Bollinger, President of the Board. Mr. Steiner is satisfied with those responses and is not objecting to the rules as proposed. A comment was also received from the Administrative Code Committee requesting the board cite section 50-32-203, MCA, as an authority section for the rule change under 8.40.1215 as well as 50-32-103, MCA. This will be so noted in the history note of the rule as well. No other comments or testimony were received.

3. The board has amended and adopted the rules exactly as proposed.

BOARD OF PHARMACY
D. WAYNE BOLLINGER, R.Ph.
PRESIDENT

BY: 
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 15, 1985.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION OF RULE
rule 10.57.211 pertaining to a) 10.57.211 TEST FOR CERTIFI-
test for certification) CATION

TO: All Interested Persons.

1. On March 28, 1985, the Board of Public Education published notice of a proposed adoption of a rule concerning a test for certification on page 264 of the 1985 Montana Administrative Register, issue number 6.

2. The agency has adopted the rule with the following changes:

10.57.211 TEST FOR CERTIFICATION (1) Effective July 1, 1986, all new applicants for initial Class 1, 2, 3, or 5 certification must provide evidence of satisfactory completion of a pre-certification test approved by the Board having completed the National Teachers Examination Core Battery with a minimum score established by the Board. Exception: teachers currently holding a class 2 standard certificate will not be required to take the test to qualify for a class 1 certificate if they obtain the class 1 certificate before October 1, 1991.

(2) and (3) remain the same.

AUTH: Sec. 20-2-121(1) MCA

IMP: Sec. 20-4-102(1) and (5) MCA

3. At the public hearing which was held May 2, 1985, at 11:00 a.m., six persons submitted comment on the proposed rule. Four persons testified at the public hearing, and three persons sent written comment to the Board prior to May 10, 1985, the date on which the Board closed the hearing record. Five were proponents, one was opponent. The following observations were made: (a) One person stressed that the test should be identified in the rule so that all parties are assured of a hearing if a change is made in the future. The Board agrees and has amended the rule accordingly, (b) One person stressed that he was a proponent for a test for initial certification only, not for re-certification. In addition, he expressed concern that: (i) the effect of a test is often that faculty ends up teaching to the test; (ii) standardized tests suffer from a bias, particularly where minorities are concerned; (iii) the test does not measure classroom effectiveness; (iv) cut-off scores will be maintained without compromise at times when a supply of teachers is low. The Board acknowledges these concerns and will regard them with care. (c) The one opponent objected to the test on grounds that the quality of teachers is more likely to be improved by a review of teacher college faculty performance and the teacher's effectiveness in a classroom than by a basic skills test. The Board does not necessarily disagree but feels the test

will have a positive effect by potentially eliminating marginal applicants.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: _____

Michael L. Dyer

Certified to the Secretary of State July 15, 1985

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of adoption of) NOTICE OF THE ADOPTION OF
rules pertaining to the con-) RULES 44.9.101 thru
duct of certain specific) 44.9.405
elections by mail ballot

TO: All Interested Persons

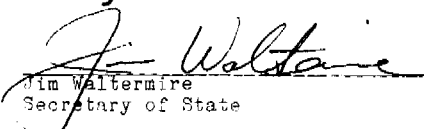
1. On June 13, 1985, the Secretary of State published notice of a proposed adoption of rules concerning mail ballot elections at page 663 of the 1985 Montana Administrative Register, issue number 11.

2. The agency has adopted the rules as proposed.

3. No comments or written testimony were received.

4. The authority for the rule is 13-19-105, MCA and the rule implements Chapter 19, MCA.

Dated this 15th day of July, 1985


Jim Waltermire
Secretary of State

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

In the matter of the adoption) NOTICE OF THE ADOPTION OF
of Rules 46.5.531, 46.5.532,) RULES 46.5.531, 46.5.532,
46.5.533, 46.5.534, 46.5.535,) 46.5.533, 46.5.534,
46.5.536, 46.5.537, 46.5.538) 46.5.535, 46.5.536,
and 46.5.539 pertaining to) 46.5.537, 46.5.538 and
foster care support services.) 46.5.539 PERTAINING TO
) FOSTER CARE SUPPORT
) SERVICES

TO: All Interested Persons

1. On June 13, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules 46.5.531, 46.5.532, 46.5.533, 46.5.534, 46.5.535, 46.5.536, 46.5.537, 46.5.538 and 46.5.539 pertaining to foster care support services at page 678 of the 1985 Montana Administrative Register, issue number 11.

2. The Department has adopted Rules 46.5.531, FOSTER CARE SUPPORT SERVICES, PURPOSE and 46.5.538, FOSTER CARE SUPPORT SERVICES, AVAILABILITY OF FUNDS as proposed.

