MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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

In the matter of the proposed amendments of 8.24.405 concerning examinations and 8.24.409 concerning fees	))))	NOTICE OF PROPOSED AMENDMENTS OF 8.24.405 EXAMINATIONS AND 8.24.409 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 15, 1986, the Board of Landscape Architects proposes to amend the above-stated rules.

2. The proposed amendment of 8.24.405 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-789, Administrative Rules of Montana)

"8.24.405 EXAMINATIONS (1) through (6) will remain the same.

(7) The board will accept proof of passage of the Uniform National Examination (UNE) in another jurisdiction as satisfactorily meeting the requirements of this section, providing the applicant for licensure submits official verification from the state in which they took the UNE, that they successfully took the UNE within the last five (5) years from the date of application."

Auth: 37-66-202, MCA Imp: 37-66-305, MCA

3. The amendment is being proposed because the Board of Landscape Architects gives the Uniform National Examination, which is given throughout the United States. As the examination given in Montana is the same examination and in the apparent absence of any statutory constraint to the contrary, the Board wishes to adopt this rule in which it accepts proof of passage of the UNE in another jurisdiction in satisfaction of section 37-66-305, MCA. The Board does not believe the statutes or rules mandate that the UNE must be taken in Montana, the statutes and rules only mandate that the examination taken for licensure must be the UNE.

4. The proposed amendment of 8.24.409 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-791, Administrative Rules of Montana)

"8.24.409 FEE SCHEDULE (1) and (2) will remain the same.

(3) Landscape Architects Fee Schedule:

Application (not included in examination fees)	$ 75.00	
Certificate (license)	35.00	
Examination (full)	250.00	
Examination - Section A 1	~~45.00~~	30.00
Section B 2	45.00	

Section ~~C~~ 3	~~80.00~~	75.00
Section ~~D~~ 4	~~80.00~~	100.00
UNE Re-evaluation per sheet for performance problems	35.00	
License Renewal	90.00	
Duplicate certificate	35.00	
Stamps - Seals	25.00	

(4) will remain the same."

Auth: 37-66-202, MCA Imp: 37-1-134, 37-66-307, MCA

5. The reason for this proposed amendment is to better align the actual cost of the various sections of the examination which includes both purchasing and grading. The sections are being changed from A-D to 1-4 because of a total restructuring of the examination format.

The amendments are necessary to meet the requirement of section 37-1-134 that fees be commensurate with costs because the costs of the examination have been realigned by the Council of Landscape Architectural Registration Boards.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 12, 1986.

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 Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 12, 1986.

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. Ten percent of those persons directly affected has been determined to be 6 based on the 68 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS
JACK ERVIN, CHAIRMAN

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

Certified to the Secretary of State, November 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the proposed amendment of 8.58.414 concerning trust account requirements	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.58.414 TRUST ACCOUNT REQUIREMENTS

TO: All Interested Persons.

The notice of proposed amendment published at page 1492 in the Montana Administrative Register on September 11, 1986, issue number 17, is amended as follows because the required number of persons designated therein have requested a public hearing:

1. On January 15, 1987, at 1:00, p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana to consider the amendment of the above-stated rule.

2. The amendment is the same as proposed in the original notice.

3. The rule is proposed for amendment for the reasons as stated in the original notice.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Realty Regulation, no later than December 12, 1986.

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

6. The authority of the board to make the proposed rule amendment is based on section 37-1-103, MCA, and the rule implements 37-51-203, MCA.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

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

Certified to the Secretary of State, November 3, 1986.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.55.203, District Superintendent	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.55.203, DISTRICT SUPERINTENDENT

TO: All Interested Persons

1. On December 4, 1986, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.55.203, District Superintendent.

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

10.55.203 ~~DISTRICT SUPERINTENDENT~~ ADMINISTRATION AND SUPERVISION (1) through (2) remain the same.

(3) All specifically designated supervisors shall be certified in accordance with state statutes and with the policies of the board of public education when:

(a) These positions are required by special programs.

(b) Positions are involved in hiring, evaluation, retention and dismissal.

AUTH: Sec. 20-7-101 MCA
IMP: Sec. 20-4-401, 20-4-402 MCA

3. The added section is being proposed as an amendment as it was omitted in error during an earlier printing.

In the matter of the amendment of ARM 10.55.205, Professional Development	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.55.205, PROFESSIONAL DEVELOPMENT

TO: All Interested Persons

1. On December 4, 1986, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.55.205, Professional Development.

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

10.55.205 PROFESSIONAL DEVELOPMENT (1) The school district shall provide, as part of a continuous program for the improvement of instruction and administration, a minimum of three days of professional development annually for each certified employee ~~in the district~~. A day of professional development is defined as six hours of actual contact time. Professional development time may be divided into no less than two hour increments to facilitate delivery of professional development programs.

(2) By ~~June 1~~ April 15 of each year, the school district shall formulate a plan for professional development which includes: (a) through (c) remain the same.

(3) For purposes of development and evaluation of the plan, the board of trustees shall establish an advisory committee including but not limited to teachers, administrative personnel and ~~a~~ trustees. A majority of the committee shall be teachers.

(4) remains the same

AUTH: Sec 20-7-101, 20-2-121(6) MCA

IMP: Sec. 20-7-101, 20-1-304 MCA

3. The board proposed this amendment in order to clarify the rule's intent.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

5. Ted Hazelbaker, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State November 3 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.57.102, Definitions	))	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.102, DEFINITIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 14, 1986, the Board of Public Education proposed to amend ARM 10.57.102, Definitions.

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

10.57.102 DEFINITIONS (1) remains the same.

(2) "Accredited" refers to approval (accreditation) by a regional accreditation association that is acceptable to the board of public education. Regional accreditation serves as a base for national accreditation and/or state certification. The six regional accreditating associations are: New England Association of Schools and Colleges, Middle States Association of Colleges and Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools and Western Association of Schools and Colleges. State approval of programs leading to certification may also be required.

(3) to (20) remain the same

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-106 MCA

3. This amendment has been proposed for purposes of clarification of the rule.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

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

directly affected has been determined to be 2958 as there are 8 institutions now being accredited.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State November 3, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.65.101, Policy Governing Pupil Instruction Related Days Approved For Foundation Program Calculations	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.65.101, POLICY GOVERNING PUPIL INSTRUCTION RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS

TO:All Interested Persons

1. On December 4, 1986, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.65.101, Policy Governing Pupil Instruction Related Days Approved For Foundation Program Calculations.

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

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) through (1)(a) remain the same.

(b) Staff professional development programs scheduled during the year for the purpose of improving instruction which may include professional organizations' instructional and professional development programs. ~~[The latter not to exceed two days].~~ If the district includes statewide professional organizations' programs as part of its staff development, it must ~~concurrently~~ provide alternative staff development for those not attending. ~~These days may be divided into two-hour increments to facilitate delivery of staff development programs.~~

(c) remains the same.

(d) Post-school record and report completion at the end of the ~~public~~ pupil instruction year. This day may be divided so as to provide one-half day at the end of each semester.

(e) remains the same.

AUTH: Sec. 20-2-121, 20-2-121(6) MCA
IMP: Sec. 20-1-304 MCA

3. The board proposed this amendment in order to clarify the rule's intent.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

5. Ted Hazelbaker, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State November 3, 1986

directly affected has been determined to be 2958 as there are 8 institutions now being accredited.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State November 3, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.65.101, Policy Governing Pupil Instruction Related Days Approved For Foundation Program Calculations	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.65.101, POLICY GOVERNING PUPIL INSTRUCTION RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS

TO:All Interested Persons

1. On December 4, 1986, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.65.101, Policy Governing Pupil Instruction Related Days Approved For Foundation Program Calculations.

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

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) through (1)(a) remain the same.

(b) Staff professional development programs scheduled during the year for the purpose of improving instruction which may include professional organizations' instructional and professional development programs. ~~(the latter not to exceed two days)~~. If the district includes statewide professional organizations' programs as part of its staff development, it must ~~concurrently~~ provide alternative staff development for those not attending. ~~These days may be divided into two-hour increments to facilitate delivery of staff development programs.~~

(c) remains the same.

(d) Post-school record and report completion at the end of the ~~public~~ pupil instruction year. This day may be divided so as to provide one-half day at the end of each semester.

(e) remains the same.

AUTH: Sec. 20-2-121, 20-2-121(6) MCA
IMP: Sec. 20-1-304 MCA

3. The board proposed this amendment in order to clarify the rule's intent.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

5. Ted Hazelbaker, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State November 3, 1986

21-11/14/86 MAR Notice No. 10-3-117

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of New Rules I through IV) relating to child support) debt tax offsets.)	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of New Rules I through IV relating to child support debt tax offsets.

TO: All Interested Persons:

1. On December 8, 1986, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the adoption of rules I through IV, relating to child support debt tax offsets.

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

3. The new rules as proposed to be adopted provide as follows:

RULE I OFFSET OF STATE TAX REFUNDS FOR CHILD SUPPORT DEBTS

(1) The child support enforcement program (CSEP) will notify the department of revenue of any child support debts which have been assigned to the state, or which CSEP is attempting to collect on behalf of applicants for child support enforcement service who are not on welfare (NAFDC). The child support debt must have accrued through a written contract, court judgment, or administrative order, and shall be for a definite amount of money due and owing for the support of a minor child. CSEP will verify the amounts referred for accuracy.

(2) Amounts offset under this procedure for a specific taxpayer will be first used to satisfy any unreimbursed aid to families with dependent children (AFDC) and foster care maintenance payments which have been provided to the taxpayer's family. Any amounts remaining will be credited on the taxpayer's individual payment record.

(3) If the tax refund exceeds the past due child support obligation, the excess tax refund will be released to the taxpayer by the department.

(4) All cases which have past due child support due and owing will be placed on state tax offset unless there is a court order, administrative order, or written agreement of record (unless the agreement provides otherwise), establishing a past due obligation and setting a payment schedule with which the taxpayer is in compliance.

AUTH: 17-4-110 MCA and § 2, Ch. 679, L. 1985; IMP: 17-4-105(4) MCA.

RULE II NOTICE OF OFFSET OF STATE TAX REFUNDS FOR CHILD SUPPORT DEBTS (1) The department shall give written notice of offset and opportunity for hearing to a taxpayer prior to the

offset of a state tax refund pursuant to 17-4-105(4), MCA. The notice shall contain a statement of the proposed action and include a statement of the opportunity for a hearing before the department prior to the offset. A request for hearing must be submitted in writing to the Director, Department of Revenue, Mitchell Building, Helena, Montana 59620-2701, within 30 days of the date of the notice by the department. The department will complete the offset procedure if no request is made.
AUTH: 17-4-110 MCA and § 2, Ch. 679. L. 1985; IMP: 17-4-105(4) MCA.

RULE III CHILD SUPPORT OFFSET OF JOINT RETURN (1) If the refund to be offset is a joint return, the spouse who does not owe the child support obligation (injured spouse"), may object pursuant to the procedures set forth in ARM 42.16.107 through 42.16.109 to having his or her share of the refund applied against the child support obligation. Under those procedures, an adjustment will be made to the joint tax return reflecting that portion of the return that is attributable to the taxpayer who owes the child support arrearages and only that portion will be offset.

(2) Filing the "injured spouse statement" does not relieve the taxpayer who is liable for past due child support from requesting a hearing under rule II if the taxpayer wishes to contest the offset procedure or to present defenses to the child support debt.
AUTH: 17-4-110 MCA and § 2, Ch. 679, L. 1985; IMP: 17-4-105(4) MCA.

RULE IV HEARING PROCEDURES FOR CHILD SUPPORT OFFSETS

(1) The department will notify CSEP of all requests for hearings, including the taxpayer's home address and social security number or numbers, if known.

(2) CSEP shall conduct a hearing pursuant to procedures promulgated by CSEP. An appeal from the final decision and order will be governed by the Administrative Procedure Act, Title 2, ch. 4, part 7, MCA.
AUTH: 17-4-110 and 40-5-226 MCA and § 2, Ch. 679, L. 1985; IMP: 17-4-105(4) MCA.

4. The Legislature gave the Department of Revenue the authority to establish by rule a procedure to offset a state income tax refund in cases where there is a past due child support obligation (17-4-105(4), MCA). These rules are intended to set forth the procedures to be used by a taxpayer to contest the child support debt in the event a joint tax return has been filed and that return is being offset by the Child Support Enforcement Program for a past due child support obligation. The procedures incorporated in the above rules will ensure that only the refund belonging to the taxpayer who owes the child support obligation will be offset by the Child Support Enforcement Program.

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:

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620-2702

no later than December 12, 1986.

6. Jim Scheier, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoption is based on §§ 17-4-110 and 40-5-226, MCA, and § 2, Ch. 679, L.1 985, and implement § 17-4-105, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 11/03/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of Rule 42.17.105 relating to) computation of withholding) taxes.)	NOTICE OF THE PROPOSED AMENDMENT of Rule 42.17.105 relating to computation of withholding taxes.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 14, 1986, the Department of Revenue proposes to amend rule 42.17.105 relating to the computation of withholding taxes.

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

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of tax withheld per payroll period shall be calculated according to the following four-step formula:

(a) Y = PZ

where Z is the individual's gross earnings for the payroll period; and

Y is the individual's annualized gross earnings.

