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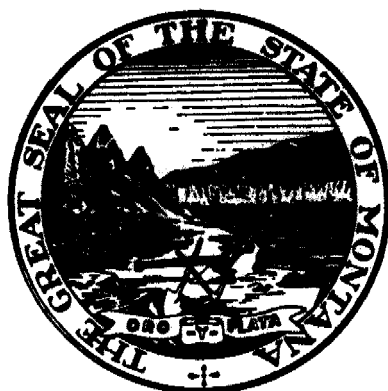
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MONTANA ADMINISTRATIVE REGISTER

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1985 ISSUE NO. 16
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PAGES 1183-1270



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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 AGRICULTURE
BEFORE THE WHEAT RESEARCH AND
MARKETING COMMITTEE

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment concerning)	ON THE PROPOSED AMENDMENT
the annual assessment)	OF RULE 4.9.401 RELATING
wheat and barley)	TO THE ANNUAL ASSESSMENT
)	ON WHEAT AND BARLEY

TO ALL INTERESTED PERSONS:

1. On October 1, 1985 at 10 a.m. in room 225 Agriculture/Livestock Building, Sixth and Roberts, Helena, a public hearing will be held to consider the adoption of proposed amendment to rule 4.9.401 concerning the wheat and barley assessment.

2. The proposed amendment to 4.9.401 provides as follows:

4.9.401 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.

(2) All assessments are subject to refund provided the following criterium are met:

~~††~~ (a) application for assessment refund shall be in writing on forms provided by the committee.

~~††~~ (i) Forms will be furnished upon application to the Wheat Research and Marketing Committee, P. O. Box 3024, Great Falls, Montana 59403.

(b) Written application for refund of the wheat or barley assessments must be submitted by the first seller of the wheat or barley or by an individual with the first seller's power of attorney.

(c) Refund application forms shall be submitted subsequently to thirty (30) days from the date of first sale and no later than ninety (90) days from the date of the first sale of wheat or barley for which a refund is filed.

AUTH: 80-11-206, 80-11-207, MCA IMP: 80-11-205, MCA

3. The Wheat Research and Marketing Committee by and through the Department of Agriculture is proposing the amendment to make permanent adoption of the emergency rule relating to the annual assessment made on wheat and barley. On July 15, 1985, this emergency rule was adopted in order for the Wheat Research and Marketing Committee to meet its financial obligations. Because of the continuing poor crop conditions it is necessary to make permanent the assessment increase invoked in the emergency rule. This increased assessment is necessary not only to meet the contractual obligations in the current fiscal year, but also to meet future needs of the program to promote the marketing and research development of grains in Montana.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Jim Christianson, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620, no later than October 1, 1985.

5. Garth Jacobson, of the Department of Agriculture has been designated to preside over and conduct the hearing.

Keith Kelly
Department of Agriculture

Certified to the Secretary of State August 19, 1985

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ATHLETICS

In the matters of the proposed) NOTICE OF PROPOSED AMENDMENTS
amendments 8.8.2803 concerning) OF 8.8.2803 PROHIBITIONS and
prohibitions and 8.8.3402 con-) 8.8.3402 REFEREE
cerning referees.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 28, 1985, the Board of Athletics proposes to amend the above-stated rules.

2. The proposed amendment of 8.8.2803 will amend subsection (5) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-251, Administrative Rules of Montana)

"8.8.2803 PROHIBITIONS (1) ...

(5) Wrestling in mud, polyurethane, or synthetic substances, or other natural or unnatural foreign substances is prohibited."

Auth: 23-3-405, MCA Imp: 23-3-404, MCA

3. Currently there is a lot of so called "mud wrestling" occurring in bars. This amendment will cover all areas, including Jello wrestling and is being done at the request of a number of city and county attorneys and commissioners.

4. The proposed amendment of 8.8.3402 will add a new subsection (22) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-271 - 8-273, Administrative Rules of Montana)

"8.8.3402 REFEREES (1) ...

(22) Referees may not act as a manager or promoter."

Auth: 23-3-405, MCA Imp: 23-3-404, 405, 501, MCA

5. The amendment is proposed to add clarification on referee's positions to eliminate any conflicts of interest in the boxing ring.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Athletics, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 26, 1985.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Athletics, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 26, 1985.

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

proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having 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 ATHLETICS
Dr. John R. Halseth, Chairman

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 19, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF BARBERS

In the matter of the proposed amendments of 8.10.405 concerning fees, 8.10.407 concerning qualification for examination for out-of-state applicants, 8.10.801 concerning general requirements and proposed repeal of sub-chapter 6, rules 8.10.601 - 8.10.603, concerning apprentice barbers)	NOTICE OF PROPOSED AMENDMENTS OF 8.10.405 FEE SCHEDULE, 8.10.407 QUALIFICATIONS FOR EXAMINATION FOR OUT-OF-STATE APPLICANTS, 8.10.801 GENERAL REQUIREMENTS and PROPOSED REPEAL OF SUB-CHAPTER 6, RULES 8.10.601 - 603, APPRENTICE BARBERS
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 28, 1985, the Board of Barbers proposes to amend and repeal the above-stated rules.

2. The proposed amendment of 8.10.405 will read as follows: (new matter underlined, deleted matter interlined)
(full text of the rule is located at pages 8-287 and 8-288, Administrative Rules of Montana)

8.10.405 FEE SCHEDULE

(1) * Examination	
Barber	\$22.00 <u>30.00</u>
Apprentice	18.00
(2) ...	
(3) <u>Apprentice license</u>	
Original	10.00
Renewal	10.00
<u>Reciprocity</u>	<u>150.00</u>
(4) ...	
(6) <u>Instructor License</u>	
Original	50.00
Renewal	25.00
<u>Instructor exam</u>	<u>50.00</u>
(7) ...	

Auth: 37-1-134, 37-30-203, MCA	Auth. Extension -
Section 9, Chapter 274, Laws of 1985	Imp: 37-30-303, 307,
309, 310, 37-1-134, MCA	

3. Section 37-1-134, MCA allows the licensing boards to set fees commensurate with program area costs. Fees have been added to include a fee for reciprocity licensing, an instructor examination, an increase is included for the barber examination, and apprentice licenses have been deleted as the 1985 legislature repealed the apprenticeship section of the statutes. (Chapter 274, L. of 1985)

4. The amendment of 8.10.407 will delete subsection (1)(e), realphabetize the remaining subsections, and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-288,

Administrative Rules of Montana)

"8.10.407 QUALIFICATIONS FOR EXAMINATION FOR OUT-OF-STATE APPLICANTS. (1) A person who has practiced barbering in another state or country, upon payment of the required fee, shall be granted permission to take an examination for certificate of registration to practice barbering if he complies with each of the following:

(a) ...
(c) has served minimum of three month apprenticeship under supervision of a barber;

(f) (e) ..."
Auth: 37-30-203, MCA Auth. Extension - Section 9,
Chapter 274, Laws of 1985 Imp: 37-30-309, MCA

5. The amendment is proposed to delete the reference to the three month apprentice, which was repealed by the 1985 legislature. (Chapter 274, Laws of 1985)

6. The proposed amendment of 8.10.801 will delete subsection (2) of the rule, will renumber the remaining subsections, and will read as follows: (new matter underlined, deleted matter interlined)

"8.10.801 GENERAL REQUIREMENTS (1) ...
(2) No apprentice barber can own or operate a barber shop.

(3) (2) ..."
Auth: 37-30-203, MCA Auth. Extension - Section 9,
Chapter 274, Laws of 1985 Imp: 37-30-401, MCA

7. The amendment is proposed for the reasons as stated in paragraph 5.

8. The board is proposing to repeal Sub-Chapter 6, rules 8.10.601 - 8.10.603, pertaining to apprentices. The full text of the rules are located at page 8-293, Administrative Rules of Montana. The authority of the board to make the repeal is based on section 37-30-203, MCA.

9. The rules are proposed for repeal for the reasons as stated in paragraph 5.

10. Interested persons may submit their data, views or arguments concerning the proposed amendments and repeals in writing to the Board of Barbers, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 26, 1985.

11. If a person who is directly affected by the proposed amendments and repeals 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 Barbers, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 26, 1985.

12. If the board receives requests for a public hearing on the proposed amendments and repeals from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and repeals, 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 BARBERS
LAWRENCE SANDRETTO, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 19, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENTS
amendments of 8.62.413 con-) OF 8.62.413 FEES, AND 8.62.
cerning fees, and 8.62.703) 703 CONTINUING EDUCATION
concerning continuing educa-) REQUIRED - WHEN
tion.)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 28, 1985, the Board of Speech Pathologists and Audiologists proposes to amend the above-stated rules.

2. The proposed amendment of 8.62.413 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1700 and 8-1701, Administrative Rule of Montana)

"8.62.413 FEES (1) ...

(3) The initial license fee for a speech pathologists shall be ~~\$50.00~~ \$25.00.

(4) The initial license fee for an audiologist shall be ~~\$50.00~~ \$25.00.

(5) The initial fee for a combined speech pathology/audiology license shall be ~~\$50.00~~ \$25.00.

(6) The initial fee for a probationary speech pathology and/or audiology license shall be ~~\$50.00~~ \$25.00.

(7) A yearly registration fee of \$20.00 for speech pathologists and/or audiologist aides.

~~(7)~~ (8) ..."

Auth: 37-15-202, MCA Auth. Extension: Section 5, Chapter 368, L. of 1985 Imp: 37-15-307, 308, MCA

3. The board is amending the fee schedule to reflect annual fees, rather than biennial, as Chapter 368, Laws of 1985 changed the renewals from a biennial basis to annual. A yearly fee is being added to include speech pathology and/or audiology aides, who are now required to be licensed.

4. The proposed amendment of 8.62.703 will read as follows: (new matter underlined, deleted matter interlined)

"8.62.703 CONTINUING EDUCATION REQUIRED - WHEN (1) All licensees applying to the board for renewal of their license shall provide proof of the following appropriate continuing education units:

(a) 20 continuing education units, at least twelve of which must be obtained through approved sponsor programs or academic course work for all renewals due on July 2, 1988.

(b) 40 continuing education units, at least 25 of which must be obtained through approved sponsor programs or academic course work, for all renewals due on July 1, 1984.

(b) For renewals starting October 31, 1986, each licensee will be required to submit evidence of 40 hours of continuing education units, as set out in rule ARM 8.62.704.

(c) For renewals thereafter, 40 hours of continuing education units will be required to be submitted no later than October 31, of each even numbered year. New licensees' continuing education units will be prorated accordingly.

(2) Credit will be granted only for educational activities undertaken during the license 2 year period for which continuing education is to be submitted. (i.e. 10/31/86, 10/31/88) immediately preceding the renewal date, except for the first renewal for which continuing education is required, in which case educational activities undertaken since October 1, 1980 shall be considered."

Auth: 37-15-202, MCA Auth. Extension: Section 5,
Chapter 368, Laws of 1985 Imp: 37-15-309, MCA

5. The board is proposing the amendment to allow for continuing education credits to be obtained over a two year period, even though the license must be renewed each year. Material is also being deleted, which is outdated.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Speech Pathologists and Audiologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 26, 1985.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Speech Pathologists and Audiologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 26, 1985.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having 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 SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
PATTI DUBRAY, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 19, 1985.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendments of Rules	)	ON PROPOSED AMENDMENT OF
20.3.202, 20.3.208	)	ARM 20.3.202, 20.3.208
20.3.209, 20.3.212	)	20.3.209, 20.3.212
20.3.213, 20.3.214	)	20.3.213, 20.3.214
20.3.215, 20.3.216	)	20.3.215, 20.3.216
20.3.401, 20.3.403	)	20.3.401, 20.3.403
20.3.404, 20.3.405	)	20.3.404, 20.3.405
20.3.407, 20.3.408	)	20.3.407, 20.3.408
20.3.410, 20.3.411	)	20.3.410, 20.3.411
20.3.412, 20.3.416	)	20.3.412, 20.3.416
AND REPEAL OF 20.3.415	)	AND REPEAL OF 20.3.415
Certification and evaluation	)	Certification and evaluation
of alcohol programs	)	of alcohol programs

TO All Interested Persons

1. On Friday, September 27, 1985 at 4:00 P.M. a public hearing will be held in the Conference Room of the Central Office of the Department of Institutions, at 1539 11th Avenue, Helena, Montana to consider the amendment of rules 20.3.202, 20.3.208, 20.3.209, 20.3.212, 20.3.213, 20.3.214, 20.3.215, 20.3.216, 20.3.401, 20.3.403, 20.3.404, 20.3.405, 20.3.407, 20.3.408, 20.3.410, 20.3.411, 20.3.412, 20.3.416 and repeal of 20.3.415. ARM 20.3.415 is found on page 20-64 of the Administrative Rules of Montana.

2. The proposed amendments replace present rules 20.3.202, 20.3.208, 20.3.209, 20.3.212, 20.3.213, 20.3.214, 20.3.215, 20.3.216, 20.3.401, 20.3.403, 20.3.404, 20.3.405, 20.3.407, 20.3.408, 20.3.410, 20.3.411, 20.3.412, 20.3.416, and repeal of 20.3.415, found in the Administrative Rules of Montana. The proposed amendment would ensure quality services by qualified persons, clarify the evaluation process and reflect actual certification and evaluation practices.

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

20.3.202 DEFINITIONS ~~(i)~~~~(a)~~ (1) through ~~(e)~~(3) remain the same.

(4) ~~(d)~~ Chemical dependency counselor
~~(e)~~ (a) "Certified counselor" means an individual meeting standards pursuant to 53-24-204 MCA, and corresponding rules and regulations described in Section 20.3.401-416 ARM.

(b) "Eligible counselor" means an individual who possesses at least 70 certification points based on education/workshop training and/or work experience.