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

46.5.532 FOSTER CARE SUPPORT SERVICES, DEFINITIONS For the purposes of this rule, the following definitions apply: Subsections (1) and (2) remain as proposed.

(3) "Clothing allowance" means payments made on behalf of a foster child for clothing subject to the conditions and limitations set forth in ARM 46.5.533.

(4) "~~Special--needs~~ SUPPLEMENTAL SERVICES allowance" means payments made on behalf of a foster child who requires medically or educationally related services or equipment which is not available from any other source. Special needs include transportation, orthopedic services and devices, eye glasses, and any other documented special requirements necessary for the foster child, subject to the conditions and limitations set forth in ARM 46.5.534.

(5) "Respite care allowance" means payments made on behalf of a foster child for assistance necessary to provide foster parents with relief from the daily care requirements of foster children whose mental or physical condition requires special or more intense care. Respite care allowances are subject to the conditions and limitations set forth in ARM 46.5.535.

(6) "Diet support allowance" means payments made on behalf of a foster child who requires special dietary supplements, aids or formulas to maintain the health of the child. Diet support allowances are subject to the conditions and

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limitations set forth in ARM 46.5.536.

AUTH: Sec. 41-3-1103, 53-2-201, 53-4-111 MCA

IMP: Sec. 41-3-1103, 53-4-111 MCA

46.5.533 FOSTER CARE SUPPORT SERVICES, CLOTHING ALLOWANCE Subsections (1) through (1)(c) remain as proposed.

(d) the child has not previously received a \$100 IN clothing allowances DURING THE YEAR.

(2) The amount of the clothing allowance is determined by the child's wardrobe and the extent to which clothing is needed, but in no case may the amount exceed \$100 per child PER YEAR.

(3) The clothing allowance must be used to purchase necessary clothing for the child.

AUTH: Sec. 41-3-1103, 53-2-201, 53-4-111 MCA

IMP: Sec. 41-3-1103, 53-4-111 MCA

46.5.534 FOSTER CARE SUPPORT SERVICES, SPECIAL--NEEDS SUPPLEMENTAL SERVICES ALLOWANCE

(1) Any child placed in a licensed youth foster home is eligible for a ~~special-needs~~ SUPPLEMENTAL SERVICES allowance if:

(a) the child is expected to be in foster care for more than 30 days;

(b) the department is making the foster care payments for the child;

(c) the need for a ~~special-needs~~ SUPPLEMENTAL SERVICES allowance has been documented by the placing social worker; and

(d) all other possible resources have been exhausted.

(2) A ~~special-needs~~ SUPPLEMENTAL SERVICES allowance is available for any documented special need of a foster child necessary to the child's health and welfare, subject to the limitations set forth in this rule.

(3) A ~~special-needs~~ SUPPLEMENTAL SERVICES allowance for transportation costs will be authorized only for foster children who must travel to secure necessary medical services or special educational or training services.

Subsections (3)(a) through (3)(b) remain as proposed.

(4) SUPPLEMENTAL SERVICES ALLOWANCES FOR ORTHOPEDIC OR ORTHODONTIC SERVICES SHALL BE PAID AT A RATE NOT TO EXCEED THE MEDICAID RATE FOR SUCH SERVICES.

(45) All ~~special-needs~~ OTHER SUPPLEMENTAL SERVICES allowances shall be limited ~~for the time the child requires support-services~~ to the lesser of:

(a) actual costs; or

(b) \$50 per month per child; ~~or.~~

~~(c) \$600 per year per child.~~

AUTH: Sec. 41-3-1103, 53-2-201, 53-4-111 MCA
IMP: Sec. 41-3-1103, 53-4-111 MCA

46.5.535 FOSTER CARE SUPPORT SERVICES, RESPITE CARE ALLOWANCE (1) Any child placed in a licensed youth foster home is eligible for respite care allowance ~~for his or her foster parents(s) if:~~

Subsections (1)(a) through (1)(c)(iii) remain as proposed.

~~(d) -- the foster parent(s) -- need a respite from daily care of the child as verified by placing worker.~~

(2) The amount of the respite care payment(s) shall not exceed:

(a) \$2 per hour ~~for one~~ PER child ~~or \$3 per hour for two~~ children for up to eight continuous hours;

(b) ~~\$20 for one child or \$25 for two children~~ \$16 PER CHILD for more than 8 hours and up to 24 hours;

~~(c) -- \$30 for one child or \$40 for two children for more than 24 hours and up to 48 hours.~~

(3) The amount of respite care payment(s) per child per year shall not exceed 96 ONE HUNDRED AND ELEVEN (111) hours FOR EACH PLACEMENT. ~~However, foster parents may be authorized to receive up to 15 additional hours if the respite care is necessary to allow the foster parents to attend training sponsored or authorized by the department.~~