In these calculations, the quantity P (number of payroll periods during the year) has one of the following values:

Annual payroll period	P = 1
Monthly payroll period	P = 12
Semimonthly payroll period	P = 24
Biweekly payroll period	P = 26
Weekly payroll period	P = 52

(b) T = Y - 1400N

~~0.07390Y - 970N whenever 0 Y 13130.02~~

~~1301.4 + .64002Y - 970N whenever~~

~~13130.02 = Y = 44365.00~~

~~8200.9 + 0.48332Y - 970N whenever Y 44365.00~~

where T is the annualized net ~~taxable~~ gross income; and

N is the number of withholding exemptions claimed.

If T in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

(c) X = A + B(T-C) where X is the individual's annualized tax liability the parameters A, B and C are chosen from the following rate schedule:

ANNUALIZED NET
~~TAXABLE~~ GROSS INCOME T

~~At Least~~	~~But Less Than~~	A	B	C
~~$ 0~~	~~$ 1,200~~	~~$ 0~~	~~.02~~	~~$ 0~~
~~$ 1,200~~	~~$ 2,400~~	~~$ 24~~	~~.03~~	~~$ 1,200~~

~~$ 2,400~~	~~$ 4,800~~	~~$ 60~~	~~.04~~	~~$ 2,400~~
~~$ 4,800~~	~~$ 7,300~~	~~$ 156~~	~~.05~~	~~$ 4,800~~
~~$ 7,300~~	~~$ 9,700~~	~~$ 281~~	~~.06~~	~~$ 7,300~~
~~$ 9,700~~	~~$12,100~~	~~$ 425~~	~~.07~~	~~$ 9,700~~
~~$12,100~~	~~$16,900~~	~~$ 593~~	~~.08~~	~~$12,100~~
~~$16,900~~	~~$24,200~~	~~$ 977~~	~~.09~~	~~$16,900~~
~~$24,200~~	~~$42,300~~	~~$1,634~~	~~.10~~	~~$24,200~~
~~$42,300~~	~~-------~~	~~$3,440~~	~~.11~~	~~$42,300~~

At Least	But Less Than	A	B	C
$ 0	$ 6,590	$ 0	2.6%	$ 0
6,590	14,600	171.34	4.4%	6,590
14,600	32,000	523.78	6.1%	14,600
32,000 and over		1,585.18	6.5%	32,000

(d) $W = \frac{X}{P}$

where W is the amount to be withheld for the payroll period;
X is the annualized tax liability; and
P is the number of payroll periods during the year.

(2) This rule is effective for quarters beginning ~~July 1, 1983, and ending June 30, 1984~~ January 1, 1987.

AUTH: 15-30-305 MCA; IMP: 15-30-202 MCA.

3. Rule 42.17.105 is proposed to be amended, in part, to correct the under-withholding of state income taxes for certain groups of taxpayers, and the proposed rule also reflects changes in state income taxes due to state and federal tax indexation and federal tax reforms. Currently, withholding during the year is insufficient to pay the tax liability for many taxpayers. Overall the withholding table is designed to equate the amount withheld from wages with the final tax owed by an average taxpayer in each income bracket and filer category. Subsection (1)(c) provides a single step procedure that follows the federal withholding method. This will simplify the withholding process for employers.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than December 12, 1986.

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 Irene LaBare at the above address no later than December 12, 1986.

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, 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 § 15-30-305, MCA. The rule implements § 15-30-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 11/03/86

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

In the matter of the repeal of Rule 46.12.1434; the amendment of Rules 46.12.1401 through 46.12.1405, 46.12.1407 through 46.12.1413, 46.12.1425 through 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1439, 46.12.1440, 46.12.1451, 46.12.1452, 46.12.1454, 46.12.1455, 46.12.1457 and 46.12.1458; and the adoption of rules I-XII pertaining to the home and community services program	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF RULE 46.12.1434; THE AMENDMENT OF RULES 46.12.1401 THROUGH 46.12.1405, 46.12.1407 THROUGH 46.12.1413, 46.12.1425 THROUGH 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1439, 46.12.1440, 46.12.1451, 46.12.1452, 46.12.1454, 46.12.1455, 46.12.1457 AND 46.12.1458; AND THE ADOPTION OF RULES I-XII PERTAINING TO THE HOME AND COMMUNITY SERVICES PROGRAM

TO: All Interested Persons

1. On December 4, 1986, 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 repeal of Rule 46.12.1434; the amendment of Rules 46.12.1401 through 46.12.1405, 46.12.1407 through 46.12.1413, 46.12.1425 through 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1439, 46.12.1440, 46.12.1451, 46.12.1452, 46.12.1454, 46.12.1455, 46.12.1457 and 46.12.1458; and the adoption of rules I-XII pertaining to the home and community services program.

2. The Department proposes to repeal Rule 46.12.1434 pertaining to adult day care services. The rule as proposed to be repealed is on pages 46-2001 and 46-2007 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

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

46.12.1401 HOME AND COMMUNITY-~~BASED~~ SERVICES PROGRAM, ~~IMPLEMENTATION SCHEDULE~~ AUTHORITY (1) The United States department of health and human services (HHS) has granted the department the authority to provide medicaid ~~services under a~~ home and community-~~based~~ services ~~waiver for a period of three years with an effective date of July 1, 1983.~~ to persons who would otherwise have to reside in and receive medicaid reim-

bursed care in an institutional setting.

(2) The program serves persons who are within groups and geographical service areas approved by the United States department of health and human services.

~~(2)--As-approved-by-the-secretary-of-HHS,--implementation of-the--home-and-community-based--services--program-will-be-as follows:~~

~~(a)--No-sooner-than-July-1,-1983:~~

~~(i)--for--elderly--persons--and--physically--handicapped persons,-Missoula-County-will-be-served:~~

~~(ii)-for-developmentally-disabled-persons,-SRS-Region-I and-V,-and-Lewis-and-Clark-County-in-SRS-Region-IV,-will-be served:~~

~~(b)--No-sooner-than-October-1,-1983:~~

~~(i)--for--elderly--persons--and--physically--handicapped persons,-Yellowstone-County-will-be-served:~~

~~(ii)-for--developmentally--disabled--persons,--SRS--Region III,-will-be-served:~~

~~(c)--No-sooner-than-January-1,-1984:~~

~~(i)--for--elderly--persons--and--physically--handicapped persons,--Lewis--and--Clark--County,--Gallatin-County,--Cascade County,-Custer-County,-and-Richland-County-will-be-served:~~

~~(ii)-for-developmentally-disabled-persons,-SRS-Regions-II and-IV-will-be-served:~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1402 LIMITING ENROLLMENT ON BASIS OF AVAILABLE FUNDS (1) ~~For--FY-84,-e~~Enrollment in the home and community-~~based~~ services program ~~at-any-point-in-time~~ is limited ~~to-360-elderly-persons,-50-physically-disabled-persons,-and 100-developmentally-disabled-persons.--For-FY-85,-enrollment in-the-program-at-any-point-in-time-is-limited-to-360-elderly persons,--50-physically-disabled-persons,-and-150-developmentally-disabled-persons.~~ based on federal restrictions and state appropriations. Enrollment will be on a first-come-first-served basis for elderly ~~and-physically-disabled~~ persons. For physically disabled persons and developmentally disabled persons, priority for enrollment will be given to those persons determined by the department or its designee to be most in need of services.

(2) The department may reduce the number of persons to be served under the program ~~below-the-numbers-specified-in-(1)~~ on the basis of available funds.

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

(d) eliminate services that may be provided in the home and community-~~based~~ services programs; or

(e) eliminate one or more categories of ~~the~~ persons to be served.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1403 INDIVIDUALS WHO MAY BE SERVED (1) Under the home and community-~~based~~ services program, services may be provided to those persons who meet all of the following requirements:

(a) are elderly, physically disabled or developmentally disabled;

(i) "~~e~~Elderly" means a person 65 years of age or older.

(ii) "~~p~~Physically disabled" means a person whose ~~ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his physical or mental disability that it has been determined that independent living and rehabilitation services are required in order to enable achievement of a greater level of independence in functioning in family or community or engaging or continuing in employment.~~ is certified as disabled by the social security administration.

(A) Some physically disabled persons are considered to require intensive institutional care. These are persons whose past medical history and current medical prognosis may require them to receive intensive long term care in an inpatient hospital rehabilitation setting. These persons may receive services under the home and community services program if they otherwise would require continued inpatient hospital services.

Subsections (1)(a)(iii) and (1)(b) remain the same.

(c) for skilled nursing facility (SNF) and intermediate care facility (ICF) levels of care, are under the direction and care of a physician, who has prescribed long term care for the person; for intermediate care facility for the mentally retarded (ICF/MR) level of care, are under the direction and care of an interdisciplinary team as defined in ARM 46.8.102(17);

(d) require the level of care of an SNF, ICF or ICF/MR, as determined by ~~the~~ preadmission screening as provided for in ARM 46.12.1301, 46.12.1302, and 46.12.1303;

(e) reside in ~~the~~ approved service areas; ~~specified in ARM 46.12.1401;~~

(f) do not reside in a hospital or long term care facility as defined in 50-5-101~~(20)~~, MCA~~;~~. ~~and~~ Long term care facilities include skilled or intermediate nursing care, ICF/MR care and personal care;

(g) have needs that can be met through the home and community-~~based~~ services program at a cost not to exceed the maximum amount allowed in accordance with ARM 46.12.1411.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1404 HOME AND COMMUNITY-~~BASED~~ SERVICES, ~~DEFINED~~ DEFINITION

(1) The following services may be provided under the home and community-**based** services program:

Subsections (1)(a) through (1)(d) remain the same.

(e) habilitation services, as defined in ARM 46.12.1435;

(f) respite care services, as defined in ARM 46.12.1438;

(g) medical alert and monitoring systems, as defined in ARM 46.12.1450;

(h) nutrition services, as defined in ARM 46.12.1456;

(i) environmental modifications/adaptive equipment, as defined in ARM 46.12.1450;

(j) transportation services, as defined in ARM 46.12.1453;

(k) outpatient physical therapy services, as defined in ARM 46.12.1444;

(l) outpatient occupational therapy services, as defined in ARM 46.12.1441; and

(m) speech pathology and audiology services, as defined in ARM 46.12.1446~~.~~7;

(n) respiratory therapy services, as defined in rule VII;

(o) nursing services, as defined in rule IV;

(p) psychological services, as defined in rule I; and

(q) dietician services, as defined in rule X.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1405 GENERAL REQUIREMENTS (1) Home and community-**based** services will be provided only by or through providers under contract with the department or with contracts approved by the department.

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

(4) All facilities providing services must meet all applicable fire and safety standards in order to receive reimbursement under the home and community-**based** services program.

(5) The cost of room and board is not reimbursable except when provided as part of respite care.

(6) Home and community services for the elderly and physically disabled shall not be provided to a person by a member of that person's immediate family. Immediate family includes the following:

(a) husband or wife;

(b) natural parent;

(c) natural child;

(d) natural sibling;

(e) adopted child;

(f) adopted parent;

(g) step-parent;
(h) step-child;
(i) step-brother or step-sister;
(j) father-in-law or mother-in-law;
(k) son-in-law or daughter-in-law;
(l) brother-in-law or sister-in-law;
(m) grandparent;
(n) grandchild;
(o) foster parent; or
(p) foster child.

(7) Pre-vocational, educational and supported employment services are reimbursable only when a person is enrolled in the home and community services program immediately upon discharge from a hospital, SNF, ICF or ICF/MR.

(a) Pre-vocational, educational and supported employment services are not reimbursable when otherwise available through local educational or vocational rehabilitation programs.

(8) No co-payment will be imposed on home and community services but persons enrolled in the home and community services program will be responsible for co-payment on other medicaid services as defined in ARM 46.12.204.

(9) Home and community services providers must be age 18 or older.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1407 CASE MANAGEMENT SERVICES, REQUIREMENTS

Subsections (1) through (2)(a) remain the same.

(b) ~~for-the--purposes--of--determining--services--to--be received--by-a--recipient,--function--in--a--manner--which--is administratively--separate--from--individuals--or-entities-directly--responsible--by-contract-for-the-provision--of--direct care-services,-and~~ function in such manner as directed by the department to assure that the services provided are of appropriate quality and the least costly.

~~(c)--when--under--contract-with--the-department,--serve-a caseload-of-no-more-than-40-persons-unless-approval-is-received-from-the-department-for-a-larger-caseload.~~

(3) For elderly and physically disabled persons, the case management team must:

(a) consist of ~~a-half-time-clerical-person,~~ a registered nurse licensed to practice in the state of Montana, ~~and~~ a ~~medical~~ social worker ~~for-elderly--persons--or-an--independent living-counselor-for-physically-disabled-persons;~~ and appropriate clerical staff;

(b) ~~function-in-a-manner-which-is-administratively-separate-from-providers-of-direct-services,-and~~ function in such manner as directed by the department to assure that services provided are of appropriate quality and least costly; and

(c) provide case management services to no more than the number of persons specified in the case management contract.

~~(c)--serve-a-maximum-caseload-of-60-persons.~~

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1408 CASE MANAGEMENT SERVICES, REIMBURSEMENT

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

(2) For elderly persons and physically disabled persons, case management services provided by a case management team shall be reimbursed based on a negotiated per diem rate not to exceed 10 percent of the statewide average per diem rate for skilled nursing and intermediate care facilities.~~,--plus--an incentive-payment,~~

~~(a)---The-negotiated-per-diem-rate-shall-be-based-on:~~

~~(i)---historical-costs-exclusive-of-capital--expenditures in-the-service-area-for-similar-services-for-similar--clients; or~~

~~(ii)--reasonable-costs-exclusive-of--capital-expenditures based-on-specific--recipient--needs-if-no--historical-basis-is available.~~

(ba) ~~The~~ An incentive payment ~~shall~~ may be allowed in accordance with the following:

Subsection (2)(b)(i) remains the same.