(5) ~~(e)~~ "Counseling"

(a) (i) "Family" means face-to-face interaction between a certified or eligible chemical dependency counselor and family member or members for a specific therapeutic purpose.

(b) (ii) "Group" means face-to-face interaction between two or more clients and a certified or eligible chemical dependency counselor for a specific therapeutic purpose.

(c) (iii) "Individual" means a face-to-face interaction between a certified or eligible chemical dependency counselor and an individual client for a specific therapeutic purpose.

(6) (f) through (y) (24) remain the same.

(25) "Trainee/intern privileges" means authorization by a certified counselor to allow a trainee or intern to provide counseling services on a progressive basis which are closely monitored and supervised within well described limits and are based on their training, experience, demonstrated competency, ability and judgment.

(a) (26) "Volunteers" means a person or persons who offer their services free of charge.

(a) "Active volunteer" means an individual who has 50 hours per year of volunteer time.

(i) (27) Full-time equivalent (FTE) means an individual employed 40 hours per week in an accepted program (A half time FTE equals 20 hours per week).

(i) (28) Document (able) (ed) means a person who by position is found credible by ADAD (e.g. a program director, personnel manager, program board officer) will sign a form attesting the dates, hours, and job titles reported for salaried employment or annual clock hours of service per year for volunteers, etc., as required. For academic work this would be an official transcript. For workshop, it would be a record of the training or affidavit.

(i) (29) State accepted program means a program reviewed and accepted by ADAD to provide chemical dependency services.

(i) (30) Registry means the list on which applicants for certification are placed.

(i) (31) Duplication means counting the same point earning activity in more than one point category.

(i) (32) Training day means a training day is six-to-eight hours of continuous training. When dates and hours are available, points will be granted for each full day, provided days average at least six hours. When hours alone are given, days will be established by division of six (6).

(i) (33) Approved list means the listing of ADAD approved workshops relevant to chemical dependency personnel and trainers who possess the qualifications to train such personnel.

(i) (34) Field means all persons currently employed in a state accepted program, serving as a board member of such a program, serving on any state level advisory board for ADAD, or employed directly or on contract by ADAD.

(10) (35) Judges means persons rating work performance tapes.

(11) (36) Panel means the group of three persons who conduct oral examinations for an endorsement area.

(12) (37) Panelist means a person serving on an endorsement panel.

(13) (38) Rounding means that if totaling and averaging (e.g. with FTE's) result in fractional points, these will be rounded down to reflect amounts clearly earned.

(15) (39) Endorsement means three areas: chemical dependency counseling, prevention and education, and management supervision.

(16) (40) Capacity grace period means if, through lack of capability or other reason, ADAD is unable to accommodate an applicant for testing, a grace period will be granted to operate on registration alone until applicant can be tested.

(17) (41) Examination eligibility means applicants must be on the registry in categories A-B to take oral, performance, and written tests. An applicant failing three (3) times to attain a passing grade on any examination must wait one (1) year before attempting the examinations again.

(18) (42) Removal from system means any applicant who has been on the registry for five two (5) (2) years without obtaining sufficient points for certification will be dropped from consideration. Those who are dropped may not reapply for a period of two years.

(19) (43) Role Play means a spontaneous exchange between the counselor and the person playing the part of the client for the purposes of the taped work sample. Reading from a prepared script will not be considered as a test of counselor competency.

AUTH: 53-24-105 MCA

IMP: 53-24-204,208,209 MCA

20.3.208 ALL PROGRAMS - ORGANIZATION AND MANAGEMENT (1)

The administrative organization of all approved chemical dependency treatment programs shall ensure that:

(a) through (c) remain the same.

(d) The program administrator reports to the governing body at least quarterly on progress toward goals and objectives which contain all of the required effectiveness indicators.

(e) and (f) remain the same.

(g) All clients have individualized treatment plans. These treatment plans shall:

(i) Be designed to help the client understand and overcome his or her illness.

(ii) Be the focal point in the documentation of the treatment of the client.

(iii) Provide summary statements of the clients' problems,

16-8/29/85

MAR Notice No. 20-3-8

appropriate realistic goals, and strategies for achieving goals. Goals should be defined as long or short term.

(iv) Delineate the treatment process.

(v) Reflect all services provided to the client, and itemize the basic purpose of each service.

(vi) Be reviewed and updated as appropriate for the component.

(h) through (n) remain the same.

(o) Program They maintains at least \$300,000 liability insurance (minimum-\$300,000.00), and professional liability insurance on all staff providing counseling service and workers' compensation on all personnel.

(p) remains the same.

AUTH: 53-24-105 MCA IMP: 53-24-208(5), 209(4)(5), 306 MCA

20.3.209 ALL PROGRAMS - PERSONNEL, STAFF DEVELOPMENT AND CERTIFICATION

(1) through (7) remain the same.

~~(8)--Volunteers--may--be--used--in--an--alcohol--treatment program--as--a--staff--supplement--The--program--shall--develop--the following--in--utilizing--volunteers.~~

~~(a)--Selection--and--evaluation--criteria.~~

~~----- (b)--A--definition--of--the--service--areas--in--which--volunteers will--be--utilized.~~

~~----- (c)--A--written--plan--which--describes--how--volunteers--will--be utilized--and--a--written--job--description.~~

~~----- (d)--A--brief--but--comprehensive--orientation,--including--a signed--confidentiality--statement,--and--ongoing--training--program for--all--volunteers.~~

~~----- (e)--Direct--supervision--by--a--certified--alcoholism counselor.~~

~~----- (f)--Documentation--of--volunteer--hours--in--accordance--with ABAD--reporting--procedures.~~

(8) Chemical dependency treatment programs may use volunteers provided that:

(a) Selection criteria are established.

(b) A written plan is available describing how volunteers will be used.

(c) Volunteers are provided orientation, ongoing training, and that they sign a confidentiality statement.

(d) Volunteer hours are documented as per ADAD reporting procedures.

(e) Volunteers are not used for counseling unless they are certified or eligible.

(9) Programs may develop a trainee/intern practicum providing that:

(a) All trainee/intern progress notes are co-signed by a

certified counselor.

(b) A system of trainee/intern privileges is established based on training and competency.

(c) An outline of the practicum has been reviewed by ADAD.

AUTH: 53-24-105 MCA

IMP: 53-24-204(2)(e) MCA

20.3.212 DETOXIFICATION (EMERGENCY CARE) COMPONENT REQUIREMENTS

(1) through (8)(b)(ii) remain the same.

(iii) Ensure methods for identifying utilization related problems which include bed utilization, length of stay, analysis of the appropriateness and necessity of admission, continued stays, recidivism, supportive services, effectiveness of an aftercare plan based on verification of referrals for a continuum of care and--results--of--follow-up, as well as utilization of the findings of related quality assurance activities and all relevant documentation.

(iv) Be conducted at least quarterly.

AUTH: 53-24-105 MCA

IMP: 53-24-208(1) MCA

20.3.213 INPATIENT - HOSPITAL COMPONENT REQUIREMENTS

(1) Remains the same.

(2) Inpatient services shall include:

(a) Admission and screening services in accordance with admission criteria which substantiate the appropriateness of treatment and include a comprehensive assessment by a certified counselor, based on at least 3 cross-referenced diagnostic/assessment tools.

(b) through (7)(c)(iv) remain the same.

AUTH: 53-24-105 MCA

IMP: 53-24-208(1) MCA

20.3.214 INPATIENT - FREE STANDING CARE COMPONENT REQUIREMENTS

(1) Remains the same.

(2) Inpatient-free standing care services shall include:

(a) Admission and screening services in accordance with admission criteria, which substantiate the appropriateness of treatment and include a comprehensive assessment by a certified counselor, based on at least 3 cross-referenced diagnostic/assessment tools.

(2)(b) through (7)(b)(ii) remain the same.

16-8/29/85

MAR Notice No. 20-3-8

(iii) Ensure methods for identifying utilization related problems including analysis of the appropriateness and necessity of admission, bed utilization, continued stays, recidivism, completion ratios, supportive services and delays in the provision of supportive services, effectiveness of an aftercare plan based on verification of referrals and results of follow-up, as well as utilization of the findings of related quality assurance activities and all current relevant documentation.

(iv) Be conducted at least quarterly.

AUTH: 53-24-105 MCA

IMP: 53-24-208(1) MCA

20.3.215 INTERMEDIATE CARE (TRANSITIONAL LIVING)
COMPONENT REQUIREMENTS

(1) through (7)(a)(iii) remain the same.

(b) Program effectiveness:

(i) Shall ensure the collection, development and utilization of information which demonstrates program effectiveness. This ~~can~~ shall include, but not be limited to, completion of goals and objectives, ~~average monthly caseloads~~, bed utilization, length of stay, completion ratios, employment and/or vocational/ educational placements and follow-up data.

AUTH: 53-24-105 MCA

IMP: 53-24-208(1) MCA

20.3.216 OUTPATIENT COMPONENT REQUIREMENTS

(1) remains the same.

(2) Outpatient services shall include:

(a) Admission and screening services in accordance with admission criteria, which substantiate the appropriateness of treatment and include a comprehensive assessment by a certified counselor, based on at least 3 cross-referenced diagnostic/assessment tools. Services which are provided on a regular basis to clients residing outside the program.

(2)(b) through (6)(a)(ii) remain the same.

(b) Program effectiveness:

(i) Shall ensure the collection, development and utilization of information which demonstrates program effectiveness. This ~~can~~ shall include, but not be limited to, completion of goals and objectives, average monthly caseloads, average contacts per client per month, completion ratios, employment and/or vocational placements and follow-up data.

AUTH: 53-24-105 MCA

IMP: 53-24-208(1) MCA

20.3.401 SYSTEM OVERVIEW (1) Certification is a two tier structure based upon a point system. Tier one is a general chemical dependency certification with points are given for work experience, college coursework, structured workshop training, performance on a written examination and an oral examination in each endorsement area. performance ratings on a taped work sample. Tier two provides endorsements in the three fields of:

(a) chemical dependency counseling;

(b) education/prevention; and

(c) management and supervision.

(2) Endorsements are acquired by points assigned based on oral examination. In addition to the above, chemical dependency counseling endorsement requires performance on a taped work sample.

Table 1. System Overview

<u>Tiers</u>	<u>Based-On:</u>
Basic Certificate requirements	1. Work experience plus 2. Academic coursework plus 3. Structured workshop plus 4. Written examination plus 5. Performance on work sample <u>Oral examination in each endorsement area</u>
Endorsements Additional requirements for certified counselor	1. Oral examination, one for each endorsement <u>Performance on a taped work sample.</u>

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.403 WORK EXPERIENCE (1) Twelve (12) points are awarded for every documentable year of full time "equivalent" (FTE) work experience completed as a counselor, educator, supervisor, or administrator working in an alcohol or drug program. A maximum of 65 points can be earned from such documented work experience. One (1) point will be given for each FTE of work in an alcohol or drug program in any other job

title (e.g. secretary, aide) except custodial titles, to a maximum of five (5) points. One Two (1) (2) points will be given for every documentable year of service as an active volunteer assisting an alcohol or drug program, "Twelve-Step" work with alcoholics anonymous, or outreach programs targeted to drug or alcohol programs sponsored by a charitable religious, or medical group. One (1) point will be given for each year of service on the governing board body of an alcohol or drug program. Up to 10 20 points can be earned from such volunteer plus board governing body work. No more than 65 points can be counted toward the basic certificate from all types of experience combined.

(2) Work experience claims cannot be duplicated. That is, the same experience claimed in two places. Neither can one claim volunteer points for any period in which he/she was employed full time by a drug or alcohol program (can claim either work or volunteer points for a given period but not both.)

(3) There is no minimum point requirement in this area.

Table 2. Work Experience Summary

Criteria	Point Formula	Maximum
Employment in professional position	12 per FTE year	65
Employment in non-custodial, non-professional position	1 per FTE year	5
Active volunteer work	<u>2</u> 1 per year)	<u>10 20</u>
Governing <u>board body</u> service	1 per year)	
<u>Combined Maximum experience points allowed</u>		<u>65</u>
<u>Required Minimum</u>		<u>-0-</u>

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.404 ACADEMIC WORK (1) One and one-quarter (1½) points will be given for each documentable academic quarter hour of credit earned for work coursework, subject only to the limit of sixty-five (65) points for academic coursework on the general certificate in the areas of: psychology, social work, sociology, counseling, and specific drug/alcohol coursework. One and one-quarter (1½) points will be given for each documentable academic quarter hour of credit, but not to exceed a total of six (6) points for each area, or fifteen (15)

for all areas, in the areas of: pharmacy, biology, anthropology, educational methods, and business administration (including economics and accounting.)

Table 3, Coursework Summary remains the same.

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.405 STRUCTURED WORKSHOP TRAINING (1) One (1) point will be granted for each day of approved structured workshop training. To qualify for credit, such workshops must be at least one day (six hours minimum), ~~the--workshop--must--be approved--as and considered appropriate for--GDP by the ADAD.~~ training-and-certification-section.

(2) Training must be documented by supplying an original (or a certified copy of a certificate of completion signed by the trainer and/or an official of the training organization.) All workshop training completed after implementation of certification must be approved in advance by the ADAD ~~training and-certification-section~~ to gain certification points.

(3) Local in-service training qualifies for points only when it is:

(a) structured training equalling one or more 6-8 hour days in length;

(b) offered in a continuous block;

(c) is an approvable topic;

(d) is offered by an approved trainer. Other types of in-service offerings are credited as part of the work experience points earned. (Four 2-hour sessions devoted to one subject is the equivalent of one 8-hour session.) To gain certification points, all in-service training must have ADAD prior approval.

(4) Specialized trainee/intern practicums for which academic credit is not received qualify for points. This program would consist of lectures and practical experience which is competency based.