~~(4) -- Respite care allowance payments shall not be made for temporary care of the child for the convenience of the foster parent(s), e.g., babysitting, day care. Respite care allowance payments are available only to provide needed relief from care of a child whose mental or physical condition requires special or more intense care while in foster care.~~

AUTH: Sec. 41-3-1103, 53-2-201, 53-4-111 MCA
IMP: Sec. 41-3-1103, 53-4-111 MCA

46.5.536 FOSTER CARE SUPPORT SERVICES, DIET SUPPORT ALLOWANCE Subsections (1) through (3) remain as proposed.

(4) In addition to the purchase of dietary aids or formula, funds may be used to purchase up to 5 hours of service per child per year from a registered dietician AT A RATE NOT TO EXCEED \$30 PER HOUR.

AUTH: Sec. 41-3-1103, 53-2-201, 53-4-111 MCA
IMP: Sec. 41-3-1103, 53-4-111 MCA

46.5.537 FOSTER CARE SUPPORT SERVICES, APPLICATION PROCESS (1) Any foster parent may apply for foster care support services. ~~on forms provided by the department.~~
Subsections (2) and (3) remain as proposed.

AUTH: Sec. 41-3-1103, 53-2-201, 53-4-111 MCA
IMP: Sec. 41-3-1103, 53-4-111 MCA

46.5.539 FOSTER CARE SUPPORT SERVICES, HEARING ~~++~~ Any person dissatisfied because of actions by the department or its representatives regarding foster care support services may request a hearing as provided in ARM 46.2.202 within 90 days of the notice of adverse action.

AUTH: Sec. 41-3-1103, 53-2-201, 53-4-111 MCA
IMP: Sec. 53-4-111, 53-2-201, 53-2-606 MCA

4. The Department has thoroughly considered all verbal and written commentary received:

COMMENT: Several foster parents objected to the "one-time" limit for a clothing allowance.

RESPONSE: The Department has changed the limit to a maximum of \$100 during the year. The child will, therefore, be eligible for a clothing allowance each year rather than the previous limit of one-time only.

COMMENT: A respondent within the Community Services Division pointed out that House Bill 500 wording is different from the proposed wording in Rule IV, "Special Needs".

RESPONSE: To be consistent with the wording in House Bill 500, the phrase "Special Needs" in Rule IV has been changed to "Supplemental Services".

COMMENT: Some respondents commented that the \$600 limit on supplemental services in proposed Rule IV would be too restrictive for either orthopedic or orthodontic services. Foster parents could not afford to pay the difference between \$600 and the actual cost of these services.

RESPONSE: The Department agrees and has redrafted Rule IV to indicate that orthopedic and orthodontic services will be paid at a rate not to exceed the Medicaid rate for such services.

COMMENT: Several foster parents, the State foster parent organization and a program manager from the Developmental Disabilities Division of the Department objected to several points in the respite care rule. The children covered by the rule are very difficult children to care for and are, in many instances, afflicted with multiple handicaps. The very nature of the handicaps and behaviors make these children hard to care for. Therefore, respondents felt approval for respite care should be based upon the needs of the child and not on the foster parents showing stress and demonstrating a need for

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a break. The respite care payment as proposed was difficult to understand as were the training hours. Finally, respondents felt the State should not be restricting how the parents choose to spend their time.

RESPONSE: The rule has been rewritten with those sections deleted that referred to the foster parents demonstrating a need for respite care. Need will be based upon the level of difficulty in caring for the particular child. The foster parent can decide whether to take the respite in a number of short breaks to attend a movie or whatever, or over a longer period of time. The section has been deleted that read, "...payments shall not be made for temporary care of the child for the convenience of the foster parents...".

Rule V(2)(a) has been changed to read, "\$2 per hour per child for up to 8 continuous hours" and Rule V(2)(b) has been changed to read, "\$16 per child for more than 8 hours and up to 24 hours". Rule V(3) has been changed to read, "The amount of respite care payments per child per year shall not exceed 111 hours for each placement". The department will not make a distinction between respite care for training purposes or for any other purposes.

COMMENT: One respondent asked what the payment rate would be for the services of a registered dietician.

RESPONSE: After consultation with the Department of Health and Environmental Sciences, it was determined that a rate not to exceed \$30 per hour is reasonable. Rule VI has been changed with the addition of "at a rate not to exceed \$30 per hour".

COMMENT: Previously, the foster parents could make a verbal request for support services but the proposed rules say the foster parents may apply "on forms provided by the department".

RESPONSE: Since it will be the responsibility of the social worker to complete the paper work for the foster care support services, the statement "on forms provided by the department" has been deleted from Rule VII(1).