~~(A)--total-payments-for-home-health-services,--as-defined in-ARM--46.12.550,--to-recipients--covered-under-the--contract with-the--case-management--team-shall-not-exceed-10-percent-of the-average--statewide-cost--of-nursing--home-care--for--these recipients-had--they-been--served-in-skilled-nursing-or-intermediate-care-facilities,-and~~

(BA) total payments under subcontracts for home and community-~~based~~ services ~~other-than-case-management-services may~~ shall not exceed 50 percent of the ~~total~~ average statewide ~~cost-of~~ per diem rate for nursing home care for those recipients had they been served in skilled nursing or intermediate care facilities.

(ii) The amount of the incentive payment will be as negotiated with the case management team and ~~may~~ shall not exceed the difference between 50 percent of the ~~total-cost-of~~ average statewide per diem rate for nursing home care for recipients covered under the contract had they been served in skilled nursing or intermediate care facilities and the total payments made under subcontracts for home and community-~~based~~ services. ~~other-than-case-management-services.~~

Subsection (2)(c) remains the same.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1409 INDIVIDUAL PLANS OF CARE FOR ELDERLY AND PHYSICALLY DISABLED PERSONS Subsection (1) remains the same.

(2) The individual plan of care shall be developed prior to the ~~recipient's~~ person's entry into home and community-~~based~~ services and be formally reviewed and approved by the department. ~~The plan must be revised and approved at intervals not to exceed 90 days from the initial or previously reviewed individual plan of care.~~ The plan must be reviewed and, if necessary, revised and approved no later than ninety (90) days from the initial plan of care approval and at intervals of at least six (6) months thereafter.

Subsections (3) through (5) remain the same.

(a) diagnosis, symptoms, complaints and complications indicating the need for home and community-~~based~~ services;

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

(f) the projected annualized costs of each service; and

Subsections (5)(g) through (7)(c) remain the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1410 INDIVIDUAL PLANS OF CARE FOR DEVELOPMENTALLY DISABLED PERSONS Subsections (1) through (1)(b) remain the same.

(c) The individual plan of care must include the projected annualized costs of each service.

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1411 COST OF PLAN OF CARE AS REASON FOR DENYING SERVICES (1) Home and community-~~based~~ services will be denied to a ~~recipient~~ person when the cost to the medicaid program of the ~~recipient's~~ person's services, as determined in accordance with subsection (a), is projected to exceeds the cost of the ~~recipient's~~ person's institutional care, determined in accordance with subsection (b). This determination will be made by the department before the implementation of the proposed plan of care has been approved by the department.

(a) ~~The cost of home and community based services will include the cost of all services to be provided to the recipient, including those services which are to be paid from sources other than medicaid (for example, from sources such as Title XX of the Social Security Act or Title III of the Older Americans Act). Service needs which are to be met by family members or volunteer organizations, however, will be excluded from the cost comparison. Assistance which is meant to meet the room and board needs of the recipient (for example, SSI~~

~~payments--and--food--stamps)--will--also--be--excluded--from--the comparison.--Services--which--are--excluded--from--a--nursing--home's per--diem--rate--at--ARM--46.12.1205(2)--will--also--be--excluded--in any--comparison--of--costs~~. The plan of care cost shall be the cost of all home and community services provided to the person that are reimbursed by medicaid in accordance with these rules. The costs of home and community services provided to the person but paid from sources other than medicaid (for example, from sources such as medicare, Title XX of the Social Security Act or Title III of the Older Americans Act) shall be recorded by case management teams and reported to the department for monitoring purposes.

(b) The costs of institutional care shall be determined as follows:

(i) For ICF and SNF levels of care, payment rates projected in accordance with ARM 46.12.1204 ~~for--one--year--for the--facilities--in--the--state--are--multiplied--by--the--number--of medicaid--patient--days--for--the--previous--year--for--each--facility. This--is--divided--by--the--number--of--medicaid--patient--days throughout--the--state.--An--equivalent--of--room--and--board--costs, $285--per--month,--is--subtracted--from--this--weighted--average. This--figure--is--the--ceiling--against--which--annualized--projected costs--under--the--plan--of--care--are--compared~~. are based on the statewide weighted average nursing home per diem rate. The SSI payment standard less forty (40) dollars for personal needs is considered to be the equivalent of room and board costs. This amount is subtracted from the statewide average nursing home rate to arrive at the ceiling against which projected annualized costs under the plan of care are compared.

(ii) For the ICF/MR level of care, a projected statewide average ~~projected~~ per diem will be derived, using the previous year's utilization rates for each ICF/MR facility. This weighted average will be adjusted by subtracting ~~$285--per month,~~ the amount for room and board which is the SSI payment standard less forty (40) dollars for personal needs. This adjusted figure is the ceiling against which annualized projected costs under the plan of care are compared.

(c) For persons in need of intensive institutional care, the maximum plan of care cost shall not exceed 80% of what the cost of service to that person would have been in an inpatient hospital rehabilitation setting. Home and community services for persons in need in intensive institutional care must receive prior authorization from the department.

(~~c~~d) The cost comparison shall be made on the basis of projected annualized costs.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1412 INFORMING BENEFICIARY OF CHOICE (1) If a person is determined by the department to require the level of care provided in a SNF, ICF or ICF/MR, the person or his legal representative will be informed of the feasible alternatives, if any, available under the home and community-based services program and will be permitted to choose among them. An institutional alternative will be included as a choice.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1413 NOTICE AND FAIR HEARING (1) The department will provide written notice to applicants for and recipients of home and community-based services when the following determinations are made by the department concerning their status pertaining to:

(a) financial eligibility;

(b) level of care;

(c) feasibility, including cost-effectiveness of home and community-based services to the recipient;

~~(d) services to be made available to the recipient under a plan of care for home and community based services; and~~

(ed) termination of recipient's eligibility for home and community-based services.

(2) The department will provide a recipient of home and community-based services with notice ten (10) days before termination of services due to a determination of ineligibility.

(3) The department will provide ~~the "to be terminated"~~ recipients of home and community-based services notice at least 30 days notice before any termination of home and community-based services ~~which is~~ due to ~~the financial exigencies of the program.~~ insufficient program funds. Such terminations are those made in accordance with ARM 46.12.1402.

(4) ~~An individual~~ person may request a fair hearing for any final determinations as listed in subsections (1)(a) through (ed) made by the department with which he is dissatisfied ~~with.~~ or for any determinations regarding services in the plan of care.

Subsection (5) remains the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1425 HOMEMAKER SERVICES, DEFINITIONS

(1) Homemaker services consist of general household activities performed by ~~a home attendant.~~ an individual or agency. Such services are provided to a person who is unable to manage his home or care for himself or others in the home, or when another who is regularly responsible for these activities is absent. These services may include:

Subsections (1)(a) through (2) remain the same.

(a) Place of residence includes an individual's own home or a foster home. Place of residence does not include a hospital or a long term care facility as defined in 50-5-101~~(20)~~, MCA. A long term care facility is defined as a skilled or intermediate nursing facility, ICF/MR or licensed personal care facility.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1426 HOMEMAKER SERVICES, REQUIREMENTS Subsection (1) remains the same.

~~(2)--Homemaker-services-may-be--provided-only--by-a--provider-that:~~

~~(a)--is-an--organized--community--program--operated--by-a nonprofit-corporation-or-governmental-entity-(with--offices-in the-community)-and--which-is-able--to-readily-provide-services in-the-community;-and~~

~~(b)--provides--training--for-and--supervision-of-the-home attendant;~~

(~~3~~2) Homemakers ~~attendants~~ must be:

(a) physically and mentally able to perform the duties required; and

~~(b)--able-to-work-under-supervision;~~

~~(c)--trained-in-home-management-and-care-of-disabled--and elderly-persons;-and~~

(~~d~~b) literate and able to follow written orders.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1427 HOMEMAKER SERVICES, REIMBURSEMENT

(1) Reimbursement for homemaker services not paid through other federal, state or locally funded programs shall be the ~~lowest~~ lower of the following:

~~(a)--the--amount-paid--through--other--federal;--state-or county-funded-programs;~~

(~~b~~a) the provider's usual and customary charges (billed charges); or

(~~c~~b) rates negotiated by the department or its designee.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1428 PERSONAL CARE ATTENDANT SERVICES, DEFINITIONS Subsections (1) and (2) remain the same.

(3) Place of residence includes a person's own home, foster home or a community home for the developmentally disabled, except that personal care attendant services may not include homemaker services when the person resides in a

community home for the developmentally disabled. Place of residence does not include a hospital, ~~or long-term care~~ skilled or intermediate nursing facility, ~~as defined in 50-5-101(20), MCA.~~ ICF/MR or licensed personal care facility.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1429 PERSONAL CARE ATTENDANT SERVICES, REQUIREMENTS (1) The requirements for personal care attendant services are as found in ARM 46.12.556, except that when a personal care attendant also provides homemaker services the attendant must ~~also be trained in home management.~~ meet the requirements in ARM 46.12.1426.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1430 PERSONAL CARE ATTENDANT SERVICES, REIMBURSEMENT (1) Reimbursement for personal care attendant services shall be as provided in ARM 46.12.557, even when personal care attendant services includes the provision of homemaker services.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1431 ADULT DAY CARE SERVICES, DEFINITIONS (1) Adult day care services include ~~provision~~ providing for the health, social and habilitation needs of a person ~~that are offered under the home and community based services program~~ in settings outside the person's place of residence for periods of four or more hours daily. ~~but~~ Adult day care services do not include residential overnight services.

(a) ~~Sheltered employment and similar forms of direct training for employment of persons are not adult day care services for the purposes of the home and community based services program and therefore will not be funded under medicaid.~~ If the center provides personal care related to health needs such as bathing or nail cutting, those services must be supervised by a registered nurse.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1432 ADULT DAY CARE SERVICES, REQUIREMENTS (1) To be eligible to receive reimbursement under the home and community-based services program: ~~the adult day care provider~~

~~must meet:~~

(a) Adult day care providers serving the elderly and physically disabled must be licensed by the department of health and environmental sciences as provided in ARM 16.32.356 and 16.32.357.

(~~a~~b) ~~for~~ Adult day care providers serving developmentally disabled persons~~,~~ must meet the minimum standards as provided ~~for~~ in ARM ~~46.8.110,~~ 46.8.901.

~~(b) for physically disabled persons, the minimum standards as provided for in ARM 46.6.603 or 46.8.110; and~~

~~(c) for elderly persons, the minimum standards as provided for in ARM 46.12.1434.~~

(2) Facility records must be current and contain specific information about the medical condition of the recipient.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1433 ADULT DAY CARE SERVICES, REIMBURSEMENT (1) Reimbursement for adult day services not paid through other federal, state or locally funded programs shall be the ~~lowest~~ lower of the following:

(a) the provider's usual and customary charges (billed charges); or

(b) rates negotiated with providers by the department or its designee.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1435 HABILITATION SERVICES, DEFINITION Subsections (1) through (2)(c) remain the same.

(3) Habilitation services for physically disabled persons ~~will~~ may be delivered in ~~the following settings:~~

~~(a)~~ natural, ~~and~~ foster and group homes.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1436 HABILITATION SERVICES, REQUIREMENTS (1) A provider of habilitation services for developmentally disabled persons will meet the requirements as provided for in ARM ~~46.8.110~~ 46.8.901.

(2) A provider of habilitation services for the physically disabled ~~will~~ may be ~~either a licensed occupational therapist or a qualified independent living counselor.~~ any of the following:

(a) trainer;

(b) physical therapist;

(c) occupational therapist;
(d) speech pathologist;
(e) audiologist; or
(f) psychologist.
(3) All professional providers of rehabilitation services must meet all professional and other licensing and certification requirements otherwise provided in this sub-chapter.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1439 RESPITE CARE, REQUIREMENTS (1) A skilled nursing facility, an intermediate care facility, or an intermediate care facility for the mentally retarded which provides respite care to a recipient of the home and community-~~based~~ services program must meet the requirements of ARM 46.12.1101(1)(a).

(2) Persons who provide respite care to a recipient of home and community-~~based~~ services must be determined by the case manager ~~or case management team~~ to be:

Subsections (2)(a) and (2)(b) remain the same.

(3) Persons who provide respite care to a recipient of home and community-~~based~~ services may be required by the case manager ~~or case management team~~ to have the following when the recipient's needs so warrant:

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

(4) Respite care available to a recipient is limited to 25 days in a ~~calendar~~ fiscal year; however, the department may, within its discretion, authorize further specified hours of respite care in excess of this limit. Additional respite care must be prior authorized by the department.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1440 RESPITE CARE, REIMBURSEMENT Subsection (1) remains the same.