~~(4) (5)~~ Up to sixty-five (65) points may be granted for any approved workshop training.

Table 4, Structured Workshop Summary remains the same.

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.407 WORK SAMPLE (1) Up to fifty (50) points are granted for performance on a work sample. The work sample will consist of two tapes of real (preferred) or simulated role play counseling sessions. These will be reviewed and rated for performance by a panel of three experienced professionals on various dimensions of counseling process. Thirty-five (35) points are required on the work sample. (Tapes are rated separately by each judge and points averaged across tapes and judges.) ~~Of the 50 points, 45~~ 50 total points come from the tape rating with 5 added subtracted if it is an actual session

~~with a drug, alcohol, or impacted family member client.~~ a role play counseling session. Since applicants may select the tape they submit, they will be able to submit what they see as their "best" work.

Table 6. Work Sample Summary

Criteria	Point Formula	Maximum
Actual Client Taped Session Quality	Score Earned x 45 Possible Score	45 50
Role play Session Actual-Client-Taped	From score earned -5 or 0	5 45
Required Minimum		35

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.408 ENDORSEMENT AREAS (1) An oral examination can earn up to (50) points.

(2) Anyone in registry categories A or B is eligible to take the endorsement area examination upon successful completion of the written exam.

(3) Up to 50 endorsement points may be counted toward the basic certificate.

Table 7. Endorsement Areas

Area	Criteria	Formula	Allowed Maximum	Required Minimum
Chemical Dependency Counseling	Oral Examination	Score x 50 Possible Score	50)	35
Education Prevention	Same as Chemical Dependency)	
Management Supervision	Same as Chemical Dependency)	
Minimum Points to be endorsed in each area				35
Maximum Endorsement Points toward initial certification				50

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.410 REGISTRY PROCESS (1) The first step in the certification process is going being placed on a registry. A registry is developed in steps.

(a) Upon written request, a registration form will be sent to applicant. Address request to ADAD, Department of Institutions, 1539 11th Avenue, Helena, MT 59620.

(b) A complete set of forms and instructions are sent to each applicant for submitting documentation or experience, education, and training necessary to place him/her into the proper registry category. These are the same forms needed for certification. A category cannot be assigned until documentation is received.

(c) Registry categories are assigned as follows:

(i) Category A - Shows a total of 100 points or more before exams. ~~With minimum exam and performance scores, will be certified.~~ Would be an eligible counselor under ARM 20.3.202(d).

(ii) Category B - Shows 70 points or more before exams. ~~With top exam scores could be certifiable. Those close to the 70 level should also give serious thought to strengthening their position through training, coursework, etc.~~ Would be an eligible counselor under ARM 20.3.202(d).

(iii) Category C - Shows less than 70 points. Will need preparation yielding more points over and above those that will probably accrue from examination. These applicants are doubtful candidates and must earn more points before sitting exams or submitting work samples, beginning the examination process. They are not eligible counselors under ARM 20.3.202(d).

(iv) Category D - This category means "category unassigned". Most common reason for being in this category is an incomplete file.

~~(v) Category AG, BG and CG -- On grace period. These were persons actively employed in the field, either on salary or by contract between initiation of registry (March 17, 1980) and formal initiation of full certification process (expected July 1, 1981). This category ceases to exist as of July 1, 1983.~~

20.3.411 PERFORMANCE ON WORK SAMPLE (1) Applicants will submit two tapes of not less than 25 nor more than 45 minutes in length. These must be continuous segments of actual counseling sessions or of a counseling role play where the client (real or role played) is dealing with either a drug or alcohol concern as addict or impacted family member.

(2) Applicants should make every effort to submit a tape of an actual counseling session with a real client as five (5) points will be added to subtracted from the scores of all tapes with actual clients, role play counseling sessions. All tapes from persons employed in the field must be sent in by the director of the applicant's program by certified mail along with a signed and notarized statement from the program director attesting the nature of the submitted tapes (role play or real clients) and that the counselor named is the counselor

executing the session on the tape. Each tape (can be one physical tape with a different session on each side) must be clearly labeled with the applicant's name, program where taped, the session number (1st, 10th, etc.) with the client if a real client or with "role play" if not a true client, and the type of client (drug, alcohol, impacted family member) and the type of session (individual, couples, family.) If role played, the name of the person playing the client should be given. Security will be maintained and confidentiality assured.

(3) Persons not currently employed in the field should contact the director of any state approved accepted program, (a list is available from ADAD) and ask ~~either to be allowed to sign on as a volunteer and execute actual counseling sessions for submission, or to have a role play set up with a staff member playing the client.~~ Program directors are under no obligation to assist in this fashion. If local arrangements cannot be made, applicants should contact ADAD in Helena, training and certification section, and a role play will be set up in Helena.

(4) through (5) remain the same.

(6) The score is the average score across from the judges and--tapes--showing--the--proportional--positive--rating multiplied-by-45-plus-5-if-a-"real"-session--Judges-only-rate-ADAD-staff-score,-average-and-record-ratings.

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.412 ENDORSEMENT AREAS (1) Endorsement area attainment is through performance on an oral examination.

(2) Each area panel is composed of three persons. One person is the ADAD "resident expert" in the endorsement field.

(3) Additionally, two panel members will be selected by ADAD; one whose skills are derived largely from experience and workshop training, and the other, one someone who has considerable academic background. They are to be selected by ADAD.

(4) Designated ADAD staff serve one year terms on the panel. Field panelists serve two years.--in the first year one field-panelist-serve-a-one-year-term--in the first year the ADAD-staff-member-chairs-the-panel--in subsequent years the field-panelist-who-is-in-his/her-second-year-of-service-chairs a maximum of two consecutive years.

(5) A master list of 15 to 25 questions and model answers is developed for each area. Panelists question the applicant for 15 30 minutes drawing 3 questions from this list. For 30 minutes panelists can ask any follow-up questions they wish of any type, regardless of the list, providing it relates to the endorsement field, in an open discussion format. The applicant is then excused and panelists may then discuss the applicant among themselves prior to each panelist making their own private ratings.

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.413 CONTINUING EDUCATION (1) Once certified, GPD the individual will be required to earn ten (10) points per year on the average; averages being run three years. Points can come from FTE work experience up to 15 points, workshop or academic courses taken within each 3-year period.

AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

20.3.416 REQUIREMENT FOR HIRING PERSONNEL (1) All personnel providing counseling hired prior to July 1, 1982, after October 1, 1985, must be certified by July 1, 1983, or eligible as defined in ARM 20.3.202(d) after which they Personnel entering the field for the first time and hired on or after July 1, 1982, will have one (1) year from the date of their employment to become certified. Otherwise the employing program faces approval action. Failure to comply with this provision may result in loss of program approval.

~~2. As of April 1, 1980, all newly employed persons in the field should complete and submit all registry forms within 36 days. All supporting documents must be received within 90 days. Otherwise the employing program faces approval action.~~


AUTH: 53-24-105 MCA

IMP: 53-24-204 MCA

4. The department is proposing these rules to ensure that the quality of services offered the public are made by qualified persons. The amendments will enable the department to clarify the evaluation process of local alcohol programs. Further, the agency will be better able to test and certify counselors employed in local programs by these amendments.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the public hearing. Written data, views, or arguments may also be submitted to the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than September 27, 1985.

6. The Legal Unit of the Department of Institutions has been designated to preside over and conduct the public hearing.


CURT GRISHOLM, Deputy Director
Department of Institutions

Certified to the Secretary of State August 19, 1985.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the application of)
LAKEWOOD PROPERTIES, INC., a Montana)
Corporation, for a declaratory)
ruling.)

NOTICE OF
HEARING

To: All Interested Persons:

PLEASE TAKE NOTICE THAT on September 23, 1985, at 10:00 a.m. at 315 North 24th Street in Billings, Montana, the petition of Lakewood Properties, Inc. for a declaratory ruling that it may lawfully restrict certain proposed real property and housing from use by persons under 55 years of age without violating §49-2-305(1)(a), MCA with respect to age discrimination in the sale, lease or rental of housing or property will be heard. All interested parties appearing at the hearing have the right to be represented by counsel. A copy of the petition is attached to this notice.

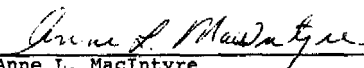
James W. Zion, hearing examiner for the Commission, Room C-317, Cogswell Building, Helena, Montana 59620 (Tel: 444-2884) will preside over and conduct the hearing.

Any person or organization may petition to intervene in this proceeding by making a petition to intervene and making a showing of interest, for the purpose of generally addressing the application or expressing a particular point of view concerning it. The deadline for filing of a petition to intervene is September 19, 1985.

DATED: August 19, 1985.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By:


Anne L. MacIntyre
Administrator
Human Rights Division

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the application)	
of LAKEWOOD PROPERTIES, INC., a)	
Montana corporation and potential)	
landlord and real estate develop-)	PETITION FOR
ment company, for the declaratory)	DECLARATORY
ruling as to the applicability)	RULING
of Section 49-2-305, MCA, to its)	
requirements for occupancy of a)	
potential multi-family project.)	

1. Petitioner's name and address are Lakewood Properties, Inc., 13 Queen Victoria Place, P.O. Box 50339, Billings, Montana 59105.

2. Petitioner has secured options for the purchase of a parcel of property located in Billings, Montana, which is zoned for single family residential use. Through a special review procedure before the City Government, this property could be used for retirement homes. In order to assure that the project when built will be utilized for retired persons, the following provisions restricting the property from use by persons under 55 years of age are desired:

(a) That no person under the age of 55 years of age can under any circumstances reside in the condominium units in this project.

(b) However, when a person over 55 years of age needs care on a temporary or permanent basis and when a doctor certifies in writing that the person is in need of such care to the Board of Directors of the condominium association, the Board of Directors then and in that event can authorize a person under the age of 55 years to reside with the person in need of the care certified to by the doctor.

3. A statute to which the Petitioner requests a declaratory ruling is Section 49-2-305(1)(a), MCA. Under this section of law it makes it unlawful to discriminate in the sale, lease or renting of housing accommodations or improved or unimproved property to persons because of their age; said section further provides that an age distinction is authorized if it is based upon reasonable grounds.

4. Petitioner contends that the project contemplated will have amenities such that it will appeal to senior citizens who are not physically, mentally or emotionally capable of living by themselves. However, the same persons are not of a condition which necessitates their being in a nursing home. Thus, the facility contemplated will provide enough amenities to provide the security and supplemental care of persons falling in that category while preserving their pride and independence on a transitional basis between independent living and the overall care provided by nursing

homes. At present there is no such facility within Billings, Montana or anywhere approximate to Billings, Montana.

5. The question presented for declaratory ruling by the Commission is whether the discrimination based upon the 55 year age cut off is reasonable in light of the facility proposed to be constructed.

6. Petitioner requests that the Commission rule that it may refuse occupancy and/or sale of said units to persons being under the age of 55 years without violation of Section 49-2-305, MCA.

7. Petitioner knows of no other person interested in this declaratory ruling.

DATED this 26th day of July, 1985.

LAKEWOOD PROPERTIES, INC.

By: s/Kenneth Hollar, President

BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PUBLIC
AMENDMENT OF ARM 26.2.401	)	HEARING ON AMENDMENT
SETTING A SCHEDULE OF FEES	)	OF ARM 26.2.401
FOR STATE LAND USE	)	REGARDING ADMINISTRATIVE
AUTHORIZATIONS AND SALE	)	FEES
DOCUMENTS)	

To: ALL INTERESTED PERSONS

1. In September, 1985, the Department of State Lands will hold three public hearings to consider the amendment of rules setting fees for the processing and issuance of certain land use authorizations. The hearings will be held as follows: on September 23, 1985 at 7:30 p.m. in the main conference room of the office of the Department of State Lands, 1625 Eleventh Avenue, Helena, Montana; on September 24, 1985, at 7:30 p.m. in the Sapphire B Room at the Yogo Inn in Lewistown, Montana; and on September 26, 1985, at 7:30 p.m. in Room 106, Miles Community College, Miles City, Montana.

2. The proposed amendment replaces the present ARM 26.2.401 found in the Administrative Rules of Montana on page 26-29. The proposed amendment would increase the fees that the Department of State Lands charges for filing or issuance of its land sale documents and land use authorizations, such as licenses, leases and easements.