COMMENT: In proposed Rule VI, is there a (2), and, if so, what is it?

RESPONSE: The Department recognizes the confusion created and has deleted the (1) from the one-paragraph rule.

COMMENT: A special needs allowance for transportation should not be limited to only those trips which are 10 miles or less

one-way.

RESPONSE: The Department disagrees. The ten-mile rule has been adopted to make clear the distinction between routine and special travel.

COMMENT: The proposed rules should include a provision for reimbursement of damage to foster homes caused by the foster children.

RESPONSE: That issue is beyond the scope of these rules. Foster parents are provided with liability coverage by the State of Montana.

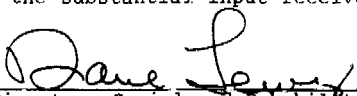
COMMENT: You should examine what you are paying for foster care then look at the cost of keeping that child in a ranch or institution setting. It is almost impossible to keep a foster child on the present payment.

RESPONSE: This issue is beyond the scope of these rules which cover only support services for foster children above the foster care payment.

COMMENT: I think the notice of the hearing was not made public. The hearing should be rescheduled and held in major Montana cities.

RESPONSE: Notice of the hearing was published in the Montana Administrative Register and circulated to foster parent organizations around the state. The Department received numerous written comments from interested parties across the state and incorporated changes accordingly.

The Department has concluded there is no need for additional hearings because of the substantial input received through written comments.



Director, Social and Rehabilitation Services

Certified to the Secretary of State July 15, 1985.

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


In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 46.12.3803	)	RULE 46.12.3803 PERTAINING
pertaining to medically	)	TO MEDICALLY NEEDY INCOME
needy income standards.	)	STANDARDS

TO: All Interested Persons

1. On June 13, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards at page 676 of the 1985 Montana Administrative Register issue number 11.

2. The Department has amended Rule 46.12.3803 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State July 15, 1985.

VOLUME NO. 41

OPINION NO. 20

ALCOHOL - Delinquent fee schedule for local alcohol licenses;

CITIES AND TOWNS - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;

FEES - Delinquent fee schedule for local alcohol licenses;

LICENSES - Delinquent fee schedule for local alcohol licenses;

LOCAL GOVERNMENT - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;

MUNICIPAL CORPORATIONS - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;

MUNICIPAL GOVERNMENT - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;

MONTANA CODE ANNOTATED - Sections 16-4-501, 16-4-501(10), 16-4-503;

MONTANA CONSTITUTION - Article XI, sections 4(1)(a), 4(2);

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 75 (1984).

HELD: The City of Missoula does not have authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses.

12 July 1985

Jim Nugent
Missoula City Attorney
201 West Spruce Street
Missoula MT 59801

Dear Mr. Nugent:

You have requested my opinion on the following question:

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Whether the City of Missoula has authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses.

An incorporated city with general government powers, such as Missoula, has all powers that are provided or implied by law. Mont. Const. art. XI, § 4(1)(a). Further, the powers of a local government with general government powers shall be liberally construed. Mont. Const. art. XI, § 4(2); Stevens v. City of Missoula, ___ Mont. ___, 667 P.2d 440, 443 (1983).

I have previously issued an opinion holding that a Lewistown city ordinance which allows an escalating monthly penalty for failure to obtain a city business license is valid. 40 Op. Att'y Gen. No. 75 (1984). Thus, an escalating fee for late payment of city license fees is proper in some situations.

However, Montana law contains specific statutes regarding alcohol license fees. Section 16-4-501, MCA, sets forth the alcohol license fees payable to the State Department of Revenue and, at section 16-4-501(10), MCA, specifically provides for a late fee as follows:

In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year.

Specific authority for local alcohol licensing is provided in section 16-4-503, MCA, which states:

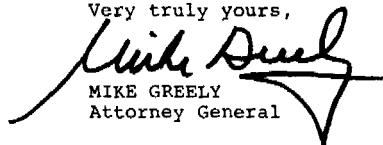
The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverages license or 100% of the fee for a beer or beer-and-wine license collected by the department from such licensee under this code.

This section expressly authorizes the city to fix license fees not to exceed certain sums. You have informed me that the City of Missoula currently charges the maximum fee allowed under section 16-4-503, MCA. The statute expressly limits the maximum fee amount chargeable by local governments and provides no power to assess a higher fee under any circumstances. In this case, where the city already charges the maximum fee allowed, an additional late renewal fee added to the license fee would be inconsistent with section 16-4-503, MCA, and, consequently, would be invalid.

THEREFORE, IT IS MY OPINION:

The City of Missoula does not have authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mike Greely", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

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 March 31, 1985. This table includes those rules adopted during the period January 1, 1985 through June 30, 1985, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1985, this table and the table of contents of this issue of the MAR.

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