(2) Respite care ~~provided by an individual provider~~ not paid through other federal, state, or locally funded programs shall be reimbursed at the lowest of the following:

~~(a) the amount paid through other federal, state or county funded programs;~~

(ba) the provider's usual and customary charges (billed charges);

(eb) rates negotiated with providers by the department or its designee; or

(dc) the ~~statewide average payment~~ facility per diem rate ~~for the applicable level of care, as determined in accordance with ARM 46.12.1411, had~~ when respite care been is

provided ~~in a nursing home~~ by a skilled or intermediate nursing facility or an ICF/MR.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1451 MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, REQUIREMENTS (1) Any medical alert device must be:

~~(a) underwriters laboratory approved; and~~

(ba) connected ~~with~~ to a local emergency response system ~~operated by a hospital, home health agency or physician~~. with the capacity to activate emergency medical personnel.

Subsection (2) remains the same.

(3) Reimbursement is not available for the purchase, installation or routine monthly charges of a telephone.

(4) The cost of environmental modifications cannot exceed $4,000; however, the department may, within its discretion, authorize an exception to this limit. Any exception must be prior authorized by the department.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1452 MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, REIMBURSEMENT (1) Reimbursement for medical alert and monitoring/environmental modifications not provided by other federal, state or locally funded programs shall be the ~~lowest~~ lower of the following:

(a) the provider's usual and customary (billed) charges ~~(billed charges)~~; or

(b) rates negotiated with providers by ~~case management teams~~, the department or its designee.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1454 TRANSPORTATION SERVICES, REQUIREMENTS

Subsection (1) remains the same.

(2) A common carrier must provide proof of:

(a) a valid Montana driver's license;

(b) ~~appropriate~~ adequate automobile insurance ~~($100,000 per person, bodily injury, $500,000 per accident, bodily injury, $100,000 property damage, per accident)~~; and

(c) assurance of vehicle compliance with all applicable federal, state and local laws and regulations.; ~~and~~

~~(d) written accident and road emergency procedures, as provided by the department, in vehicle.~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

46.12.1455 TRANSPORTATION SERVICES, REIMBURSEMENT

(1) Reimbursement for transportation not provided through other federal, state or locally funded programs shall be the lowest of the following:

(a) the amount specified in ARM 46.12.1005;

~~(b) the amount paid through other federal, state or county funded programs;~~

(eb) the provider's usual and customary charges (billed charges); or

(dc) rates negotiated with providers by the department or its designee.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1457 NUTRITION SERVICES, REQUIREMENTS

(1) ~~Nutrition services requirements are as provided in ARM 46.4.303, 46.4.304, 46.4.305 and 46.4.306.~~ The congregate or home delivered meal services are as provided in ARM 46.4.303 through 46.4.306.

(2) A full nutritional regimen of three meals a day may not be provided through congregate or home delivered meals.

~~(a) A full nutritional regimen means three meals a day.~~

~~(3) Home delivered meals may be provided only on weekends, except that meals may be provided on week days when prior authorized by the department.~~

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1458 NUTRITION SERVICES, REIMBURSEMENT

(1) Reimbursement for ~~nutrition services shall be the lowest of the following.~~ congregate or home delivered meal services not paid through other federal, state or locally funded programs shall be the lower of the following:

~~(a) the amount paid through other federal, state or county funded programs;~~

(ba) the provider's usual and customary charges (billed charges); or

(eb) rates negotiated with providers by the department or its designee.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

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

RULE I PSYCHOLOGICAL SERVICES, DEFINITION

(1) Psychological services are defined as provided in ARM 46.12.580 with the following additions:

(a) Psychological services may only be provided for disabled persons for habilitative purposes.

(b) Psychological services also include consultation with providers and caregivers directly involved with the recipient and development and monitoring of behavior programs.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE II PSYCHOLOGICAL SERVICES, REQUIREMENT

(1) Requirements for psychological services are defined as provided in ARM 46.12.581.

(2) Psychological services as defined in rule I(1)(b) are limited to six hourly visits or the equivalent per fiscal year; however, the department may within its discretion authorize further specified hours of psychological services in excess of this limit. Any services in excess of this limit must be prior authorized by the department.

(3) When the psychologist consults with a provider or caregiver as part of the recipient's treatment, the consultation time shall be billed to medicaid under the recipient's name. The provider shall indicate on the claim that the recipient is the patient and state the recipient's diagnosis. He shall also indicate consultation was with a provider or caregiver.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE III PSYCHOLOGICAL SERVICES, REIMBURSEMENT

Reimbursement for psychological services is provided for in ARM 46.12.582(1) and (2).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE IV NURSING SERVICES, DEFINITION Nursing services are medically necessary services provided to recipients who require nursing care that is not available from a home health agency.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE V NURSING SERVICES, REQUIREMENTS

(1) Nursing services must be provided by a registered nurse or licensed practical nurse. Persons providing nursing services must meet the licensure and certification

requirements provided in ARM 8.32.401 et seq.

(2) Nursing services must be provided to a person in his own home. Nursing services shall not be provided to a person residing in a hospital, skilled or intermediate nursing care facility or intermediate care facility for the mentally retarded, or licensed personal care facility.

(3) Nursing services can be provided only when home health agency services as provided in ARM 46.12.550 are not available.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE VI NURSING SERVICES, REIMBURSEMENT

(1) Reimbursement for nursing services not paid through other federal, state or locally funded programs shall be the lower of the following:

(a) the provider's usual and customary (billed) charges; or

(b) rates negotiated by the department or its designee.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE VII RESPIRATORY THERAPY SERVICES, DEFINITION

Respiratory therapy services include direct treatment, on-going assessment of medical condition, equipment monitoring and upkeep, pulmonary education and rehabilitation.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE VIII RESPIRATORY THERAPY SERVICES, REQUIREMENTS

(1) Respiratory therapy services must be provided by a registered respiratory therapist as defined by the national board for respiratory care.

(2) A certified respiratory technician, as defined by the national board for respiratory care, may assist under the direct supervision of a registered respiratory therapist or physician who is responsible for and participates in the recipient's treatment program.

(3) Respiratory therapy services are limited to recipients who would be institutionalized without respiratory care.

(4) Respiratory therapy services are limited to a maximum of 24 visits per fiscal year; however, the department may within its discretion authorize further specified hours of respiratory therapy services in excess of this limit. Any services exceeding this limit must be prior authorized by the department.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE IX RESPIRATORY THERAPY SERVICES, REIMBURSEMENT (1) Reimbursement for respiratory therapy services not paid through other federal, state or locally funded programs shall be the lower of the following:

(a) the provider's usual and customary (billed) charges; or

(b) $25 per hour.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE X DIETICIAN SERVICES, DEFINITION (1) Dietician services mean services related to the nutritional needs of and management for the recipient.

(2) Dietician services include nutrition evaluation and consultation, therapy, education and research.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE XI DIETICIAN SERVICES, REQUIREMENTS (1) Dietician services must be provided by a registered dietician. Persons providing dietician services must meet the qualifications in section 37-21-302 MCA.

(2) Dietician services are limited to recipients who have a medically restricted diet or who do not eat appropriately to maintain health.

(3) Dietician services are limited to a maximum of 12 hours per fiscal year.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

RULE XII DIETICIAN SERVICES, REIMBURSEMENT (1) Reimbursement for dietician services not paid through other federal, state or locally funded programs shall be the lower of the following:

(a) the provider's usual and customary (billed) charges; or

(b) $25 per hour.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

5. The rules are proposed to be amended to conform with recent federal approval to provide new waiver services and cover new service areas. The rules will allow individuals eligible for home and community services to receive dietician, respiratory therapy, psychological and nursing services. These services will enable individuals to live in their homes or in the community rather than be institutionalized. The

adult day care program criteria was repealed since all participating adult day care facilities must be licensed by the Montana Department of Health and Environmental Sciences. The projected cost of providing the new waiver services is approximately $200,000 in FY 87 of which $68,000 is state general fund. The cost of providing institutional services to this at-risk population would far exceed the waiver service cost. Copies of this notice can be obtained at human services offices in Montana.

6. 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 December 12, 1986.

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

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 31, 1986.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF THE ADOPTION OF
of Rules 2.13.201 through) RULES
2.13.205 relating to emer-)
gency telephone service)

TO: All Interested Persons:

1. On September 25, 1986, the Department of Administration published notice of a proposed adoption of rules concerning emergency telephone service at pages 1523-1531 of the 1986 Montana Administrative Register, issue number 18.

2. In order to effectively establish a statewide emergency telephone system and implement the statutes, the department proposed rules. These rules are reasonably necessary for the guidance of participating entities.

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

2.13.201 PURPOSE (1) It is the policy and intent of the state of Montana to establish a statewide emergency telephone system which will provide access to all emergency public and private safety services from all telephones in the state through the use of the nationally recognized emergency telephone number 9-1-1. It is the purpose of these rules to provide an administrative framework for the accomplishment of this policy.

(2) These rules have been prepared by the department of administration with the concurrence of the department of administration's advisory council on 9-1-1.

(3) It is the intent of these rules to provide the greatest degree of flexibility for local jurisdictions, public safety agencies, and private safety agencies and citizens to plan, design, install, operate and maintain and improve local emergency telephone systems based upon the individual needs and requirements at the local level.

(4) It is the intent of these rules that all local emergency telephone systems provide at least minimum 9-1-1 service.

AUTH: 10-4-102 , MCA; IMP: 10-4-101 through 10-4-303, MCA.

2.13.202 DEFINITIONS ~~(1) "Account" means the 9-1-1 emergency telecommunications account established in 10-4-301, MCA.~~

~~(2)~~ (1) "Central office boundary" is the smallest subdivision in a telephone system which is defined by the extent of central office physical telephone service coverage and/or electronic software defined coverage.

~~(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10, MCA.~~

~~(4) "Direct dispatch method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.~~

~~(5) "Emergency" means any event that requires dispatch of a public or private safety agency.~~

~~(6) "Emergency services" means services provided by any public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.~~

~~(7) "Exchange access services" means:~~

~~(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and~~

~~(b) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in subsection (7)(a).~~

~~(8) "Local government" means any city, county, or political subdivision of the state and its agencies.~~

~~(9) "Minimum 9-1-1 service" means a telephone service meeting the standards established in 10-4-102, MCA that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.~~

~~(10) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.~~

~~(11) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.~~

~~(12) "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.~~

~~(13) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.~~

~~(14) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and which may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.~~

~~(15) "Relay method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes that pertinent information from the caller and relays such information to the~~

~~appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.~~

~~(16) "Subscriber" means an end user who receives telephone exchange access services.~~

~~(17) "Transfer method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers such a request to an appropriate public safety answering agency or other provider of emergency services.~~

AUTH: 10-4-102, MCA; IMP: 10-4-101, MCA.

2.13.203 DEPARTMENT OF ADMINISTRATION DUTIES AND POWERS (1) The department shall assist in the development of 9-1-1 systems in the state. The department shall:

(a) prescribe and publish preliminary and final planning forms with instructions to be filed by 9-1-1 jurisdictions with the department which will describe proposed 9-1-1 systems in a level of detail which will identify compliance with and variations from minimum 9-1-1 service. The department will amend the planning forms at its discretion in order to ensure the filing by 9-1-1 jurisdictions of all needed information;

(b) upon request of a 9-1-1 jurisdiction, assist in planning an emergency 9-1-1 telephone system. The level and amount of assistance provided shall be based upon the department's staffing and scheduling availability, based upon the department's determination. Requests for assistance are to be directed in writing to the Chief, Telecommunications Bureau, Information Services Division, Department of Administration, Capitol Station, Helena, MT 59620;

(c) establish criteria and procedures for evaluating plans to ensure 9-1-1 telephone systems will provide minimum 9-1-1 service;

(d) monitor the implementation of approved plans for compliance with the plan and the use of funding. The department may schedule on-site visits of planned or implemented 9-1-1 telephone systems for the purpose of determining compliance with approved plans and the use of funding, and may prescribe information to be filed by 9-1-1 jurisdictions with the department to verify compliance with approved plans and the use of funding;

(e) report biennially to the Legislature the progress made in implementing a statewide emergency telephone system in a form prescribed by the department or requested by the Legislature.

(2) The department shall establish an advisory council to participate in the development and implementation of the 9-1-1 program in the state. The council shall be established pursuant to 2-15-122, MCA. The council shall be appointed for a one year term and, at the end of one year, may be reappointed in full, replaced in full or in part or terminated at the discretion of the director of the department.

AUTH: 10-4-102, MCA; IMP: 10-4-103, 10-4-104, MCA.

~~RULE IV EMERGENCY TELEPHONE SYSTEM REQUIREMENTS (1) Every public and private safety agency in this state may establish or participate in an emergency telephone system.~~

~~(2) An emergency telephone system must include:~~

~~(a) a 24-hour communications facility automatically accessible anywhere in the 9-1-1 jurisdiction's service area by dialing 9-1-1;~~

~~(b) direct dispatch of public and private safety services in the 9-1-1 jurisdiction or relay or transfer of 9-1-1 calls to an appropriate public or private safety agency; and~~

~~(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office.~~

~~(3) The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number.~~

~~AUTH: 10-4-102, MCA; IMP: 10-4-103, 10-4-104, MCA.~~

RULE V 2.13.204 PARTICIPATION BY PUBLIC AND PRIVATE SAFETY AGENCIES (1) 9-1-1 jurisdictions must include all legally constituted public and private safety agencies which operate within or are affected by one or more common central office boundaries.

(2) Public and private safety agencies wishing to jointly plan a 9-1-1 emergency telephone system must agree in writing in order to become a 9-1-1 jurisdiction. Such written agreement must be filed by the proposed 9-1-1 jurisdiction at the time of filing preliminary plans and final plans in a form prescribed by the department.