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

26.2.401 SCHEDULE OF FEES ~~(1)--Fees-for-surface-leases are-as-follows:~~ The Department of State Lands shall collect the following non-refundable administrative fees:

~~(a)--issuance-of-lease---\$10.00-for-first-25-sections, \$-50-for-each-additional-section-or-fraction-thereof;~~
~~----(b)--assignment-or-sublease---\$10.00;~~
~~----(c)--collateral-assignment---file-or-release---\$7.50-for first-lease-\$2.00-for-each-additional-lease;~~
~~----(2)--Fees-for-oil-and-gas, uranium, mining-or nonmetalliferous-leases-are-as-follows:~~
~~----(a)--a-non-refundable-\$10.00-fee-must-accompany-the-application;~~
~~----(b)--issuance-of-lease---\$10.00;~~
~~----(c)--assignment---\$10.00;~~
~~----(d)--unit-or-operating-agreement-(oil-and-gas)---\$25.00;~~
~~----(3)--Fees-for-sales-of-state-lands-are-as-follows:~~
~~----(a)--application-for-purchase---\$125.00-(non-refundable);~~
~~----(b)--assignment-of-contract---\$15.00;~~

-----~~(c) issuance of a contract or a patent ---\$25.00,~~
 -----~~(d) reinstatement of a contract ---\$25.00,~~
 -----~~(4) Fees for easements and special permits are as follows:~~
 -----~~(a) issuance of right-of-way deed ---\$25.00,~~
 -----~~(b) assignment ---\$10.00,~~
 -----~~(c) special permits (gravel, signboards, etc.) ---\$10.00,~~
 -----~~(5) Fees for special charges are as follows:~~
 -----~~(a) certified copy of original ---\$5.00,~~
 -----~~(b) other documents (maps, xerox, copies, etc.) ---\$1.50 a page, \$1.00 minimum.~~

(1) Grazing/Agriculture Lease Application	\$25.00
(2) Grazing/Agriculture Lease Assignment	50.00
(3) Grazing/Agriculture Sublease Application	25.00
(4) Grazing/Agriculture Collateral Assignment	25.00
(5) Grazing/Agriculture Lease Renewal Application	25.00
(6) Seismic Permit Application	50.00
(7) Oil and Gas Lease Application	15.00
(8) Oil and Gas Lease Issuance	25.00
(9) Oil and Gas Lease Assignment	25.00
(10) Oil and Gas Unit Agreement Issuance	25.00
(11) All other Mineral Lease Applications	50.00
(12) All other Mineral Lease Renewal Applications	25.00
(13) All other Mineral Lease Assignments	50.00
(14) Sand, Gravel, et al Permit Application	25.00
(15) Geothermal Lease Application	25.00
(16) Geothermal Lease Renewal Application	25.00
(17) Geothermal Lease Assignment	25.00
(18) Homesite/Cabinsite Lease Application	25.00
(19) Homesite/Cabinsite Lease Renewal Application	25.00
(20) Homesite/Cabinsite Lease Assignment	25.00
(21) Commercial Lease Application	50.00
(22) Commercial Lease Renewal	50.00
(23) Commercial Lease Assignment	50.00
(24) Special Land Use License Application	25.00
(25) Special Land Use License Assignment	25.00
(26) Special Land Use License Renewal	25.00
(27) Private Land Exchange Application	100.00
(28) Land Sale Application	100.00
(29) Land Sale Control Issuance	50.00
(30) Land Sale Patent Issuance	50.00
(31) Land Sale Assignment (Contract or Patent)	50.00
(32) Land Sale Reinstatement	50.00
(33) Easement Application	50.00
(34) Easement Assignment	50.00
(35) Certified Copy of Original	10.00
(36) Other copied documents	1.00/page
(37) Computer charges \$10.00 minimum or actual cost plus	

10* handling.


AUTH: 2-4-201, MCA; IMP: 77-1-302, MCA.

4. The Board and Department are proposing this amendment to defray the cost of processing and issuance of various documents. The fee levels in the current rule were set in 1972. In June of 1983, the Legislative Auditor issued an audit report recommending that fees be increased to a level commensurate with the cost of administration.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearings. Written data, views or arguments may also be submitted to Mr. Kelly Blake, Administrator, Lands Division, Department of State Lands, Capitol Station, Helena, Montana 59620 no later than September 27, 1985.

6. Kelly Blake has been designated to preside over and conduct the hearings.

7. The authority of the Department and the Board to make the proposed amendment is based on Section 2-4-201, MCA, and the rule implements Section 77-1-302, MCA.



John F. North, Acting Commissioner
Department of State Lands

Certified to the Secretary of State on August 19, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-)	NOTICE OF THE PROPOSED AMEND-
MENT of Rule 42.12.143 to)	MENT of Rule 42.12.143 to
allow temporary ownership of)	allow temporary ownership of
a second all-beverages)	a second all-beverages
license.)	license.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1985, the Department of Revenue proposes to amend rule 42.12.143 to allow temporary ownership of a second all-beverages license.

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

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES (1)

Except as provided in section 16-4-205, MCA, any person owning stock in a corporation which owns an all-beverages license is not qualified to own an interest, either as owner, partner, or stockholder, in another all-beverages, wholesale beer, or table wine distributor's license.

(2) and (3) remain the same.

AUTH: 16-1-303 MCA, and Sec. 2, Ch. 82, L. 1985; IMP: 16-4-205 and 16-4-401 MCA.

3. The Department proposes to amend rule 42.12.143 because Chapter 82, Laws of 1985, amended § 16-4-205, MCA, to allow an all-beverages licensee who has a security interest in another all-beverages license to obtain temporary ownership of the other license on default. Rule 42.12.143 restricts ownership in more than one all-beverages license. An amendment to the rule creating an exception for temporary ownership by a secured party of another license on default is proposed to conform with § 16-4-205, MCA.

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

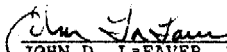
Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 27, 1985.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dawn Sliva at the above address no later than September 27, 1985.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed amendments is based on § 16-1-303, MCA, and Sec. 2, Ch. 82, L. 1985, and the rule implements §§ 16-4-205 and 16-4-401, MCA.



JOHN D. LaFAVRE, Director
Department of Revenue

Certified to Secretary of State 8/19/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF THE PROPOSED AMEND-
MENT of Rule 42.12.323 relat-	)	MENT of Rule 42.12.323 relat-
ing to the permissible and	)	ing to the permissible and
prohibited activities of a	)	prohibited activities of a
special or catering permit	)	special or catering permit
holder.	)	holder.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1985, the Department of Revenue proposes to amend rule 42.12.323 relating to the permissible and prohibited activities of a special permit holder.

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

42.12.323 PERMISSIBLE AND PROHIBITED ACTIVITIES (1) and

(2) remain the same.

(3) Beer wholesalers and table wine distributors shall not:

~~{a}--allow holders of special permits to sell beer and/or table wine from a truck, van, or other vehicle owned by the wholesaler;~~

~~{b} (a) allow their employees to assist the a special permittee or catering permittee in the sale of beer and/or table wine; or~~

~~{c} (b) sell beer and/or table wine to a special permittee or catering permittee on a consignment basis.~~

(4) A special permittee or catering permittee may use portable equipment furnished by a wholesaler in accordance with 16-3-241(2), MCA.

AUTH: 16-1-303 MCA and Sec. 2, Ch. 229, L. 1985; IMP: 16-3-241 and 16-4-301 MCA.

3. The Department proposes to amend rule 42.12.323 because Chapter 229, L. 1985, amended § 16-3-241, MCA, to allow wholesalers to furnish portable equipment to use for the temporary cooling, handling, and dispensing of draft beer to a special permittee or to an all-beverages licensee catering an event off his regular licensed premises. The provisions of rule 42.12.323(3)(a) affecting beer, which specifically prohibit this activity, are deleted because of Chapter 229, L. 1985. The provisions of rule 42.12.323(3)(a) affecting table wine are deleted because § 16-3-406, MCA, enacted after the original promulgation of rule 42.12.323, controls the furnishing of equipment to dispense table wine. Subsections (3)(b) and (3)(c) are redesignated (3)(a) and (3)(b), and amended to accurately reflect the types of permits and alcoholic beverages affected by sales restrictions provided at §§ 16-3-241 and 16-3-406, MCA. A

new subsection (4) is added to allow special permittees and catering permittees to use portable equipment in accordance with § 16-3-241, MCA.

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


Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 27, 1985.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dawn Sliva at the above address no later than September 27, 1985.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed amendment is based on § 16-1-303, MCA, and Sec. 2, Ch. 229, L. 1985. The rule implements §§ 16-3-241, 16-3-406, and 16-4-301, MCA.



JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)
of New Rule I relating to)
special fuel user's registra-)
tion card and Rule II relat-)
ing to compressed natural gas)
provisions, and the AMENDMENT)
of Rule 42.28.105 relating to)
what constitutes special)
fuels.)

NOTICE OF THE PROPOSED ADOP-
TION of New Rule I relating to
special fuel user's registra-
tion card and Rule II relat-
ing to compressed natural gas
provisions and the AMENDMENT
of Rule 42.28.105 relating to
what constitutes special
fuels.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1985, the Department proposes to adopt new Rule I relating to special fuel user's registration cards, new Rule II relating to compressed natural gas provisions, and to amend rule 42.28.105 relating to special fuels.

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

RULE I SPECIAL FUEL USER'S REGISTRATION CARD (1) The provisions of these rules on special fuel user's permits apply to special fuel users who qualify to display a special fuel user's registration card in lieu of a special fuel user's permit with the exception that the registration card need only be displayed instead of the permit.

AUTH: 15-70-104, MCA IMP: 15-70-302, MCA

RULE II DEFINITION OF LIQUIFIED PETROLEUM GAS (1) For the purpose of the annual tax fee provided in 15-71-101, MCA, "liquified petroleum gas" is gas primarily composed of propane, butane, or heavier hydrocarbons or mixtures thereof which was separated from petroleum or natural gas and normally is sold in liquified or pressurized form as fuel, commonly known as bottled gas, tank gas, or simple LPG. All other hydrocarbon fuels which are gas at ordinary atmospheric pressure and temperature are considered "compressed natural gas".

AUTH: 15-70-104, MCA IMP: 15-70-322 and 15-71-101, MCA

42.28.105 WHAT CONSTITUTES SPECIAL FUEL (1) Fuel taxable under the Special Fuel Tax Act includes diesel fuel, stove oils, heating oils, burner fuels, compressed natural gas, or any other combination of hydrocarbon fuels used for the propulsion of motor vehicles, except fuels subject to the Gasoline License Tax or to the license tax on vehicles propelled by liquified petroleum gas.

AUTH: 15-70-104, MCA IMP: 15-70-301, MCA

3. The Department proposes to adopt Rule I because Chapter 222, Laws of 1985, amended § 15-70-302, MCA, adding a new provision which related, in part, to special fuel user's permits. Therefore, this rule is necessary to modify the Department's

rules to accommodate these changes without having to amend all current rules that apply to permits. The Department proposes to adopt Rule II and to amend rule 42.28.105 because Chapter 371, Laws of 1985, amended §§ 15-70-301 and 15-70-322, MCA, of the Special Fuel Act to require persons using compressed natural gas to comply with the act. It is necessary to adopt Rule II to define what is considered compressed natural gas and what is considered liquified petroleum gas and amend rule 42.28.105 to include compressed natural gas as a special fuel under the act.

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


Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 27, 1985.

5. If a person who is directly affected by the proposed adoption and amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dawn Sliva at the above address no later than September 27, 1985.

6. If the agency receives requests for a public hearing on the proposed adoption and amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption and amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed adoption and amendment is based on § 15-70-104, MCA, and the rules implement §§ 15-70-301, 15-70-302, 15-70-322, and 15-71-101, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL)	NOTICE OF THE PROPOSED Repeal
of Rule 42.15.424 relating)	of Rule 42.15.424 relating to
to household and dependent)	household and dependent care
care expenses.)	expenses.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1985, the Department proposes to repeal rule 42.15.424 relating to household and dependent care expenses.

2. The rule proposed to be repealed can be found on pages 42-1561 and 42-1562 of the Administrative Rules of Montana.

3. The Department proposes to repeal this rule because the present rule 42.15.424 is inconsistent with a new statute on the subject. Since the statute does not need clarification, the rule can now be repealed.

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


Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 27, 1985.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dawn Sliva at the above address no later than September 27, 1985.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association have no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed repeal is based on § 15-30-305, MCA, and the rule implements § 15-30-121, MCA.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL) NOTICE OF THE PROPOSED Repeal
of Rule 42.15.323 relating) of Rule 42.15.323 relating to
to nongame wildlife checkoff.) nongame wildlife checkoff.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1985, the Department proposes to repeal rule 42.15.323 relating to the nongame wildlife checkoff.

2. The rule proposed to be repealed can be found on page 42-1542 of the Administrative Rules of Montana.

3. The Department proposes to repeal this rule because rule 42.15.323 is inconsistent with a new statute concerning the checkoff. Since the statute does not need clarification, the rule can now be repealed.

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


Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 27, 1985.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dawn Sliva at the above address no later than September 27, 1985.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association have no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed repeal is based on § 15-30-305, MCA, and the rule implements § 15-30-150, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

16-8/29/85

MAR Notice No. 42-2-295

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-)	NOTICE OF PROPOSED AMENDMENT
MENT of Rules 42.15.511 and)	of Rules 42.15.511 and
42.15.512 relating to expand-)	42.15.512 relating to expand-
ing and extending alternate)	ing and extending alternate
energy credit.)	energy credit.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1985, the Department of Revenue proposes to amend rules 42.15.511 and 42.15.512 relating to expanding and extending alternate energy credit.

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

42.15.511 CREDIT FOR NONFOSSIL ENERGY GENERATION SYSTEM

(1) Remains the same.

(2) The credit may be claimed only with respect to an installation made in the taxpayer's principal residence (including a principal place of residence acquired with an existing system) on or after January 1, 1977, but before ~~December 31, 1986~~ January 1, 1993. The credit is allowed only once with respect to a particular installation. Once a tax credit has been given for a particular installation, it cannot be claimed again by a subsequent taxpayer who purchases the residence. It must be claimed against the taxpayer's tax determined for the year in which the residence is purchased or the installation is placed in use. In cases in which the residence is purchased in a year subsequent to installation the credit is to be applied to the latter year. If the credit exceeds the taxpayer's tax liability for such taxable year, the unused portion may be carried over and applied against his or her tax liability for succeeding taxable years. However, an unused credit may not be carried beyond the fourth taxable year succeeding the taxable year in which the installation was acquired.

(3) This credit must be claimed on Form 2-B, which may be obtained from the Montana Department of Revenue, Helena, Montana 59620. The completed form must be attached to the taxpayer's return for the year in which the credit is claimed. An application for credit which includes a low emission wood or biomass combustion device must include the manufacturer's name and model number of the device.