~~(3) Public or private safety agencies sharing common boundaries may enter into agreements which provide that an emergency unit dispatched by an emergency telephone system established in accordance with 10-4-103, MCA must render emergency services without regard to jurisdictional boundaries.~~

~~(4) A public safety agency with jurisdictional responsibilities must in all cases be notified by the public safety answering point of a request for service in the agency's jurisdiction.~~

AUTH: 10-4-102, MCA; IMP: 10-4-104, 10-4-113, MCA.

~~RULE VI SUBMISSION OF PRELIMINARY PLANS (1) A 9-1-1 jurisdiction may submit a preliminary plan, in a form prescribed by the department, for establishing an emergency telephone system in accordance with 10-4-103, MCA to:~~

~~(a) public and private safety agencies in the 9-1-1 jurisdiction;~~

~~(b) the department; and~~

~~(c) providers of telephone service in the 9-1-1 jurisdiction's service area.~~

~~(2) The department shall review the preliminary plan for compliance with 10-4-103, MCA and rules adopted pursuant to~~

~~10-4-102, MCA and report its approval or disapproval to the 9-1-1 jurisdiction within 90 days of receipt of the plan.~~

~~(3) A provider of telephone service in the 9-1-1 jurisdiction's service area shall, within 90 days of receipt of the plan, provide the 9-1-1 jurisdiction with a good faith estimate of the cost to the 9-1-1 jurisdiction for implementing the plan.~~

~~AUTH: 10-4-102, MCA; IMP: 10-4-111, MCA.~~

~~RULE VII SUBMISSION AND APPROVAL OF FINAL PLANS (1) A 9-1-1 jurisdiction shall submit a proposed final plan, in a form prescribed by the department, for establishing an emergency telephone system pursuant to 10-4-103, MCA within one year from receipt of the department's approval of its preliminary plan to:~~

~~(a) public and private safety agencies in the 9-1-1 jurisdiction;~~

~~(b) the department; and~~

~~(c) providers of telephone service in the 9-1-1 jurisdiction's service area.~~

~~(2) In addition to other matters required by 10-4-103, MCA, the final plan must include a description of all capital and recurring costs for the proposed emergency 9-1-1 telephone system.~~

~~(3) The department shall determine whether the final plan complies with 10-4-103, MCA and rules adopted pursuant to 10-4-102, MCA. Subject to 10-4-113, MCA, if the department determines that the plan complies, it shall approve the plan, or if the department determines that the plan does not comply, it shall disapprove the plan. The department shall inform the 9-1-1 jurisdiction of its decision within 180 days of receipt of the plan. In any statement approving a final plan, the department shall indicate a timetable in which the provider shall undertake necessary telephone system conversions. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system.~~

~~AUTH: 10-4-102, MCA; IMP: 10-4-112, MCA.~~

~~RULE VIII 2.13.205 DISTRIBUTION OF EMERGENCY TELECOMMUNICATIONS ACCOUNT (1) The department shall make quarterly distribution of the emergency telecommunications account, established in the state special revenue fund in the state treasury, beginning on April 1, 1987. Distribution shall be made for the following:~~

~~(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out its responsibilities. The amount paid may not exceed 1% of the account on the date of distribution or actual expenses incurred, whichever is less.~~ (1) The department of revenue shall submit an itemized statement of actual expenses incurred during each calendar quarter to the department within 30 days following the end of each calendar quarter. If such a statement is not received by the department within 30 days following the end of the quarter the department shall not

distribute any of the account to the department of revenue for that calendar quarter;

~~(b)~~ (2) Administrative costs incurred during the preceding calendar quarter by the department in carrying out its responsibilities. The amount paid may not exceed 7% of the account on the date of distribution or actual expenses incurred, whichever is less. The department shall prepare an itemized statement of actual expenses incurred during each calendar quarter within 30 days following the end of each calendar quarter. If such a statement is not prepared by the department within 30 days following the end of the quarter the department shall not receive any of the account for that calendar quarter;

~~(c) Costs incurred during the preceeding calendar quarter by each provider of telephone service in the state for:~~

~~(i) collection of the fee imposed by 10-4-201, MCA;~~

~~(ii) modification of central office switching and trunking equipment for emergency telephone service only; and~~

~~(iii) conversion of pay station telephones required by 10-4-121, MCA.~~

~~(2) Payments under subsection (1)(c) shall be made only after application by the provider to the department in a form prescribed by the department, for costs incurred in subsection (1)(c).~~ (3) Applications for payments ~~under subsection (1)(c)~~ for costs incurred by providers of telephone services must be received by the department within 30 days following the end of each calendar quarter.

(a) If an application by a provider is not received by the department within 30 days following the end of the calendar quarter the department shall not distribute any of the account to that provider for that calendar quarter.

(b) All applications received by the department ~~relevant to subsection (1)(c)~~ shall be reviewed in detail by the department for appropriateness of costs claimed by providers. Such detailed review may include, but is not limited to, review of an application by one provider in comparison to other similar applications by other providers, review of associated paid invoices, time records and contracts and on site reviews by the department and its employees and consultants of completed work supported in an application. ~~Such detailed reviews may be made to verify costs for subsections (1)(c)(i), (1)(c)(ii) and (1)(c)(iii) individually or collectively. If the provider contests the review, payment may not be made until the amount owed to the provider is made certain by the department.~~

~~(3)~~ (4) All amounts ~~under subsection (1) and (2)~~ verified shall be paid within 60 days following the end of each calendar quarter. Payments which are still under review at the expiration of the 60 days may be distributed from the next calendar quarterly receipts of the account if, within 60 days following the end of the next calendar quarter, the amount owed to the provider is made certain.

~~(4)~~ (5) ~~After all amounts under subsection (1), (2) and (3) have been paid~~ The department shall, within 10 days, distribute the balance of the account into separate accounts

for the cities and counties utilizing the following information and in the following manner:

(a) the department shall obtain the most recent per capita census data for incorporated cities and counties in the state from the department of commerce, census and economic information center;

(b) the department shall compute the per capita percentage each county represents to the entire state population based upon the census data. Any county whose per capita percentage is less than 1% of the entire state population shall automatically have its percentage increased to equal 1%. Each county's percentage shall then be recomputed to adjust for the counties whose per capita percentage was originally less than 1%. The county per capita percentages shall total 100%;

(c) the department shall compute the quarterly allocation amount for each county based upon the percentages computed in subsection ~~(4)~~(5)(b) applied against the balance of the account;

(d) the department shall compute the per capita percentage each incorporated city represents to its county population based upon the census data obtained in ~~(4)~~(5)(a). The balance of each county's population shall be computed to be each county's per capita percentage for its remaining population. The total of each county's incorporated city per capita percentage(s) and its remaining per capita percentage shall equal 100%;

(e) the department shall compute the quarterly distribution amount for each incorporated city and each county based upon the percentages computed in subsection ~~(4)~~(5)(d) applied against each county's quarterly allocation amount computed in subsection ~~(4)~~(5)(c);

(f) the department shall compute the quarterly distribution amount for each 9-1-1 jurisdiction. This shall be based upon the per capita percentage that each 9-1-1 jurisdiction's service area is in relation to the incorporated city(s) and the remaining county(s) area served by each 9-1-1 jurisdiction.

(g) each incorporated city with 9-1-1 jurisdictions with an approved final plan shall receive the quarterly distribution amount for each 9-1-1 jurisdiction. Each county with 9-1-1 jurisdictions with an approved final plan shall receive the quarterly distribution amount for each 9-1-1 jurisdiction. Quarterly distributions for each city and county without approved final plans shall be distributed into separate accounts within the state treasury for each city and county. Such amounts shall be retained in the separate accounts within the state treasury until a final plan is approved, at which time the accrued balance for a 9-1-1 jurisdiction, with interest, shall be distributed to the city or county with the next quarterly distribution;

(h) cities and counties shall distribute the amounts received under ~~(4)~~(5)(e) to 9-1-1 jurisdictions within their jurisdiction who ~~have~~ an approved final plan. The department shall provide a statement with each city and county distribution indicating which 9-1-1 jurisdictions in their

jurisdiction have an approved final plan. A 9-1-1 jurisdiction with an approved final plan whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from each city or county involved. Cities and counties are to distribute monies to 9-1-1 jurisdictions with an approved final plan whose 9-1-1 service area includes multiple local jurisdictions on a per capita basis.

AUTH: 10-4-102, MCA; IMP: 10-4-121, 10-4-301, 10-4-302, MCA.

RULE IX LIMITATIONS ON USE OF FUNDS ~~(1) Money received under Rule VIII, subsection (4)(g) and (h) may be used only to pay for installing, operating and improving an emergency telephone system using 9-1-1. Direct expert or consultant contracts necessary for directly planning, designing, developing and installing an emergency telephone system using 9-1-1 are considered bona fide expenses.~~

~~(2) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved final plan or is not using funds in the manner described in subsection (1), the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The 9-1-1 jurisdiction is not eligible to receive funds until such time as the department determines that the 9-1-1 jurisdiction is complying with the approved final plan and fund limitations.~~

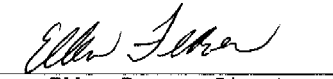
~~(3) Money not necessary for immediate use may be invested by the city or county. The income from the investments shall be used only for the purposes described in subsection (1).~~

~~AUTH: 10-4-102, MCA, IMP: 10-4-303, MCA.~~

4. An attorney from the Legislative Council commented on the necessity of eliminating reiteration of statutory language. The department has revised the rules to accommodate this suggestion. No other comments or testimony were received.

5. The authority for the rules is 10-4-102 MCA and rules implement 10-4-101 through 303.

Department of Administration

By 
Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State November 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTURITRY

In the matter of the amendments of 8.17.404 concerning examinations, 8.17.501 concerning fees and 8.17.702 concerning renewals	NOTICE OF AMENDMENTS OF 8.17.404 EXAMINATION, 8.17.501 FEE SCHEDULE AND 8.17.702 RENEWAL-CONTINUING EDUCATION

TO: All Interested Persons:

1. On September 25, 1986, the Board of Denturitry published a notice of amendments of the above-stated rules at page 1532, 1986 Montana Administrative Register, issue number 18.

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

3. No comments or testimony were received.

BOARD OF DENTURITRY
BRENT KANDARIAN, PRESIDENT

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

Certified to the Secretary of State, November 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PRIVATE SECURITY PATROLMEN AND INVESTIGATORS

In the matter of the amendments of 8.50.431 concerning insurance requirements and 8.50.437 concerning fees	)))	NOTICE OF AMENDMENTS OF 8.50.431 INSURANCE REQUIREMENTS AND 8.50.437 FEE SCHEDULE

TO: All Interested Persons:

1. On September 11, 1986, the Board of Private Security Patrolmen and Investigators published a notice of amendments of the above-stated rules at page 1488, 1986 Montana Administrative Register, issue number 17.

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

3. No comments or testimony were received.

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS
CLAYTON BAIN, CHAIRMAN

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

Certified to the Secretary of State, November 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the amendments of 8.56.409 concerning fees and 8.56.607 concerning permit fees	NOTICE OF AMENDMENTS OF 8.56.409 FEES SCHEDULE AND 8.56.607 PERMIT FEES

TO: All Interested Persons:

1. On September 11, 1986, the Board of Radiologic Technologists published a notice of amendments of the above-stated rules at page 1490, 1986 Montana Administrative Register, issue number 17.

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

3. No comments or testimony were received.

BOARD OF RADIOLOGIC
TECHNOLOGISTS
LON ROMINGER, CHAIRMAN

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

Certified to the Secretary of State, November 3, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE HARD-ROCK MINING IMPACT BOARD

In the matter of the amendment of 8.104.203 concerning the format of a plan, 8.104.207 concerning the contents of an objection to a plan, and 8.104.211 concerning implementation of an approved impact plan, and the adoption of new rules concerning definitions, waiving impact plan requirements, modifying plans, financial guarantee of tax prepayments, evidence of the provision of services by local government units, and the contents of petitions for plan amendments	NOTICE OF CORRECTION

TO: All Interested Persons.

1. The Hard-Rock Mining Impact Board's notice of amendment and adoption regarding the above-stated rules, published at page 1826, 1986 Montana Administrative Register, issue number 20, contained a discrepancy as to the numbers which have been assigned to the Board's new rules.

2. The introductory language of paragraph "4." of the notice is hereby corrected as follows to correspond to the numbers specified in the notice's caption: (new matter underlined, deleted matter interlined)

"4. The Board has amended rules 8.104.203, 8.104.207 and 8.104.211 and has adopted rules 8.104.211A, 8.104.213, 8.104.214, ~~8.104.215,~~ 8.104.216, and 8.104.217, ~~and 8.104.218~~ exactly as proposed. . ."

3. The correction described by paragraph 2 (above) does not affect the text of the rules adopted by the Board.

HARD-ROCK MINING IMPACT BOARD
KEOHLER STOUT, CHAIRMAN

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

Certified to the Secretary of State, November 3, 1986.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 10.55.204, Principal) NOTICE OF AMENDMENT OF ARM 10.55.204, PRINCIPAL

TO: All Interested Persons

1. On August 14, 1986, the Board of Public Education published notice of a proposed amendment concerning Principal on page 1360 of the 1986 Montana Administrative Register, Issue number 15.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held September 15, 1986, one person testified as a proponent and no written comments were received prior to September 12, 1986, the date on which the Board closed the hearing record.