AUTH: 15-32-203 MCA; IMP, 15-32-201 and 15-32-202 MCA

42.15.512 DETERMINATION OF APPROPRIATE SYSTEMS (1) A nonfossil energy system means:

(a) a system for the utilization of solar heat, wind, solid wastes, or the decomposition of organic wastes;

(b) a system for capturing energy or converting energy

sources into usable sources;

(c) a system for the production of electric power from wood wastes; ~~or~~

(d) a low emission wood or biomass combustion device certified by the department of health and environmental sciences; or

~~(d)~~ (e) a system for the utilization of water power by means of an impoundment not over 20 acres in surface area.

(2) Remains the same.

(3) Except for the low emission wood burning stoves and fireplaces referred to in (1)(d) above, Wood wood burning stoves and fireplaces do not qualify for the credit.

AUTH: 15-32-203 MCA; IMP: 15-32-201 and 15-32-202 MCA

3. The Department proposes to amend rules 42.15.511 and 42.15.512 because 42.15.512, ARM, specifically disallows wood burning stoves and fireplaces from the alternate energy credit. Chapter 513, Laws 1985, (Senate Bill No. 309) has changed to credit to allow some of these devices. Without the change, the rule would be in conflict with the law. ARM 42.15.511 has a sunset on the energy credit of December 31, 1986. This legislation changes the sunset to January 1, 1993. Without the change, the rule would be in conflict with the law.

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


Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 27, 1985.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dawn Sliva at the above address no later than September 27, 1985.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed amendments is based on § 15-32-203, MCA. The rules implement §§ 15-32-102 and 15-32-201, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)
of New Rule I relating to the)
electrical energy production)
license tax and line loss.)

NOTICE OF THE PROPOSED ADOPT-
TION of New Rule I relating
to the electrical energy pro-
duction license tax and line
loss.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1985, the Department proposes to adopt new Rule I relating to the electrical energy production license tax and line loss.

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

RULE I ELECTRICAL ENERGY PRODUCER'S LICENSE TAX (1) Each person or other organization engaged in the generation of electrical energy shall be obligated to file tax returns and submit payment of the tax due. "Person" is defined as any individual, corporation, partnership, association, joint stock company, or syndicate.

(a) Only one tax return shall be filed for each generating facility. This return will reflect 100% of the production for the tax period and include payment of the total tax liability for such facility.

(b) Each generating facility with multiple partners or other interest owners shall designate one partner to prepare and file the tax return. This partner shall also be responsible for responding to and paying any subsequent assessment resulting from a department audit.

(c) Nothing in these rules shall be construed to prevent the partner actually filing the tax return from recovering the proportionate share of the tax liability from other interest owners in the generating facility.

(2) Deductions from total kilowatt hours generated will be allowed only for actual and necessary plant use. No deduction is allowed for any line losses.

AUTH: 15-1-201 MCA; IMP: 15-51-101 through 15-51-114 MCA.

3. The Department proposes to adopt new Rule I because with the advent of joint ownership of power generating facilities have come disputes concerning who is responsible for filing tax returns and paying the tax. A rule requiring the partners to designate one of the partners of the generating facility to file the tax return and pay the tax would remove the Department from disputes and facilitate tax collection. Further, there is currently no definitive statement regarding line loss in the statutes or regulations. This rule would clarify the issue.

4. Interested parties may submit their data, views, or

arguments concerning the proposed adoptions to:

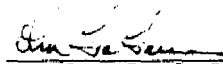
Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 27, 1985.

5. If a person who is directly affected by the proposed adoptions 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 Dawn Sliva at the above address no later than September 27, 1985.

6. If the agency receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed adoption is based on § 15-1-201, MCA, and the rules implement §§ 15-51-101 through 15-51-114, MCA.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PROPOSED ADOPTION
of a rule relative to ballot	)	OF A RULE RELATIVE TO BALLOT
preparation for the AIS-315	)	PREPARATION FOR THE AIS-315
Optical Scan Ballot Counter	)	OPTICAL SCAN BALLOT COUNTER

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Parties

1. On September 28, 1985 the secretary of state proposes to adopt a rule relative to ballot preparation for the AIS-315 Optical Scan Ballot Counter.

2. The proposed rule does not replace any rule currently found in the Administrative Rules of Montana.

3. The rule provides as follows:

RULE I BALLOT PREPARATION - AMERICAN INFORMATION SYSTEMS (AIS-315) (1) Ballots shall be prepared in accordance with the provisions of Title 13, MCA, except that, in the event of a partisan primary election it is not required to prepare and print a completely separate primary ballot page for any nonpartisan offices or ballot issues which may be appearing.

(2) For ballots used by the AIS-315, it is permissible to print nonpartisan offices and ballot issues on the same ballot page as partisan offices so long as:

(a) they are printed on the individual ballot page for each political party entitled to participate in the primary election;

(b) the layout is identical on the partisan ballot for each political party;

(c) there is sufficient room on the ballot page of each political party for all the nonpartisan ballot offices and ballot issues;

(d) ballot layout is such that it is clearly apparent to the voter the point at which the partisan primary ends and the nonpartisan primary begins; and

(e) an instruction to the voter is printed at the end of the partisan offices telling them to go on to where the nonpartisan primary begins and vote that primary.


AUTH & IMP: 13-17-107(2), MCA

4. The reason for the proposed adoption of the rule is in response to a request for an additional rule from comments received at a public hearing held on August 6, 1985 for the adoption of rules relative to the use of the AIS-315 Optical Scan Ballot Counter. Rules heard on that day are published in the adoption stage of this register.

5. Interested parties may submit their data, views, or arguments concerning the proposed rule to Alan D. Robertson, Chief Counsel, Office of Secretary of State, Room 225, State Capitol, Helena MT 59620, no later than September 26, 1985.

6. If a person who is directly affected by the proposed adoption 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 Alan D. Robertson, Chief Counsel, Office of the Secretary of State, Room 225, State Capitol, Helena, MT 59620, no later than September 26, 1985.

7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, which ever is less, of the persons who are directly affected by the proposed adoption; 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 10 persons based on 56 county election administrators and approximately 44 contract printers in Montana.


JIM WALTERMIRE, Secretary of State

Certified to the Secretary of State August 19, 1985

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 Rule 46.12.3001 per	)	THE PROPOSED AMENDMENT OF
taining to Medicaid applica-	)	RULE 46.12.3001 PERTAINING
tions-Social Security Number	)	TO MEDICAID APPLICATIONS-
requirements	)	SOCIAL SECURITY NUMBER
	)	REQUIREMENTS

TO: All Interested Persons

1. On September 19, 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 Rule 46.12.3001 pertaining to Medicaid applications-Social Security Number requirements.

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

46.12.3001 APPLICATION . Subsections (1) through (5) (a) (iv) remain the same.

(6) Use of social security number:

(a) In the Montana medicaid program, disclosure of or application for a social security number is voluntary mandatory. Medicaid may not be denied or ~~delayed~~ to an otherwise eligible applicant for failure or refusal to disclose or apply for a SSN.

(b) Notwithstanding the above, under 42-CFR-435-910 P.L. 98-369, Sec. 2651(c)(3) and 53-2-201, MCA, the department will request, on the application, the SSN of each individual (including children) for whom medicaid services are requested.

(c) In requesting requiring a SSN, the department will inform the applicant that:

(i) disclosure of or application for a SSN is voluntary and not a mandatory eligibility requirement mandatory;

(ii) the request mandate for a SSN is made under the authority of 42-CFR-435-910 P.L. 98-369, Sec. 2651(c)(3) and 53-2-201, MCA; and

(iii) the SSN will be used only in the administration of the medicaid program.

Subsections (6) (d) through (6) (d) (iii) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-132 and 53-6-133 MCA

3. The Deficit Reduction Act of 1984 (Public Law 98-369, Section 2651(c)(3)) requires states to obtain social security numbers from applicants as a condition of eligibility. In the past, provision of a social security number was voluntary; now it is mandatory. Under this proposed amend-

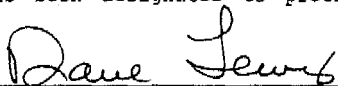
16-8/29/85

MAR Notice No. 46-2-451

ment, failure to provide the social security number will result in denial of eligibility.

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 September 26, 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 August 19, 1985.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of rules and the	)	THE PROPOSED ADOPTION OF
amendment of Rules 46.6.102,	)	RULES AND THE AMENDMENT OF
46.6.302, 46.6.304 and	)	RULES 46.6.102, 46.6.302,
46.6.305 pertaining to the	)	46.6.304 AND 46.6.305
physical disabilities	)	PERTAINING TO THE PHYSICAL
program	)	DISABILITIES PROGRAM

TO: All Interested Persons

1. On September 18, 1985, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of rules and the amendment of Rules 46.6.102, 46.6.302, 46.6.304 and 46.6.305 pertaining to the physical disabilities program.

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

RULE I PHYSICAL DISABILITIES PROGRAM, PURPOSES The purpose of the physical disabilities program is to provide for the needs of physically disabled persons who are in need of services generally not available to them due to their ineligibility for other assistance programs. The program is to provide services in community settings that assist and supervise the client in meeting daily living needs.

AUTH: Sec. 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985
(HB 798)

IMP: Sec. 53-19-101 and 53-19-103 MCA

RULE II PHYSICAL DISABILITIES PROGRAM, SERVICES

(1) Services provided under the physical disabilities program shall be those services that assist a client in living independently in community settings.

(2) Services may include but are not limited to:

(a) personal assistance and training;

(b) mobility assistance and training;

(c) home management assistance and training;

(d) problem solving;

(e) equipment purchase; and

(f) other services the department considers appropriate.

(2) The department may establish and provide only those services it determines are needed, cost effective and for which funding is available.

AUTH: Sec. 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985
(HB 798)

IMP: Sec. 53-19-101 and 53-19-103 MCA

16-8/29/85

MAR Notice No. 46-2-452

RULE III PHYSICAL DISABILITIES PROGRAM, ELIGIBILITY REQUIREMENTS

(1) A person is physically disabled if:

(a) the person is disabled with a permanent impairment that substantially limits major life activity such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgement or memory; and

(b) the disability can be diagnosed by a physician.

(2) A person is eligible for physical disabilities services if:

(a) the person is physically disabled;

(b) the person is determined by the department to be in need of services;

(c) there are appropriate services available to the person under the program; and

(d) the person is not eligible for similar services provided under other programs including but not limited to programs for developmentally disabled persons, for vocational rehabilitation services or for medicaid home and community-based services.

(3) The person's financial needs in relation to service needs will be determined as provided for in ARM 46.6.405 through 46.6.411.

AUTH: Sec. 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985

(HR 798)

IMP: Sec. 53-19-103 MCA

RULE IV PHYSICAL DISABILITIES PROGRAM, CLIENT SERVICES AND PLACEMENT

A person found to be eligible for physical disabilities services may only receive those available services which are identified as appropriate for that person through an independent living plan.

AUTH: Sec. 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985

(HB 798)

IMP: Sec. 53-19-103 MCA

RULE V INDEPENDENT LIVING REHABILITATION PROGRAM, PURPOSES

The purpose of this program is to provide services designed to meet the current and future needs of severely disabled persons whose disabilities are so severe that they do not presently have the potential for employment, but for whom services will enable them to live and function independently in community settings.

AUTH: Sec. 53-7-102 and 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985 (HB 798)

IMP: Sec. 53-7-103, 53-19-103, and 53-19-105 MCA

RULE VI INDEPENDENT LIVING REHABILITATION PROGRAM, SERVICES

(1) Comprehensive services for independent

living means any appropriate vocational rehabilitation services and other services that will enhance the ability of a severely disabled person to live independently and function within a community setting and, if appropriate, secure and maintain appropriate employment.

(2) Such services may include, but are not limited to, the following:

- (a) counseling services, including psychological, psychotherapeutic and related services;
 - (b) housing incidental to the purpose of this section (including appropriate accommodations to and modification of any space to serve disabled persons);
 - (c) appropriate job placement services;
 - (d) transportation;
 - (e) attendant care;
 - (f) physical rehabilitation;
 - (g) therapeutic treatment;
 - (h) needed prostheses and other appliances and devices;
 - (i) health maintenance;
 - (j) recreational activities;
 - (k) services for children of pre-school age, including physical therapy, development of language and communication skills and child development services; and
 - (l) other services the department considers appropriate.
- (3) The department may provide only those services it determines are needed, cost effective and for which funding is available.

AUTH: Sec. 53-7-102 and 53-19-112 MCA: Sec. 7, Ch. 713, L. 1985 (HB 798)

IMP: Sec. 53-7-103, 53-19-103, and 53-19-105 MCA

RULE VII INDEPENDENT LIVING REHABILITATION PROGRAM, ELIGIBILITY REQUIREMENTS Services may be provided in this program to any severely disabled person whose ability to engage or continue in employment, or whose ability to function independently in the family or community, is so limited by the severity of the disability that vocational or comprehensive rehabilitation services would be appreciably more costly and of appreciably greater duration than those required for the vocational rehabilitation of a disabled person.

AUTH: Sec. 53-7-102 and 53-19-112 MCA: Sec. 7, Ch. 713, L. 1985 (HB 798)

IMP: Sec. 53-7-103, 53-19-103, and 53-19-105 MCA

RULE VIII INDEPENDENT LIVING REHABILITATION PROGRAM, PROVISION OF SERVICES (1) The department may, within its discretion, provide services to a person who is eligible for the independent living rehabilitation program.

(2) Only such services as are determined appropriate in

accordance with an independent living plan may be provided to a person accepted for services.

AUTH: Sec. 53-7-102 and 53-19-112 MCA: Sec. 7, Ch. 713, L. 1985 (HB 798)

IMP: Sec. 53-7-103, 53-19-103, and 53-19-105 MCA

RULE IX CLIENT GRIEVANCES (1) Providers of vocational rehabilitation services must establish and maintain client grievance procedures.

(2) Any matter of grievance not adequately resolved between a provider of services and a client may be brought to the department for review and resolution.