In the matter of the adoption of ARM 10.55.303, Teaching Assignments) NOTICE OF AMENDMENT OF ARM 10.55.303, TEACHING ASSIGNMENTS

TO: All Interested Persons

1. On August 14, 1986, the Board of Public Education published notice of a proposed amendment concerning Teaching Assignments on page 1362 of the 1986 Montana Administrative Register, issue number 15.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held September 15, 1986, 2 persons testified as proponents and 1 person testified as an opponent. Three written comments, two proponents and one opponent, were received prior to September 12, 1986, the date on which the Board closed the hearing record.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Clarabelle Morton

Certified to the Secretary of State November 3, 1986.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 10.57.301, Endorsement Information	)))	NOTICE OF AMENDMENT OF ARM 10.57.301, ENDORSEMENT INFORMATION

TO: All Interested Persons

1. On August 14, 1986, the Board of Public Education published notice of a proposed amendment concerning Endorsement Information on page 1363 of the 1986 Montana Administrative Register, issue number 15.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held September 15, 1986, no persons testified and no written comments were received prior to September 12, 1986, the date on which the board closed the hearing.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State November 3, 1986.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 10.58.511, Foreign Languages	)))	NOTICE OF AMENDMENT OF ARM 10.58.511, FOREIGN LANGUAGES

TO: All Interested Persons

1. On August 14, 1986, the Board of Public Education published notice of a proposed amendment concerning Foreign Languages on page 1364 of the 1986 Montana Administrative Register, issue number 15.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held September 12, 1986, no persons testified and no written comments were received prior to September 12, 1986, the date on which the Board closed the hearing record.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State November 3, 1986.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule ARM 24.29.702 Regarding Self-Insurers	))))	NOTICE OF AMENDMENT AND ADOPTION OF RULES REGARDING SELF-INSURERS

TO: All Interested Persons.

1. On July 31, 1986, the Division of Workers' Compensation published Notice of Public Hearing on the proposed amendment of rule ARM 24.29.702 regarding self-insurers under Sections 39-71-2109, MCA, at page 1273 of the 1986 Montana Administrative Register. The notice advised that a hearing would be held on the proposed rule on August 20, 1986, at 10:00 a.m. in the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana.

2. On August 20, 1986, at 10:00 a.m., a public hearing was held in the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the amendment of the rule as proposed.

*3. On the recommendation of the Secretary of State, the rule has been divided so the main subsections are separate rules. Punctuation changes which do not alter the substance of the rule have also been made on advice of the Secretary of State and will be printed in the replacement pages of the Administrative Rules of Montana. The Division amends and adopts the proposed rules as follows:

24.29.702 Same as (1) in proposed rule.
24.29.702A Same as (2) in proposed rule.
24.29.702B Same as (3) in proposed rule.
24.29.702C Same as (4) in proposed rule.
24.29.702D Same as (5) in proposed rule.
24.29.702E ~~(6)~~ Excess Insurance: Specific excess and aggregate excess insurance shall be required of all employers and groups of employers electing coverage under plan no. 1 as a proof of financial ability to pay compensation benefits and other liabilities. The contract or policy of specific excess insurance and aggregate excess insurance shall comply with all of the following:

(a) Is issued by a carrier licensed in the United States with a Best's Rating of A+, A or B+. EXCESS COVERAGE ISSUED BY A CARRIER NOT RATED BY BEST'S WILL BE CONSIDERED FOR APPROVAL IN THE DISCRETION OF THE DIVISION.

(b) through (f) Same as in proposed rule.

24.29.702F Same as (7) in proposed rule.

24.29.702G Same as (8) in proposed rule.

24.29.702H Same as (9) in proposed rule.

24.29.702I ~~(3)[10]~~ Renewal Required: An employer or group of employers who has effectively elected to be bound by plan no. 1 may renew the election for the next ensuing fiscal year, by meeting all the requirements of sections (1) & (2) of this rule at least 30 days before the expiration of the state's fiscal by April 30th each year. If an employer or group of employers does not renew its election, ~~it~~ THE EMPLOYER OR INDIVIDUAL EMPLOYER OF A GROUP must elect to be bound by compensation plan no. 2 or plan no. 3.

24.29.702J Same as (11) in proposed rule.

24.29.702K Same as (12) in proposed rule.

24.29.702L ~~(4)(13)~~ SUSPENSION AND REVOCATION OF PERMISSION. The division will revoke its order granting permission to carry on business as a self-insurer after determining that the employer or group of employers no longer has the necessary ~~finances~~ financial resources and ability to pay the compensation, benefits and all liabilities which have been or are reasonably likely to be incurred during the period the employer or group of employers has been a self-insurer and through the remaining fiscal year. The division may suspend the permission to operate as a self-insurer on good cause shown pending a hearing and decision on whether the permission should be revoked. The division's revocation order is not effective unless contested case procedures have been conducted in accordance with ARM 24.29.207. An employer or INDIVIDUAL EMPLOYERS OF A group of employers whose permission to carry on business as a self-insurer has been revoked must elect to be bound by compensation plan no. 2 or plan no. 3 on the effective date of such revocation.

24.29.702M ~~(14)~~ TERMINATION BY SELF INSURER Any employer or group of employers operating as a self-insurer under plan no. 1 which terminates its self-insurer status, or the self-insurer status of any or all of its subsidiaries, or members, for any reason, must notify the division in writing of its intent to terminate twenty (20) days before such termination. An employer, or INDIVIDUAL EMPLOYERS OF A group of employers, who terminates as a self-insurer, but continues to operate in business must elect to be bound by compensation plan no. 2 or plan no. 3 on the effective date of such termination.

24.29.702N ~~(5)(15)~~ REVIEW PROCESS If an employer or group of employers seeking election to be bound by plan no. 1 under this rule does not agree with the division's decision, ~~he~~ it may request an administrative review in accordance with ARM 24.29.206. If the employer or group of employers does not agree with the division's decision after completion of administrative review procedures, ~~he~~

it may request contested case procedures in accordance with ARM 24.29.207.

4. Sections 39-71-403, MCA, and 39-71-2101 to 39-71-2109, MCA, as amended by Chapter 480 of the Laws of 1985 require the division to establish rules by which individual employers and groups of individual employers may be certified as self-insured under plan no. 1 of the Workers' Compensation Act. These rules are necessary in order to provide procedures and guidelines by which the financial ability of employers to meet the obligations under the Workers' Compensation Act can be assessed for the purpose of determining whether they should be certified as self-insurers.

5. The Division has thoroughly considered all comments received on the proposed rule. Following is a summary of the comments received from the public and the Division's responses:

a. **COMMENT:** Audited financial statements are too costly for each individual employer in a group; a feasibility study of the group's plan should be adequate for the division's review.

RESPONSE: Audited financial statements are necessary to obtain guaranteed accurate information on the financial solvency and ability to pay benefits of the employers in a group. A feasibility study would not provide the same information, as it would indicate future plans rather than the present financial position. Feasibility studies would not be available with consistent and reliable data.

b. **COMMENT:** The requirements of the employer being in business at least five years and having at least 100 employees are not relevant criteria to determine financial stability.

RESPONSE: These factors are relevant indicators of basic stability and financial depth of the applicant.

c. **COMMENT:** It will be difficult for the units of a holding company to establish themselves as engaged in similar businesses as required by (1).

RESPONSE: A holding company can apply as one entity, so the individual units would not have to meet this requirement.

d. **COMMENT:** The rule should specify the criteria for comparison of similar trades, businesses, occupations, professions, or functions.

RESPONSE: This function may be reasonably accomplished within the discretion of the division according to common considerations of similarity.

e. **COMMENT:** A loss run with reserve estimates on an individual basis should not be required for initial applications of an employer or group of employers because of potential adverse legal effects.

RESPONSE: A loss run with reserve estimates is necessary in order to determine an employer's ability to pay its liabilities and to calculate the amount of security due from a group self-insurer.

f. **COMMENT:** The rule should specify the criteria for consideration in "...financial standards acceptable to the division..." in (2).

RESPONSE Most of the factors considered are specified in (2). The actual conclusion that an employer is solvent and has the financial ability to pay benefits is a decision that must be reached in the sound exercise of discretion by the division. The factors considered must be somewhat flexible to meet changing economic conditions and to analyze the specific characteristics of the firm or group.

g. **COMMENT:** A large corporation cannot supply all of the data required by subsection (2) and the division cannot make meaningful use of it. A large corporation should be required to supply only its most recent financial statement and supporting data.

RESPONSE: All of the information required by the rule is typically already prepared and available in the annual reports of a corporation. The division needs the information to determine the financial condition of the corporation.

h. **COMMENT:** The minimum amount is set in (4)(c) for a surety bond as required in (3)(c) of $500,000.00 or 110% of a group's cumulative average paid losses over the four previous years, whichever is greater, and no less than the retention amount of a group's excess insurance. Some parties commented that these minimums are too high while others commented that they are too low.

RESPONSE: A reasonable guaranty is necessary to assure the payment of a group's liabilities. An amount too low would not provide such assurance but an amount too high would make self-insurance prohibitive. The minimums chosen are intended to meet the immediate payment requirements of a group in the event of failure to meet its obligations until an alternate source of benefits can be established.

i. **COMMENT:** The surety bond amount should be determined based on number of employees, industry type, and other relevant factors.

RESPONSE: The bond amount specified in the rule is a minimum. The actual amount will be based on a loss run for the particular employer or group which will be more accurate than an amount based on the industry in general.

j. **COMMENT:** Instead of a surety bond as required by (4), a group should be allowed to deposit government securities.

RESPONSE: Such securities may not be available to make immediate payments to claimants in the event of insolvency of a group as they may be tied up in legal

proceedings. A surety company can pay on a bond regardless of the legal status of the group.

k. **COMMENT:** The surety bond provided under (5)(d) should require the surety company to give at least sixty days advance notice of cancellation instead of thirty days.

RESPONSE: The division's research indicates that a bond with longer than thirty days notice of cancellation would generally not be available.

l. **COMMENT:** The security required in (3) and (4) is not part of the election to be a self-insurer but relate to insolvency, so is beyond the authority of the statutes.

RESPONSE: Inherent in the authority to regulate the election of self-insurers is the division's obligation to assure that injured workers receive their lawful benefits. This obligation is aided by these security requirements.

m. **COMMENT:** A deposit of security at the time of default in payment of compensation would most likely not be available.

RESPONSE: The comment may be correct, but the division is obligated to attempt to protect the interests of injured workers.

n. **COMMENT:** Excess insurance is unnecessary, costly, of limited availability, and beyond the statutory authority.

RESPONSE: Excess insurance coverage is a standard and customary means by which insurers protect themselves and their beneficiaries. It is very necessary as insurers in all three plans may reach a point where their financial burdens are too great to manage alone. This requirement is part of the inherent authority of the division to assure that benefits are paid to injured workers.

o. **COMMENT:** Specific guidelines should be developed regarding excess coverage and retention.

RESPONSE Guidelines are provided in (6). The division must have some discretion in determining the appropriate excess coverage for a particular self-insurer.

p. **COMMENT:** The rules should have specific criteria for determining the amounts of excess insurance required.

RESPONSE: Specific criteria would make it difficult to tailor the excess insurance to the needs of the particular employer. The division, in its discretion, will decide the coverage requirements for each employer.

q. **COMMENT:** A Best's rating is not available for excess insurers associated with foreign insurers, such as an excess insurer which is reinsured by a foreign insurer. An exception should be available for unrated excess insurers with strong financial statements and excellent financial history.

RESPONSE: The rule will be amended to allow excess coverage provided by unrated carriers to be submitted for

approval within the discretion of the division.

r. **COMMENT:** Surety bonds should be allowed in lieu of excess insurance.

RESPONSE: The purposes of the two forms of security are different and an interchange would not be appropriate to meet obligations under these rules.

s. **COMMENT:** Suspension of a self-insurer should be allowed only after a hearing in the Workers' Compensation Court.

RESPONSE: The Legislature has specifically vested authority to regulate self-insurers in the division. In some cases, it may be necessary to suspend a self-insurer immediately to limit further risk to employees before a hearing. The division will provide the opportunity for a contested case hearing to afford a self-insurer due process, and the division's decision may be reviewed by the court.

t. **COMMENT:** The provisions for election of Plans Two or Three on termination of self-insured status do not apply to a group.

RESPONSE: These provisions will be revised to clarify that individual employers in a group must obtain alternate coverage.

u. **COMMENT:** The rule should require a feasibility study to show the actuarial soundness and economic viability of a self-insurance plan.

RESPONSE: Such a study may be useful but not absolutely necessary as long as the applicant has provided the financial information required to establish solvency and ability to discharge obligations incurred.

v. **COMMENT:** The forms to be completed for renewals should be shorter than the original applications.

RESPONSE: The forms will be kept as short as possible while still obtaining the necessary information.

w. **COMMENT:** The rule should impose a time limit on the division to decide on an application. Automatic approval should be given if no action is taken by the division by the deadline.

RESPONSE: The statute already implies that the division will act by the start of the state's fiscal year, July 1. Of course, this is subject to the employer submitting its documentation by May 30. The statutes require the division to actually exercise discretion in the approval of a self-insurer so automatic approval can not be provided for in the rule. The risk of an unqualified employer being self-insured is too great to leave to inaction.

x. **COMMENT:** Renewals of self-insurer status should be automatic unless the division obtains information to terminate self-insurer status.