AUTH: Sec. 53-7-102 and 53-19-112 MCA: Sec. 7, Ch. 713, J. 1985 (HB 798)

IMP: Sec. 53-7-102 and 53-19-103 MCA

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

46.6.102 DEFINITIONS (1) "Applicant" means a person who has made formal application to the department to receive vocational rehabilitation services administered by the department.

(2) "Client" means an applicant who has been determined by the department to be a handicapped person and to be eligible for the vocational rehabilitation, visual, nonvocational extended employment, physical disabilities, independent living services or visual medical programs administered by the department and who has agreed to accept such services as the department may determine are appropriate for that person's vocational rehabilitation or other needs.

Subsections (3) through (11) remain the same.

(12) "Vocational rehabilitation services" means those services administered by the department under the authority of Title 53, chapter 7 of the Montana Codes Annotated and as defined in this chapter of the administrative rules of Montana. Vocational rehabilitation services include the vocational rehabilitation, visual, nonvocational extended employment, physical disabilities, independent living services and visual medical programs as defined in this chapter.

Subsections (13) through (19) remain the same.

(20) "Independent living plan" means the written individualized independent living plan (I.I.L.P.) prepared by the department for clients of physical disabilities services. This plan specifies the independent living goals and needs of the client and the services the department may provide to the client in order to assist in attaining an improved quality of life.

AUTH: Sec. 53-7-203, 53-7-302 and 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985 (HB 798)

IMP: Sec. 53-7-101 through 53-7-107, 53-7-201 through 53-7-203, 53-7-301 through 53-7-309 and 53-19-103 MCA

46.6.302 PURPOSE (1) Vocational rehabilitation services provided through the department, except those necessary for determining the eligibility of an applicant for services, may be provided by the department to any person who, after applying for services, has been determined by the department, in accordance with ARM 46.6.305, the criteria of this sub-chapter and that of sub-chapter 4, to be a disabled individual who is eligible for such services and who has agreed to accept such services as an applicant or a client of the department. Eligibility for the receipt of visual medical services, and of nonvocational extended employment services, physical disabilities services and independent living services will be determined in accordance with ARM 46.6.2605 for visual medical services, and ARM 46.6.1309 for nonvocational extended employment services, Rule III for physical disabilities services, and Rule VIII for independent living services.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985 (HB 798)

IMP: Sec. 53-7-101 through 53-7-107, 53-7-201 through 53-7-203, 53-7-301 through 53-7-309 and 53-19-103 MCA

46.6.304 DETERMINATION OF ELIGIBILITY (1) The department will, except for visual medical services, and nonvocational extended services, physical disabilities services and independent living services, determine if an applicant, in accordance with the criteria of this sub-chapter and sub-chapters 4 and 5, policies and standards adopted by the department to govern eligibility, and applicable federal law and regulations, is a disabled individual, has a substantial handicap to employment and may be reasonably expected to benefit significantly as to employability from vocational rehabilitation services.

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

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985 (HB 798)

IMP: Sec. 53-7-101 through 53-7-107, 53-7-201 through 53-7-203 and 53-7-301 through 53-7-309 and 53-19-103 MCA

46.6.305 CLIENT ELIGIBILITY CRITERIA (1) Vocational rehabilitation services, except those necessary for determining the eligibility of an applicant to be a client, will be provided by the department only to a person who is a client.

(2) Eligibility to be a client, except for visual medical services, and nonvocational extended employment

services, physical disabilities services and independent living services is based on the following basic criteria:

(a) the presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(b) a reasonable expectation that vocational rehabilitation services may substantially benefit the individual in terms of employability.

(3) Eligibility for the visual medical program, and for the nonvocational extended employment program, physical disabilities services and the independent living services are determined in accordance with ARM 46.6.2605 for visual medical services, and ARM 46.6.1309 for nonvocational extended employment services, Rule III for physical disabilities services and Rule VIII for independent living services.

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

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-19-112 MCA; Sec. 7, Ch. 713, L. 1985 (HB 798)

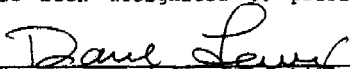
IMP: Sec. 53-7-101 through 53-7-107, 53-7-201 through 53-7-203, 53-7-301 through 53-7-309 and 53-19-103 MCA

4. The 1985 Montana Legislature mandated through passage of House Bill #798 a program of services to physically disabled persons to help meet their needs which were not being met by existing programs of services. The program may provide a variety of services that assist physically disabled persons in leading constructive and rewarding lives. These rules implement that program by setting forth criteria as to purpose, scope of services and eligibility.

The independent living services program is a federally mandated, state implemented program which is complementary to the state initiated physically disabled program. The services provided by that program are for the purpose of assisting disabled persons in establishing themselves in independent living situations.

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 September 27, 1985.

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 _____, August 19, 1985.
MAR Notice No. 46-2-452 16-8/29/85

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING ON
of rules and amendment of) THE PROPOSED ADOPTION OF
Rule 46.12.581 pertaining to) RULES AND AMENDMENT OF RULE
licensed clinical social work) 46.12.581 PERTAINING TO
services.) LICENSED CLINICAL SOCIAL
) WORK SERVICES

TO: All Interested Persons

1. On September 18, 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 adoption of rules and amendment of Rule 46.12.581 pertaining to licensed clinical social work services.

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

RULE I LICENSED CLINICAL SOCIAL WORK SERVICES, DEFINITION Licensed clinical social work services are those services provided by a licensed clinical social worker which are within the scope of the practices of his profession as provided for in Title 37, Chapter 22, MCA.

AUTH: Sec. 53-6-113 MCA; Sec. 2, Ch. 77, L. 1985 (HB 595)

IMP: Sec. 53-6-101 MCA

RULE II LICENSED CLINICAL SOCIAL WORK SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

- (1) Licensed social work services are limited to:
 - (a) individual counseling;
 - (b) group counseling; and
 - (c) family therapy.

(2) Licensed social work group counseling services shall consist of one and one-half hour sessions with no more than 8 individuals participating in the group.

(3) Licensed social work services and/or psychological services as defined in ARM 46.12.580 are limited to 22 hourly visits or the equivalent per state fiscal year.

(4) When an eligible child receives social work services and the social worker consults with the parent as part of the child's treatment, the time with the parent shall be billed to medicaid under the child's name. The provider shall indicate on the claim that the child is the patient and state the child's diagnosis. He shall also indicate consultation was with the parent. Any treatment done in this manner shall be charged against the 22 hours available to the child.

595) AUTH: Sec. 53-6-113 MCA; Sec. 2, Ch. 77, L. 1985 (HB
IMP: Sec. 53-6-101 MCA

RULE III LICENSED CLINICAL SOCIAL WORK SERVICES, REIM-
BURSEMENT (1) The department will pay the lower of the
following for licensed clinical social work services not also
covered by medicare:

(a) provider's actual (submitted) charge; or
(b) the department's fee schedule found in this rule.
(2) The department will pay the lowest of the following
for licensed social work services which are also covered by
medicare:

(a) the provider's actual (submitted) charge for the
service;
(b) the amount allowable for the same service under
medicare; or
(c) the department's fee schedule contained in this
rule.

(3) Payment for licensed clinical social work services
shall not exceed the following:

(a) \$33.16 per hour for individual counseling;
(b) \$9.94 per session for group counseling; or
(c) \$33.16 for family therapy.

595) AUTH: Sec. 53-6-113 MCA; Sec. 2, Ch. 77, L. 1985 (HB
IMP: Sec. 53-6-101 MCA

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

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

(1) Psychological services are limited to those allowed
under 37-17-102(5) MCA.

(2) Group psychological services shall consist of one
and one-half hour sessions with no more than eight individuals
participating in the group.

(3) Psychological services and/or licensed social worker
services, as defined in Rule I, are limited to 22 hourly
visits or the equivalent, per fiscal year.

(4) When an eligible child receives psychological ser-
vices, and the psychologist consults with the parent as part
of the child's treatment, time spent with the parent shall be
billed to medicaid under the child's name. The provider shall
indicate on the claim that the child is the patient and state
the child's diagnosis. He shall also indicate consultation
was with the parent. Any treatment done in this manner shall
be charged against the 22 hours available to the child.

AUTH: Sec. 53-6-113 MCA; Sec. 2, Ch. 77, L. 1985 (HB 595)

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

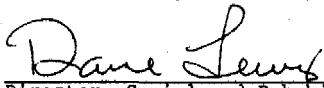
4. These rules are being proposed to provide Medicaid recipients with medically necessary counseling from licensed social workers. The 49th Montana legislature passed HB 595 which gives the Department the authority to cover licensed social worker services. Federal regulations allow such services with limitations. Those limitations have been incorporated into the proposed rules. Payments for social worker counseling could potentially raise Department costs. To increase the range of providers offering services without raising overall costs, certain reimbursement and integrated hourly limits for psychological and licensed social worker services have been set.

The limits imposed in Rule II and the level of reimbursement specified in Rule III are intended to assure that the Department complies with HB 500, the general appropriation bill for fiscal years 1985 and 1986. The rules as proposed may cause increased utilization; however, the fee differential and other limitations should allow overall costs to the Department to remain the same.

Copies of this notice can be obtained through human services offices in 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 September 27, 1985.

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 August 19, 1985.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT
amendment of ARM 2.21.122,	)	OF ARM 2.21.122,
2.21.123, 2.21.132 and	)	2.21.123, 2.21.132, and
2.21.133 relating to	)	2.21.133 RELATING TO
sick leave	)	SICK LEAVE

TO: All Interested Persons.

1. On July 11, 1985, the department of administration published notice of the proposed amendment of ARM 2.21.122, 2.21.123, 2.21.132 and 2.21.133 relating to sick leave at page 865 of the 1985 Montana Administrative Register, issue number 13.

2. The rules have been amended as proposed.

3. No comments or testimony were received.

By


Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State, August 19, 1985.

BEFORE THE STATE AUDITOR
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of procedural rule	)	OF PROCEDURAL RULE
6.2.101, and the adoption	)	6.2.101, AND ADOPTION OF
of procedural rules for	)	PROCEDURAL RULES FOR CON-
contested case hearings	)	TESTED CASE HEARINGS
before the securities	)	BEFORE THE SECURITIES
department	)	DEPARTMENT

TO: All Interested Persons

1. On July 11, 1985, the State Auditor published notice of proposed amendment of procedural rule 6.2.101, concerning the adoption of the attorney general's Model Procedural Rules, and proposed adoption of procedural rules I through V (6.2.120 through 6.2.124) for contested case hearings before the securities department, at pages 870-872 of the 1985 Montana Administrative Register, issue number 13.

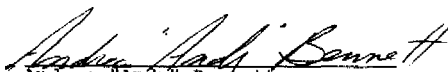
2. The agency has amended rule 6.2.101, as proposed, and has adopted new procedural rules 6.2.120 through 6.2.123 as proposed. The agency has adopted new procedural rule 6.2.124 with the following change:

6.2.124 JUDICIAL REVIEW

(1) and (2) are the same as the proposed rule.
(3) Judicial review shall not be accomplished by trial de novo, however, new evidence may be adduced in accordance with 30-10-308, MCA.

3. No comments or testimony were received.

4. The authority for the rules is 30-10-107, MCA, and the rules implement 30-10-107, 30-10-305, 30-10-201, 30-10-207, and 30-10-308.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State on August 12, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the amendment) NOTICE OF AMENDMENT OF
of 8.18.407 concerning the) 8.18.407 FEE SCHEDULE
exam fee)

TO: All Interested Persons:

1. On July 11, 1985, the State Electrical Board published a notice of amendment of the above-stated rule at page 873, 1985 Montana Administrative Register, issue number 13.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SANITARIANS

In the matter of the amendments) NOTICE OF AMENDMENTS OF
of 8.60.407 concerning applica-) 8.60.407 APPLICATIONS,
tions, 8.60.408 concerning mini-) 8.60.408 MINIMUM STAND-
mum standards for registration,) ARDS FOR REGISTRATION
8.60.410 concerning registra-) CERTIFICATE, 8.60.410
tion exam and certificate, 8.) REGISTRATION EXAMINA-
60.411 concerning annual) TION AND CERTIFICATE, 8.60.
renewals and adoption of a) 411 ANNUAL CERTIFICATE
new rule setting a fee sche-) (LICENSE) RENEWAL, AND
dule.) ADOPTION OF A NEW RULE
) 8.60.413 FEE SCHEDULE

TO: All Interested Persons:

1. On July 11, 1985, the Board of Sanitarians published a notice of amendments and adoption of the above-stated rules at pages 874 through 877, 1985 Montana Administrative Register, issue number 13.
2. The board has amended and adopted the rules exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS

In the matter of the amendment) NOTICE OF AMENDMENT
of 8.61.404 concerning the) OF 8.61.404 FEE SCHEDULE
renewal fee)

TO: All Interested Persons:

1. On July 11, 1985, the Board of Social Work Examiners published a notice of amendment of the above-stated rule at

page 878, 1985 Montana Administrative Register, issue number 13.

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

3. One comment was received from the Administrative Code Committee with regard to the cited implementing sections. Section 37-22-202 was cited, rather than 37-22-302. This will be corrected in the replacement pages. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, August 19, 1985.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

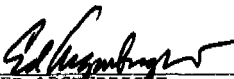
In the matter of the amendment)	In the matter of the amend-
of special education rules con-)	ment of ARM 10.16.1003 and
cerning program narrative and)	10.16.1902 concerning
destruction of data)	special education program
	narrative and destruction
	of data

TO: All Interested Persons

1. On July 11, 1985 the Superintendent of Public Instruction published a notice of amendment of the above-stated rules at page 879-881, 1985 Montana Administrative Register, issue number 13.