RESPONSE: The statutes require the division to actually review and make a decision on self-insurers annually. The division must have the opportunity to

consider any new economic variables since the last application.

y. **COMMENT:** On the Agreement and Assumption Guarantee form, under the corporate seal, it should read "Secretary" or "Chief Administrative Officer."

RESPONSE: The change would not be appropriate. The form requires the signature of the ranking officer of the employer with the attestation of the corporate secretary as is customary in corporate transactions.

ROBERT J. ROBINSON
Administrator
Div. of Workers' Compensation

CERTIFIED TO SECRETARY OF STATE November 3, 1986.

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

In the matter of the amendment of Rule 46.10.304A pertaining to unemployed parents in the AFDC program	)))	NOTICE OF THE AMENDMENT OF RULE 46.10.304A PERTAINING TO UNEMPLOYED PARENTS IN THE AFDC PROGRAM

TO: All Interested Persons

1. On September 25, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.304A pertaining to unemployed parents in the AFDC program at page 1577 of the 1986 Montana Administrative Register, issue number 18.

2. The Department has amended Rule 46.10.304A as proposed.

3. General comments regarding the AFDC program were received at the hearing. No comments or testimony about the proposed rule changes were received.

4. This rule amendment will be applied retroactively from October 1, 1986.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 31, 1986.

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

In the matter of the amendment of Rules 46.12.801, 46.12.802, 46.12.805 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.801, 46.12.802, 46.12.805 AND 46.12.806 PERTAINING TO PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES

TO: All Interested Persons

1. On May 15, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.801, 46.12.802, 46.12.805 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies at page 755 of the 1986 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.801 as proposed.

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing home residents are contained in ARM 46.12.1205.

Subsections (1) and (1)(a) remain as proposed.

(i) Prescriptions for oxygen shall include the liter flow per minute, ~~and~~ the hours of use per day~~.~~ AND THE RESULTS OF BLOOD GAS TESTS ON THE RECIPIENT.

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

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT~~/GENERAL~~ REQUIREMENTS

(1) Requirements for the purchase OR RENTAL of prosthetic devices, durable medical equipment and medical supplies are as follows:

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

(i) Those items not listed in the fee schedule, INCLUDING ALL MISCELLANEOUS ITEMS, must be submitted to the department for approval.

(d) EXCEPT AS PROVIDED IN SUBSECTION (2)(a) BELOW OR AS OTHERWISE INDICATED IN THE FEE SCHEDULE IN ARM 46.12.806,

PPurchase or rental of prosthetic devices, durable medical equipment and medical supplies of ~~$150.00~~ $200.00 or more per ~~claim~~ MONTH require written prior authorization on the claim before the ~~authorization~~ service is rendered to the recipient. ITEMS LISTED ~~By report~~ BR ~~items~~ with a cost of less than ~~$150.00~~ $200.00 PER MONTH FOR WHICH PRIOR AUTHORIZATION IS NOT SPECIFICALLY MANDATED will be paid ~~at 90 percent of billed charges~~ without authorization. MISCELLANEOUS ITEMS OR ITEMS NOT LISTED IN THE FEE SCHEDULE WITH A COST OF LESS THAN $200.00 PER MONTH MUST BE AUTHORIZED PRIOR TO PAYMENT.

(e) PRIOR AAuthorization of A claims ~~which require prior authorization or are by report (BR) items~~ does not guarantee that the recipient is eligible for medicaid.

Subsections (1)(f)/ and (2) remain as proposed.

(a) Oxygen concentrators ~~and liquid oxygen systems~~ shall be PRIOR approved ~~initially~~ on a rental basis only AND THEN ONLY WHEN THE RENTAL RATE IN THE FEE SCHEDULE WOULD BE EQUALLED OR EXCEEDED BY THE COST OF A CONVENTIONAL GASEOUS OR LIQUID OXYGEN SYSTEM. LIQUID OXYGEN SYSTEMS SHALL BE PRIOR APPROVED INITIALLY ON A RENTAL BASIS ONLY AND THEN ONLY WHEN AN OXYGEN CONCENTRATOR WOULD NOT BE MORE ECONOMICAL OR WOULD BE MEDICALLY INAPPROPRIATE. Purchase of ~~oxygen concentrators and~~ liquid oxygen systems WHICH MEET THE CRITERIA FOR RENTAL shall be considered on a case-by-case basis and must be prior authorized.

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

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, ~~REIMBURSEMENT/~~FEE SCHEDULE

(1) MEDICAID FEE SCHEDULE FOR RENTAL/PURCHASE OF PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES. ~~AND EQUIPMENT~~

[* DENOTES AUTHORIZATION REQUIRED PRIOR TO SERVICE OR DELIVERY OF ITEM.]
[** DENOTES AUTHORIZATION REQUIRED PRIOR TO PAYMENT.]

Amendment of items including "~~Crutches, stand, wood/per month---66.60~~" through "~~(2) MEDICAID FEE SCHEDULE FOR PURCHASE OF MEDICAL SUPPLIES AND EQUIPMENT~~" remains as proposed.

ITEM	MONTHLY RENTAL	PURCHASE
Surgical Supplies		

ITEM	MONTHLY RENTAL	PURCHASE

Amendment of items including "Syringes" through "Diastix/~~each~~$ .07" remains as proposed.

Glucometer		BR *

Amendment of items including "Keto-diastix/$ .12" through "Crutches, special $15.73 $31.46" remains as proposed.

Dialysis equipment	BR	BR *
Hospital bed, standard with mattress	$42.90 **	$906.60 *
Hospital bed, electric with mattress	$89.10 **	$1,264.18 *

Amendment of items including "Hospital bed, standard, side rails/per rail $60.50" through "Alternating pressure pad $36.30" remains as proposed.

Alternating pressure pad with pump		$369.53 *
Jobst pressure pump	$48.40	---
Bathtub lift	BR	BR *
Hoyer lift	$60.50	$635.25 *
Seat lift	$60.50	$1,155.55 *

Amendment of items including "Standard commode $14.30 $78.65" through "~~Handheld nebulizer $7.21~~" remains as proposed.

Whirlpool bath (portable)		$352.00 *

Amendment of items including "Sitz bath $60.50" through "Walker, wheeled $20.90 $169.40" remains as proposed.

Wheelchair, standard folding	$54.45 **	$687.50 *
Wheelchair, standard hospital	$42.35	$399.30 *
Wheelchair, standard with accessory	$54.45	$830.50 *
Wheelchair, standard motor	$60.50 **	$1,712.26 *
Wheelchair, child, folding	$25.20	$605.00 *

ITEM	MONTHLY RENTAL	PURCHASE
Wheelchair, child, with accessory	$31.46	$487.30 *
Wheelchair, custom special	$48.40 **	$1,070.85 *
Amendment of items including "Wheelchair accessory BR" through "OXYGEN AND OXYGEN EQUIPMENT" remains as proposed.		
Ultrasonic nebulizer	$54.45 *	$514.25 *
Oxygen concentrator	$290.40 * ~~$150.00~~	~~$1,500.00~~
Linde reservoir	$48.40 *	---
Linde walker unit	$42.35 *	---
Liberator	$66.55 *	---
Liberator/stroller	$108.90 *	---
P.C.U. container	$48.40 *	---
L.V. 160	$42.35 *	---
Cylinder	$7.26 *	---
Oxygen tent	$36.30 *	---
Porta-carry unit with E tank/reg.	$24.20 *	---
Asthamastix	BR	BR
IPPB, air/oxygen	$66.00	$508.20 *
~~IPPB, oxygen---$500.20~~		
Pulmonaide	BR	
Portabird	$47.66	$572.00 *
Handevent	$60.50 ~~$10.40~~	$125.84
Respirator	$54.45	$477.95 *

ITEM	MONTHLY RENTAL	PURCHASE
Mada Duo-pak (with adjustable flow regulator)	$30.25	$230.69 *
Lifesaving unit 5000	$29.04	$154.50
Lifesaving unit 5010	$29.04	$203.28 *
Regular humidifier unit		$20.30
D er, E OR K cylinder		BR *
D or E CYLINDER (FILL)		$8.30 *
K CYLINDER (FILL)		$25.30 *

Amendment of items including "Vaporizer, steam type $14.47" through "~~Cylinder No. 5 --- BR~~" remains as proposed.

02 liquid per pound		$1.25 *
02 gas per cubic foot		$ .10 * ~~$ .06~~

Amendment of items including "~~02 contents Linde Reservoir $45.38~~" through "~~Delivery charge --- BR~~" remains as proposed.

Oxygen regulator	$20.35 ~~$6.00~~	$130.00 ~~$10.15~~ ~~$90.00~~

Amendment of items including "~~Liquid 02 330 --- BR~~" through "~~Ankle brace --- BR~~" remains as proposed.

Orthopedic shoes, brace	$221.74 *

Amendment of items including "Orthotic appliances BR" through "~~Miscellaneous supplies and equipment BR~~" remains as proposed.

Apnea Monitor	$200.00 * ~~$150.00~~

Amendment of items including "Gel cushion $46.53" through "Isotopes $52.37" remains as proposed.

Eye prosthesis	$363.00 *

ITEM	MONTHLY RENTAL	PURCHASE

Amendment of items including "Overbed table $13.92" through "Shipping and delivery charges BR" remains as proposed.

Miscellaneous supplies and equipment		
[LESS THAN $200.00 PER MONTH]	BR **	BR **
[$200.00 OR MORE PER MONTH]	BR *	BR *

Amendment of items including "Contraceptives" through "~~IUD's---CU7---$22.00~~" remains as proposed.

~~IUD's---Progestasert~~ $9.90 ~~40.00~~

Amendment of items including "~~IUD's---others---$6.60~~" through "Foam, jelly, creme $3.63" remains as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The inclusion of the term "most economical" will lead to misunderstanding.

RESPONSE: The Department has included the phrase "most economical" to enable it to examine and consider alternatives to items requested by the provider for the recipient. For example, the Department intends to allow the rental of oxygen concentrators only when the rental rate in the fee schedule would be equalled or exceeded by the cost of a conventional gaseous or liquid oxygen system. The Department also intends to allow the rental of liquid oxygen systems only when a oxygen concentrator would not be more economical or would be medically inappropriate. The Department has added language to the rules to make this clear.

COMMENT: Medicaid's requirements to document medical necessity should be similar to Medicare requirements.

RESPONSE: The Department has reviewed Medicare's certification procedures and is willing to model the Medicaid certification procedures after them. To facilitate this, the Department has added language requiring blood gas tests for all recipients in conjunction with the Medicare requirements. Medicaid certification procedures will be fully described in the Medicaid Provider Manual and will include a simplified recer-

tification every six months.

COMMENT: Why is the Department requiring that claims for liquid and gaseous oxygen reflect only the amount of oxygen actually used by the patient?

RESPONSE: The purpose of this section is to assure that the amount of oxygen billed by the provider is related to the patient's use of oxygen as prescribed by the physician. The Department intends to compare claims for oxygen to the prescription to assure that excessive amounts of oxygen are not billed.

COMMENT: The proposal to allow the Department to contract with a provider to be the sole source of durable medical equipment, supplies and prosthetic devices will violate the recipient's right to free choice of provider.

RESPONSE: The Omnibus Budget Reconciliation Act of 1981 added a new section, 1915(a)(1)(B), to the Social Security Act. This section allows a state to arrange "through a competitive bidding process or otherwise" the purchase of medical devices. In the preamble to the federal regulations, the Health Care Financing Administration (HCFA) defines "medical devices" as "items such as durable medical equipment, home health appliances, eyeglasses, hearing aids, or prosthetics...." This list is illustrative, according to HCFA, and does not prohibit the State from volume purchasing other items in the durable medical equipment, supplies, and prosthetic devices area.

COMMENT: Durable medical equipment providers in Montana are, for the most part, small businessmen and would be unable to compete with large out-of-state business concerns to be "sole providers of a specific item in a geographic area".

RESPONSE: Since most durable medical equipment providers in the State may not be in a position to bid successfully, the bidding process would allow for the development of consortiums of durable medical equipment providers. Such a consortium would be better able to cover a specified geographic area and be in a better position to compete with out-of-state business concerns.

COMMENT: What items does the Department contemplate purchasing in bulk through contract with a "sole provider"?

RESPONSE: Initially, the Department is interested in purchasing oxygen services from a "sole provider". Other states have established sole provider programs for both standard and customized wheelchairs, apnea monitors, parenteral therapy, and equipment loan closets. Each of these areas will be carefully

evaluated by the Department, for cost-effectiveness and administrative feasibility, before any action is proposed.

COMMENT: How will the Department assure that the "sole provider" will provide medically appropriate equipment suited to the patient's needs and conditions and of acceptable quality?

RESPONSE: The Department will assure that the "sole provider" provides medically appropriate equipment of acceptable quality both through the bid solicitation and evaluation process and through the contract monitoring process.

COMMENT: We believe that the Department's proposed price of $0.06 per cubic foot is too low. The $.1034 per cubic foot calculation done by Medicare to establish their rate for gaseous oxygen gives a reasonable charge for large oxygen cylinders of S size or larger.

RESPONSE: The Department has revised its rate for gaseous oxygen to $.10 per cubic foot.

COMMENT: The proposed rate for liquid oxygen of $1.25 per pound is too low.

RESPONSE: The Department has adopted the price set for liquid oxygen by Medicare. Federal regulations prevent the Medicaid Program from reimbursing more than the Medicare Program.