2. The Superintendent has amended the rules exactly as proposed, adding Section 20-7-402(2) MCA to the authority section as requested by the legal counsel for the Administrative Code Committee.

3. No comments or testimony were received.



ED ARGENBRIGHT
SUPERINTENDENT OF
PUBLIC INSTRUCTION

Certified to the Secretary of State August 19, 1985.

BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT	)	NOTICE OF ADOPTION
OF ARM 36.12.103 TO REVISE THE	)	OF AMENDMENT OF ARM
APPLICATION FEE FOR WATER RIGHT	)	36.12.103 APPLICATION
TRANSFER CERTIFICATES	)	AND SPECIAL FEES

TO: All Interested Persons

1. On May 30, 1985, the Board of Natural Resources and Conservation published notice of a proposed amendment to ARM 36.12.103 pertaining to the setting of a new fee for filing form No. 608, Water Right Transfer Certificate. The amendment reflects a statutory change in the manner in which the form is processed requiring the Department to collect a higher fee to pay administrative costs for the Department and each County Clerk and Recorder. The notice was published on pages 578-580 of the Montana Administrative Register, 1985 Issue No. 10.

2. No public hearing was contemplated and no request for a public hearing was received. Public comments were accepted until July 8, 1985. No public comments were received.

3. The Board of Natural Resources and Conservation adopted amended ARM 36.12.103 on August 14, 1985.

4. The authority of the Board to make the proposed amendment is based on Chapter No. 271, Montana Session Laws 1985, Senate Bill 223-Section 3, (effective July 1, 1985), Section 85-2-426(1), MCA, and implements Section 85-2-426(1), MCA, for the rule. Section 5 of Senate Bill 223 extends the Board's authority to make this rule amendment.

Richard Spalding
Richard Spalding, Acting Chairman
Board of Natural Resources
and Conservation

Certified to the Secretary of State on August 19, 1985

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF THE AMENDMENT of
MENT of Rule 42.13.301	)	Rule 42.13.301 relating to
relating to the storage of	)	the storage of alcoholic
alcoholic beverages.	)	beverages.

TO: All Interested Persons:

1. On March 14, 1985, the Department of Revenue published notice of the proposed amendment of rule 42.13.301 relating to the storage of alcoholic beverages at pages 242 and 243 of the 1985 MAR, issue no. 5.

2. The Department has amended rule 42.13.301 with the following changes:

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES (1) A licensee may store alcoholic beverages only on his licensed premise.

(2) Only those alcoholic beverages for which the premises are specifically licensed may be received, accepted, or stored.

(3) For the purpose of this subchapter, the words "store alcoholic beverages" mean to keep alcoholic beverages for sale to a licensed beer wholesaler, table wine distributor, retail licensee, or the public as permitted by Title 16, MCA. The repacking of beer or table wine into smaller quantities at an unlicensed terminal or warehouse facility after shipment in accordance with the provisions of 16-3-230 and 16-3-402, MCA, for transshipment and delivery by a retail licensee to the retailer's licensed premise does not constitute storage of alcoholic beverages.

3. A public hearing was held on April 4, 1985, to consider the proposed rule changes. Howard Heffelfinger, Administrator of the Liquor Division, Tom Mulholland, Assistant Administrator of the Liquor Division, Diana Koon, Liquor Division License Bureau, and David Woodgerd, Tax Counsel, appeared on behalf of the Department. Roger Tippy, attorney, appeared and represented the Montana Beer & Wine Wholesalers Association. David Jackson, attorney, appeared and represented Buttrely Food Stores. Several persons appeared on behalf of the wholesale and retail beer and wine industry. Oral testimony and written comments were received. The Hearing Examiner continued the hearing to July 1, 1985, to allow for the preparation and presentation of an economic impact statement. Representatives of the wholesale and retail beer and wine industry opposed the proposed amendment of rule 42.13.301 allowing retail licensees to deliver alcoholic beverages.

The public hearing was reconvened on July 1, 1985. In addition to the above persons, Michael G. Carrity, Tax Counsel, appeared on behalf of the Department. Dan Hoven, attorney, appeared for Anheuser Busch, Inc. The Department proposed to

delete the amendment found at 42.13.301(3), as proposed, and allow the 50th Legislative Session to address the issues affecting the delivery of alcoholic beverages. The opponents withdrew their request to introduce any evidence regarding economic impact of the remaining proposed amendments.

4. The authority of the Department to make the proposed amendments is § 16-1-303, MCA. The rule implements §§ 16-3-701 and 16-6-301, MCA.



JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I (42.27.108)) relating to gasohol blenders.)	NOTICE OF THE ADOPTION of Rule I (42.27.108) relating to gasohol blenders.
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TO: All Interested Persons:

1. On June 13, 1985, the Department published notice of the proposed adoption of Rule I (42.27.108) relating to gasohol blenders at page 651 of the 1985 Montana Administrative Register, issue no. 11.

2. The Department has adopted Rule I (42.27.108) with the following changes:

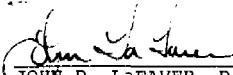
42.27.108 GASOHOL BLENDERS (1) Pursuant to 15-70-201(6)(e), MCA, a person who blends alcohol with gasoline to produce gasohol is a "distributor" if no tax has been paid on the alcohol or gasoline which is blended to produce gasohol. As a distributor, the gasohol blender is responsible for paying the tax on all the alcohol and gasoline which has not been taxed and which is used to produce gasohol. If the person qualifies as a distributor solely on the basis of blending alcohol and ~~gasohol~~ gasoline, the person is a distributor only with respect to the alcohol and gasoline used to produce gasohol.

(2) and (3) remain the same.

3. A public hearing was held on July 3, 1985, to consider the proposed adoption of Rule I (42.27.108). The following individuals and groups were represented at the hearing: John C. Braunbeck for Gordon H. Doig of Alcotech, Ringling, Montana; and Bruce Kania for A. E. Montana, Inc., Manhattan, Montana. The Department of Revenue was represented by Paul Van Tricht. Also present from the Department were Norris Nichols, Administrator, and Cindy Anders, Distributor Tax Examiner, Motor Fuel Tax Division.

Mr. Braunbeck presented oral and written testimony concerning proposed Rule I which relates to gasohol blenders. He suggested replacing the word "alcohol" where it appears in the rule with the word "ethanol", because the use of the term "alcohol" in this context could be confused with the statutory definition of "gasohol". The Hearing Examiner deemed the use of the term "alcohol" in Rule I consistent with the use of the term in the applicable statutes and stated it should not be changed since the term "alcohol" is defined for clarification in Rule 42.27.602(2)(b), ARM. The last sentence of Rule I (42.27.108(1)) contains a typographical error and the Department agrees with the presiding officer that it should be changed. No other comments were made.

4. The authority of the Department to adopt Rule I (42.27.108) is based on § 15-70-104, MCA, and Sec. 5, Ch. 697, L. 1985, and implements Ch. 697, L. 1985.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State August 19, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF THE AMENDMENT of
of Rules 42.27.603 and	)	Rules 42.27.603 and 42.27.604
42.27.604 relating to the	)	relating to the alcohol tax
alcohol tax incentive for	)	incentive for exported
exported alcohol.	)	alcohol.

TO: All Interested Persons:

1. On June 13, 1985, the Department published notice of the proposed amendment of rules 42.27.603 and 42.27.604 relating to the alcohol tax incentive for exported alcohol at page 653 of the 1985 Montana Administrative Register, issue no. 11.

2. The Department has amended rules 42.27.603 and 42.27.604 as proposed.

3. A public hearing was held on July 3, 1985, to consider the proposed amendment of rules 42.27.603 and 42.27.604. The following individuals and groups were represented at the hearing: John C. Braunbeck for Gordon H. Doig of Alcotech, Inc., Ringling, Montana; and Bruce Kania for A. E. Montana, Inc., Manhattan, Montana. The Department of Revenue was represented by Paul Van Tricht. Also present from the Department were Norris Nichols, Administrator, and Cindy Anders, Distributor Tax Examiner, Motor Fuel Tax Division.

The Department proposed amendments to rules 42.27.603 and 42.27.604 to implement Senate Bill No. 400 (Ch. 697, L. 1985), which provided a tax incentive for alcohol which is exported from Montana.

Mr. Braunbeck presented oral and written testimony summarized as follows: replace the term "alcohol" in the rules with "ethanol"; reduce the time the Department makes the payments to no more than two weeks. Mr. Braunbeck believes the rules as proposed will result in a payment delay of up to 60 days; review of the use of "gasohol dealer" and "wholesale distributor" in the rules since they could be confused and eliminate rule 42.27.603(4) entirely because the information required to be submitted by ethanol producers to assure the exported alcohol is blended to produce gasohol will encourage out-of-state customers to look elsewhere for their alcohol. This would defeat the purpose of the tax incentive for exported alcohol.

Mr. Kania suggested that rule 42.27.603(3)(g) be amended to eliminate the requirement that the application for the tax incentive payment include "the date and the place the alcohol was blended with gasoline to produce gasohol". Mr. Kania contended the requirement would create "extraordinary hardship" on gasoline distributors who broker ethanol because they would have to wait for gasohol dealers and alcohol purchasers to provide a certificate of blending before applying for the tax incentive payment. He further contended that a warranty from the dealers and purchasers should be sufficient.

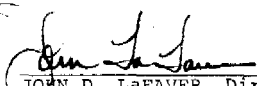
The Hearing Officer and the Department concluded that the use of the term "alcohol" in rules 42.27.603 and 42.27.604 is consistent with the use of the term in the applicable statutes and should not be changed to "ethanol" as the term had been previously defined for clarification. It was further concluded that Senate Bill No. 400 (Ch. 697, L. 1985), specifically requires "a certificate of blending issued by the alcohol purchaser showing the total gallons of alcohol blended and the date of blending". Acceptance of a warranty from gasohol dealers or alcohol purchasers simply stating that they had blended Montana-produced alcohol with gasoline would violate the statutory requirement.

The reasons which were given for the elimination of proposed rule 42.27.603(3)(g) and 42.27.603(4) are not persuasive. The Department deems such information necessary to verify the certificate of blending. Such requirements are reasonable, within the discretion of the Department, and would not create a hardship on gasoline distributors. A distributor can simply telephone the instate gasohol dealer or alcohol purchaser for the information. A written certificate of blending is only required under rule 42.27.603(4) for alcohol exported from Montana prior to being blended.

The suggested review of the statutory definition of a "gasohol dealer", § 15-70-503(b)(3), MCA, to determine whether confusion exists between the terms of a "wholesale distributor" and a "gasohol dealer" is unnecessary. Reference to the Department's rule 42.27.108, "Wholesale Distributor" should be sufficient to clarify any confusion over definition of the term.

Finally, the Department was asked to narrow its incentive payment time frames as much as possible. Section 15-70-523(2), MCA, provides that application "for payment of tax incentives must be filed with the Department no later than the 25th day of the calendar month following the month for which the claim is being made". The statute does not require one to wait until the 25th of the following month to file an application for the payment. However, multiple applications each month would make processing difficult. Further, to ensure the accuracy of the application, the Department must cross-check these applications with the gasoline distributor's reports which are due on the 25th day of the month. Rules 42.27.601 through 42.27.605 provide for the processing of the tax incentive payment. No other comments were made and the Hearing Officer concluded rules 42.27.603 and 42.27.604 should be amended as proposed.

4. The authority of the Department to amend rules 42.27.603 and 42.27.604 is based on § 15-70-104, MCA, and Sec. 5, Ch. 697, L. 1985, and implements Title 15, Ch. 70, part 5, MCA.


JOHN D. DeFAVER, Director
Department of Revenue

Certified to Secretary of State 8/19/85

16-8/29/85

Montana Administrative Register

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF RULES
of rules relative to the use)	FOR THE USE OF THE AMERICAN
of the AIS-315 Optical Scan)	INFORMATION SYSTEMS 315 OPTI-
Ballot Counter)	CAL SCAN BALLOT COUNTER

TO: All Interested Persons

1. On July 11, 1985, the secretary of state published notice of the proposed adoption of rules relative to the use of the AIS-315 Optical Scan Ballot Counter. The notice was published at page 901 of the Montana Administrative Register, Issue No. 13.

2. The agency has adopted as proposed Rules I thru XV as rules 44.3.1760; 44.3.1762 thru 44.3.1775.

3. At the public hearing, in addition to staff, 1 person appeared. The testimony was in support of the rules as a whole. The comments which were made at the hearing follow.

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

COMMENT: The proposed rules are very good in that they cover the necessary points and yet are still flexible enough to allow local options.

COMMENT: A considerable sum of money could be saved for each partisan primary election if nonpartisan offices and ballot issues could be printed right on the partisan primary ballot sheets for the AIS machine. There is plenty of room for them given the number of slots on a single AIS ballot page. Savings would occur at both the printing and counting stages.

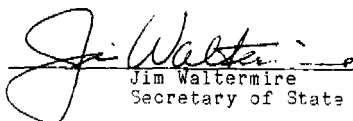
RESPONSE: Agreed. The statutes governing "traditional" ballots require that, for partisan primary elections, a separate ballot of a separate color be printed containing all nonpartisan offices and ballot issues and then distributed with the partisan ballots to each elector. It is common, however, when voting machines and devices are used, for the ballot form requirements to deviate from those required by the statutes for "traditional" ballots. Such deviations are allowed in order to deal with the needs and capabilities of various authorized devices.

COMMENT: The Secretary of State, through his authority to prescribe forms, should determine in advance and for all primaries that, for the AIS ballots, nonpartisan offices and ballot issues need not be printed on a separate ballot page and may be printed on each partisan ballot following the partisan offices.

RESPONSE: The agency agrees in principle, but doesn't feel that the form prescription authority is the appropriate vehicle. The agency believes that the issue is more one of policy in the preparation of AIS ballots than it is one of mere form. The agency believes that a separate rule to that effect would be a more appropriate vehicle.

COMMENT: A written draft of a proposed amendment to the proposed rules, in the form of a new additional rule dealing with prescribed forms, is submitted for consideration. If the agency can come up with better language to do what is intended than that would be fine.

RESPONSE: The agency is aware that there are at this time three counties which have purchased the AIS-315 system and will be using it for their municipal primary elections on September 10, 1985. The agency believes that it can in fact come up with better language to do what was intended by the proposed amendment and which would not rely on the form prescription authority. Two of the three counties using the AIS-315 did not confront the separate nonpartisan primary ballot question this year due to the fact that their entire municipal election is nonpartisan. These counties do, however, have an interest in how the issue is resolved for future years. The agency would like to submit proposed language to all three counties for comment prior to adopting any rule dealing with this issue. However, doing so at this point would delay adoption of the balance of the rules. That would result in there being no rules in effect governing the use of this equipment at the time the three counties intend to use it on September 10th. Resolving this issue at this time is not critical: it isn't even applicable to two of the counties this year; and the third, Missoula County, has already requested and received permission to combine the two ballots for this year. But there is a critical need to have rules in place governing counting procedures prior to the use of this system on September 10th. The agency believes that it is in the best interests of all concerned to proceed with the adoption of the proposed rules as they are and to address the additional issue of the separate nonpartisan ballot page with a subsequent rule adoption process which the agency will undertake immediately.


Jim Waltermire
Secretary of State

Dated this 19th day of August, 1985

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

In the matter of the adop-	)	NOTICE OF THE ADOPTION OF
tion of rules pertaining to	)	RULES (I) 46.5.550, (II)
residential alcohol and drug	)	46.5.551, (III) 46.5.553,
treatment for indigent	)	(IV) 46.5.554, (V)
juveniles.	)	46.5.555, (VI) 46.5.556,
	)	(VII) 46.5.558, (VIII)
	)	46.5.560 and (IX) 46.5.562
	)	PERTAINING TO RESIDENTIAL
	)	ALCOHOL AND DRUG TREATMENT
	)	FOR INDIGENT JUVENILES

TO: All Interested Persons

1. On July 11, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules 46.5.550, 46.5.551, 46.5.553, 46.5.554, 46.5.555, 46.5.556, 46.5.558, 46.5.560 and 46.5.562 pertaining to residential alcohol and drug treatment for indigent juveniles at page 911 of the 1985 Montana Administrative Register, issue number 13.

2. The Department has adopted Rules 46.5.550, RESIDENTIAL ALCOHOL AND DRUG TREATMENT FOR INDIGENT JUVENILES; 46.5.555, DETERMINATION OF INDIGENCY; and 46.5.558, ERRONEOUS OR IMPROPER PAYMENTS, as proposed.

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

46.5.551 DEFINITIONS For purposes of this rule, the following definitions apply:

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

(2) "Indigent juvenile" means a person under the age of 18 whose family meets the eligibility criteria for indigency set forth in ~~Rule-V~~ ARM 46.5.555.

Subsections (3) and (4) remain as proposed.

AUTH: Sec. 41-3-1103 MCA; Sec. 2, Ch. 177, L.1985

IMP: Sec. 41-3-1103 MCA

46.5.553 ELIGIBILITY FOR SERVICES Subsections (1) and (1)(a) remain as proposed.

(b) The juvenile and his family are determined to be indigent by the department pursuant to the criteria set forth in ~~Rule-V~~ ARM 46.5.555; and

Subsections (1)(c) through (2) remain as proposed.

AUTH: Sec. 41-3-1103 MCA; Sec. 2, Ch. 177, L.1985

IMP: Sec. 41-3-1103 MCA

46.5.554 APPLICATION FOR SERVICES Subsection (1) remains as proposed.

(2) The person making application must provide sufficient documentation to establish that the juvenile meets the eligibility criteria set forth in ~~Rule-V~~ ARM 46.5.553.

AUTH: Sec. 41-3-1103 MCA; Sec. 2, Ch. 177, L.1985

IMP: Sec. 41-3-1103 MCA

46.5.556 BILLING, REIMBURSEMENT AND PROCESSING The department shall make payments directly to the provider, subject to the following conditions and limitations:

Subsection (1) remains as proposed.

(2) Providers shall be reimbursed according to the rates set forth in ~~Rule-V~~ ARM 46.5.560. The provider will accept payment in accordance with ~~Rule-V~~ ARM 46.5.560 as payment in full.

(3) The department will not reimburse the provider for any services other than alcohol and drug treatment.

AUTH: Sec. 41-3-1103 MCA; Sec. 2, Ch. 177, L.1985

IMP: Sec. 41-3-1103 MCA

46.5.560 RATES (1) The department will pay providers the usual and customary charges or the rates set forth in this rule, whichever is lower.

(2) The rate for residential alcohol and drug treatment for indigent juveniles shall be \$110.00 per day for each day of care actually provided, not to exceed 40 days of care. THE DEPARTMENT SHALL PAY FOR THE DAY THE JUVENILE ENTERS THE TREATMENT FACILITY, BUT NOT THE DAY THE JUVENILE LEAVES THE FACILITY.

AUTH: Sec. 41-3-1103 MCA; Sec. 2, Ch. 177, L.1985

IMP: Sec. 41-3-1103 MCA

46.5.562 UNAVAILABILITY OF FUNDS Subsections (1) through (3) remain as proposed.

(4) All providers who are providing residential alcohol and drug treatment to eligible indigent juveniles at the time of receiving the notice that the appropriated funds have been exhausted will be reimbursed for the treatment of those juveniles who have been determined eligible for benefits by the department and are receiving treatment at the time of notice. The provider shall be reimbursed according to the terms and conditions set forth in ~~Rule-V~~ ARM 46.5.560.

AUTH: Sec. 41-3-1103 MCA; Sec. 2, Ch. 177, L.1985

IMP: Sec. 41-3-1103 MCA

4. References to proposed rules in the first notice have been changed to refer to permanent rule numbers.

5. The department has thoroughly considered all comments received:

COMMENT: The Budget, Contracts and Payment Bureau commented that for clarity the rules should specify that the department will pay for the day the child is admitted to the facility, but not the day the child is discharged. This is the standard payment procedure used for all services for which the department makes a payment.

RESPONSE: Rule VIII, RATES, has been amended to incorporate the language requested by the Budget, Contracts and Payment Bureau.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 19, 1985.

VOLUME NO. 41

OPINION NO. 23

BOARD OF NURSING - Authority to require license applicant to hold college degree;
EDUCATION, HIGHER - Authority of Board of Nursing to require license applicant to hold college degree;
LICENSES, OCCUPATIONAL AND PROFESSIONAL - Authority of Board of Nursing to require license applicant to hold college degree;
NURSES, PRACTICAL - Authority of Board of Nursing to require license applicant to hold college degree;
NURSES, REGISTERED - Authority of Board of Nursing to require license applicant to hold college degree;
MONTANA CODE ANNOTATED - Sections 2-4-305, 20-15-108, 37-1-131, 37-7-302, 37-8-102, 37-8-202, 37-8-301, 37-8-405, 37-8-415, 37-10-302, 37-17-302, 37-21-301;
SESSION LAWS OF 1981 - Chapter 248.

HELD: The Board of Nursing does not have the authority to require applicants for professional or practical nursing licenses to hold a specific college degree as a qualification for initial licensure.

7 August 1985

Donna Small, R.N.
President, Montana Board
of Nursing
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0401

Dear Ms. Small:

You have requested my opinion on the following question:

Does the Board of Nursing have the authority to require professional and practical nursing license applicants to hold a specific college degree as a qualification for initial licensure?

Montana Administrative Register

16-8/29/85

Your inquiry states that the American Nurses Association has been promoting the establishment of uniform minimum educational standards for entry into a professional or practical nursing practice. Under the Association's proposed standards, a registered professional nurse would be required to hold at least a baccalaureate degree, and a licensed practical nurse would be required to hold at least an associate degree, in order to qualify for initial licensure. Your question is whether state law would authorize the Board to adopt the Association's proposed standards by establishing these threshold degree requirements for nursing license applicants.

The Legislature has set forth the qualifications required of applicants for professional and practical nursing licenses. Section 37-8-405, MCA, provides:

Professional nursing--qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

- (1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;
- (2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and
- (3) meets other qualification requirements the board prescribes.

Section 37-8-415, MCA, provides:

Licensed practical nursing--qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant:

- (1) has successfully completed at least an approved 4-year high school course of study or

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

Since neither statute expressly requires applicants to hold a college degree in order to be licensed, the initial inquiry is whether subsection (3) of these two statutes would permit the Board to prescribe, by rule, the qualification requirement of a specific college degree.

The Board's rule-making authority is contained in section 37-8-202(2), MCA, which states that the Board "may make rules necessary to administer this chapter," and section 37-1-131, MCA, which requires the Board to "set and enforce standards and rules governing the licensing, certification, registration, and conduct" of members of the nursing profession. Although the Board is specifically authorized to "define the educational requirements and other qualifications applicable to specialty areas of nursing" such as nurse-anesthetists (§ 37-8-202(5), MCA), the Board is granted no such express rule-making authority with respect to further educational requirements for professional and practical nurses.

Both section 37-8-405, MCA, and section 37-8-415, MCA, in subsections (1) and (2), set forth the educational requirements for license applicants; applicants must have successfully completed "at least an approved 4-year high school course of study" or its equivalent plus the appropriate nursing education program. Section 37-8-102(4), MCA, defines "nursing education program" as "any board-approved school that prepares graduates for initial licensure;" this statute provides that such programs for professional nurses may be in a junior college and that such programs for practical nurses may be in a vocational-technical center.

If the Legislature had intended to require nursing license applicants to hold a specific college degree, it would have set forth this requirement in the statutes, as it has done in other license qualification statutes. See, e.g., §§ 37-21-301, 37-7-302, 37-10-302, 37-17-302,

MCA. Also, if the Legislature had intended to require professional nurses to hold a baccalaureate degree, it would not have permitted the nursing education program for professional nurses to be established at a junior college, which cannot award such a degree. See § 20-15-108, MCA. The same reasoning applies to the education program for practical nurses; a vocational-technical center could not award an associate degree to an applicant for a practical nursing license.

The Montana Supreme Court has held that a rule which engrafts additional, noncontradictory requirements on a statute which were not envisioned by the Legislature is "out of harmony" with legislative guidelines and therefore invalid. See, e.g., Bell v. Dept. of Professional and Occupational Licensing, 36 St. Rptr. 880, 594 P.2d 331 (1979); Board of Barbers v. Big Sky College, 38 St. Rptr. 621, 626 P.2d 1269 (1981). In light of these cases, it is likely that a rule requiring applicants to hold specific college degrees would be viewed by the Court as beyond the Board's rule-making authority and not reasonably necessary to effectuate the purpose of the statute. See § 2-4-305(6), MCA.

The second inquiry is whether the Board's authority, under sections 37-8-202 and 37-8-301, MCA, would permit the Board to require nursing school students to obtain a specific college degree in order to complete their nursing education programs.

Section 37-8-202(2), MCA, states that the Board "shall prescribe standards for schools preparing persons for registration and licensure" as professional or practical nurses. Section 37-8-301, MCA, provides that the Board "shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102."

Section 37-8-102, MCA, defines the terms "practice of professional nursing" and "practice of practical nursing" as the performance for compensation of services requiring knowledge of the various sciences as well as nursing theory, process, and procedures. Although the required knowledge is extensive, nothing in the statute suggests that such knowledge may be obtained only through a college degree program. As noted above,

section 37-8-102(4), MCA, permits nursing education programs to be located in educational institutions which could not confer the minimum degrees proposed by the Association.

The Board's authority to prescribe standards for schools does not implicitly or necessarily include the authority to require specific college degrees of nursing school graduates. The Legislature has not expressed any intention that graduation from nursing school be contemporaneous with, or dependent upon, graduation from college. Nor does the Board's authority to adopt rules relating to the conduct of nursing education programs imply the power to require a college degree as a condition of graduation from nursing school. Regarding this delegated rule-making authority, the statement of intent attached to SB 427 (1981 Mont. Laws, ch. 248) provided:

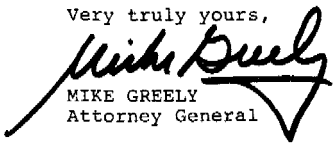
It is the intent of the Legislature that the rules adopted relate directly toward the nursing education programs' insuring that the qualifications of a professional nurse or a practical nurse are adequate in the areas of services to be provided ...

The Legislature has established entry-level educational requirements for professional and practical nursing license applicants which do not include specific college degrees; the Legislature has also granted the Board rule-making authority to define the educational requirements applicable to specialty areas of nursing without granting similar authority applicable to professional and practical nurses. It is a rule of statutory construction that the express mention of one matter excludes other similar matters not mentioned. See, e.g., Helena Valley Irrigation District v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967). And in determining legislative intent, an express mention of a certain power or authority implies the exclusion of nondescribed powers. See, e.g., State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355 (1975). I have concluded that these omissions by the Legislature indicate its intent not to require professional or practical nurses to hold specific college degrees in order to be licensed by the Board.

THEREFORE, IT IS MY OPINION:

The Board of Nursing does not have the authority to require applicants for professional or practical nursing licenses to hold a specific college degree as a qualification for initial licensure.

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, 1985. This table includes those rules adopted during the period July 1, 1985 through September 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 June 30, 1985, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1985 Montana Administrative Register.

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| I-V | Grading of Certified Seed Potatoes, p. 711, 1146 |
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- 4.14.305 and other rule - Applicant Eligibility - Tax Deduction, p. 628, 1016

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- I-V Comprehensive Health Care Association and Plan, p. 531
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