COMMENT: The proposed rate for handevents of $10.48 is too low.

RESPONSE: The Department will withdraw the proposed rate for handevents of $10.48 and maintain the current rate of $60.50. The intent of the proposal was to adjust the rate to reflect the useful life of the product. However, this did not reflect the cost of providing the service. It should be noted that a handevent is similar to a pulmonaide which is currently priced BR or at 90% of billed charges.

COMMENT: The proposed monthly rate for rental of an oxygen regulator of $6 is too low and does not reflect the cost of doing business.

RESPONSE: The Department has reviewed information from several providers regarding their customary charges for monthly rentals of regulators and has decided to withdraw the proposed rate of $6. The current rate of $20.35 will remain in effect.

COMMENT: The Department has noted some concern regarding the purchase of oxygen regulators.

RESPONSE: The Department has surveyed several of the providers regarding their customary charges for the purchase of an oxygen regulator. As a result of the survey, the Department has established a purchase price for oxygen regulators of $130.

COMMENT: The proposed rates for oxygen concentrators of $150 for rental and $1,500 for purchase are too low.

RESPONSE: The Department has reviewed all of the comments from providers concerning oxygen concentrators. Comments were received indicating that providers incurred not only equipment costs but also costs for servicing equipment, repairs, travel and other overhead. Several providers indicated that they were providing a service rather than just a product. Additionally, in July, the Department contacted the providers requesting information regarding the monthly cost to provide oxygen concentrators. As a result of the information received, the Department will withdraw its proposed monthly rental of $150 and maintain the current rate of $290.40. However, in doing this, the Department has also clarified its intent to rent or purchase only the most economical and medically appropriate oxygen delivery system. With respect to the proposed purchase price for oxygen concentrators of $1,500, the Department has decided to withdraw this part of the rule. After reviewing problems with providers concerning maintaining purchased concentrators, the Department has concluded that it is better for the recipient if the services were limited to rentals only for the time being.

COMMENT: Montana Medicaid should reexamine its prices for small oxygen tanks sizes D, E and Q. The cost of these tanks should include not only the cost of the oxygen but also the cost of handling and delivery.

RESPONSE: The Department has reviewed the comments received concerning oxygen tanks. The Department will establish a price for the fill of a D or E tank of $8.30 and $25.30 for K tanks, which are the current Medicare rates for these items. No reimbursement adjustment has been made for Q tanks because Medicaid has no history of claims for these items. Finally, the Department will reimburse $7.26 for the monthly rental of the tanks regardless of size.

COMMENT: Many of the fee schedule products require prior authorization. These items are not noted as such. Also, the proposed rule requires prior authorization of items costing $150 or more. The prior authorization limit is too low and will overburden limited Department staff with unnecessary review of items which are not subject to significant abuse or overutilization. It is not clearly shown in the rule which

items require prior authorization.

RESPONSE: The Department has considered the comments of several providers concerning the $150 limit for prior authorization. The Department has decided to increase the prior authorization amount to $200. The Department has also adopted in the final rule the suggestion that items requiring prior authorization be so noted. An asterisk marks those items that require prior authorization or authorization prior to delivery of service or item. Double asterisks mark those items that require authorization after service delivery but prior to payment.

COMMENT: Approval of low cost items billed under the miscellaneous category after the service is given will subject the provider to a potential loss.

RESPONSE: The Department believes that it is necessary to review claims billed under the miscellaneous code to confirm that the items are medically necessary. The requirement that low cost items billed under the miscellaneous category be approved after the service is given but prior to payment does not preclude a provider from obtaining approval prior to delivery of service. Additional language has been added to the rule to make this clear.

COMMENT: In regard to prescriptions for oxygen, is a PRN (as needed) order acceptable?

RESPONSE: No. The prescription must be specific as to the amount of oxygen required.

COMMENT: Coverage of nutrient solutions should not be limited to use in enteral and parenteral therapy and to the circumstance where the solutions are the sole source of nutrition to the patient. Not all occasions for use of nutritional therapy need to be prior authorized.

RESPONSE: Because of the potential for abuse and overutilization in this area, the Department currently restricts reimbursement for parenteral and enteral therapy to the sole source situation and requires prior authorization in all cases. The Department will study utilization in this area and will reevaluate its criteria for coverage on the basis of this review.

COMMENT: The requirement to renew a prescription every six months would be a burden to providers and there may be delays in receiving the prescription renewal. It is suggested that prescriptions be renewed every year.

RESPONSE: The Department's intent is to assure that medical equipment and supplies are actually intended to treat a medical condition. We believe that the documentation requirement is the minimum necessary to establish medical necessity. Further, for patients who have medical conditions which require oxygen therapy, the Department has agreed elsewhere to institute a simplified recertification procedure for the six month renewal of prescription and justification of medical need.

COMMENT: Use of specialty equipment in nursing homes should not be deleted, but the rule should be clarified that such equipment needs to have prior authorization. It should also be clarified what standard equipment should be provided by the nursing home.

RESPONSE: The proposed rule does not delete the use of specialty equipment in nursing homes. The proposed rule makes a cross reference to ARM 46.12.1205 which indicates the items which are expected to be provided by the nursing home and those which may be billed separately by the nursing home or a medical equipment supplier. Copies of the list of items to be supplied by the nursing home and those that can be billed separately are available from the Department.

COMMENT: Preauthorization of oxygen claims for $150 or more should be unnecessary. Once oxygen certification procedures are met, additional preauthorizations for each $150 billed would be redundant.

RESPONSE: The Department will establish a preauthorization procedure for items $200 or more which will not be redundant of the oxygen certification procedure.

COMMENT: Will prior authorization over the telephone be allowed under the proposed rule?

RESPONSE: The Department will prior authorize items either in writing or by telephone and have the provider submit the approved claim and required documentation for the authorizing signature.

COMMENT: Marking items on the fee schedule requiring a $3 co-pay would be a great help in not overcharging the recipients for co-payment on services.

RESPONSE: The administrative rules indicate that for prosthetic devices, durable medical equipment and medical supplies, the co-payment will be $3 for each item which is paid BR. The BR designation serves the purpose of marking items for which the co-payment will be $3.

COMMENT: Many urostomy and catherization supplies are not listed in the fee schedule but are medically necessary. Also, adding adaptive equipment as a by report (BR) item on the fee schedule would be helpful when claims for the handicapped are submitted for payment. Some examples are: feeding seats that adapt to floor sitting, postural devices, bath chairs and lifts and postural support systems for wheelchairs.

RESPONSE: The Department acknowledges that there are some categories and descriptions used by providers in billing which are not listed in the proposed rules. These categories and descriptions must be billed under the miscellaneous code and are paid by report. The Department will devote attention to including these unlisted items in the future.

COMMENT: The proposed monthly rental for apnea monitors of $150 is too low.

RESPONSE: The Department has reviewed the information submitted and will adjust the proposed rate of $150 to $200. The Department believes that this fee is appropriate based on amounts billed and paid to other providers under the current BR method.

COMMENT: Will prior authorizations have a time limit?

RESPONSE: Prior authorizations are given for services or items that are medically necessary and appropriate for the recipient at the time the recipient is evaluated. The Department expects the services or items to be delivered in a reasonable period of time and to meet the need of the recipient. For on-going services or items, prior authorizations, including prescriptions, must be renewed at least every six months. The Department may determine that prior authorizations must be renewed earlier than six months because of the patient's condition.

COMMENT: The Department should develop written instructions concerning the procedures for obtaining and extending authorization for medical equipment and supplies.

RESPONSE: The Department will establish procedures for prior authorization in the Medicaid Provider Manual.

COMMENT: Costs of repair and service for rental equipment are not included as a separate item in the proposed Medicaid fee schedule.

RESPONSE: The Department expects that rented equipment be in good repair and that it perform its intended function. The

cost of keeping rental equipment in good condition is the provider's responsibility and is covered in the rental fee.

COMMENT: The Department has been informed that intrauterine devices (IUD's) can only be inserted by a physician. Thus, these items cannot be reimbursed over the counter.

RESPONSE: The Department has deleted IUD's from the rule for medical equipment and medical supplies. These products will be reimbursed as a physician service.

COMMENT: The Department's fiscal intermediary noted that prior authorization would be difficult to implement on a per claim basis and suggested that a per month basis would be more feasible.

RESPONSE: The Department agrees and has amended the proposed rule accordingly.

COMMENT: Other amendments which should be made to clarify the Department's intent include: (1) adding "or rental" to ARM 46.12.805(1) which will ensure it is clear the reimbursement methodology applies to both purchase and rental; (2) adding language to ARM 46.12.805(1)(c) and (d) to assure that all miscellaneous items purchased are medically necessary. These changes would also make clearer the distinction between prior authorization and payment authorization; and (3) eliminating redundant language in ARM 46.12.805.

RESPONSE The Department agrees and has made the recommended changes.

5. These rule amendments will be effective January 1, 1987.

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 31, 1986.

VOLUME NO. 41 OPINION NO. 85

CHILD ABUSE - Authority of the Department of Social and Rehabilitation Services to prevent the withholding of medical treatment for infants;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Authority of the Department of Social and Rehabilitation Services to prevent the withholding of medical treatment for infants;
HOSPITALS - Authority of the Department of Social and Rehabilitation Services to prevent the withholding of medical treatment for infants;
MONTANA CODE ANNOTATED - Sections 41-3-102, 41-3-401 to 41-3-404, 41-3-406;
MONTANA LAWS OF 1985 - Chapter 626, section 1.

HELD: The Department of Social and Rehabilitation Services has authority to initiate legal proceedings to prevent the withholding of medically indicated treatment for disabled infants with life-threatening conditions.

23 September 1986

Dave Lewis, Director
Department of Social and
Rehabilitation Services
Room 301, SRS Building
111 Sanders
Helena MT 59620

Dear Mr. Lewis:

You have asked my opinion on the following question:

> Does the Department of Social and Rehabilitation Services have the authority under Montana statutes to pursue any legal remedies, including the authority to initiate legal proceedings, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions?

I have reviewed the statutory framework and concluded that the Department clearly has this authority. My analysis and reasoning follow.

In 1985 the Montana child abuse, neglect, and dependency statutes were amended to include provision for the treatment of infants faced with life-threatening conditions from whom medical treatment is withheld for any reason. 1985 Mont. Laws, ch. 626, § 1. These amendments added two definitions to the prior statutory scheme. "Adequate health care" was redefined to include "the prevention of the withholding of medically indicated treatment, permitted or authorized under state law." § 41-3-102(4), MCA. A new subsection (5) was added defining "withholding of medically indicated treatment." This definition, with its several qualifications, is set out below:

> "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:
>
> (a) the infant is chronically and irreversibly comatose;
>
> (b) the provision of such treatment would:
>
> (i) merely prolong dying;
>
> (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
>
> (iii) otherwise be futile in terms of the survival of the infant; or

> (c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

§ 41-3-102(5), MCA. These 1985 changes have the effect of broadening the scope of the term "abused or neglected child" under Montana law. Thus, under section 41-3-102(2), MCA, an abused child is one whose health is threatened with harm by the acts of a parent or some other person responsible for his welfare. Harm is defined to include, inter alia, the failure to provide adequate health care. § 41-3-102(3)(c), MCA. Your opinion request essentially asks whether the State has authority to legally proceed to protect the right of an infant who is alleged to be an "abused or neglected child" because of its parents' refusal to provide or authorize suitable medical treatment.

Since infants fitting the statutory definition are now considered abused or neglected children, the Department is provided with a wide panoply of statutory procedures by which it can provide medical protection. First, the Department through its attorney may file a petition for temporary investigative authority and protective services. § 41-3-402, MCA. Upon proper proof the petition allows a district court to issue an order "granting such relief as may be required for the immediate protection of the youth." § 41-3-403(1)(a), MCA. Specifically the court may order that (1) the infant undergo a medical evaluation (§ 41-3-403(2)(b), MCA), (2) it be placed in a medical facility for protection (§ 41-3-403(2)(d), MCA), or (3) the parents provide necessary services (§ 41-3-403(2)(e), MCA). While these particular sections were drafted primarily with the abused adolescent in mind, the terms

unquestionably include the subject of your concern--a premature or disabled infant immediately in need of sophisticated medical technology.

Second, the Department may, in lieu of proceeding under section 41-3-402, MCA, file an abuse, neglect, and dependency petition pursuant to section 41-3-401, MCA. Such a petition may seek a broad range of relief including (1) temporary investigative authority and protective services, (2) temporary legal custody, (3) termination of parent-child legal relationship, and/or (4) any other relief consistent with the child's best interests. § 41-3-401(10), MCA. Adjudicatory and dispositional hearings are thereafter held on the petition. §§ 41-3-404, 41-3-406, MCA. While the precise nature of the relief sought in the petition and ordered by the district court will depend on the particular facts, there is no dispute that a proceeding initiated under section 41-3-401, MCA, can result in the Department being granted the authority to control future medical decisions concerning the child.

In summary, under present dependency and neglect statutes, the Department is vested with broad authority to initiate legal proceedings to compel medical treatment of disabled infants. The relief available in such proceedings is very broad and will, of course, be determined on the basis of the specific circumstances present.

THEREFORE, IT IS MY OPINION:

> The Department of Social and Rehabilitation Services has authority to initiate legal proceedings to prevent the withholding of medically indicated treatment for disabled infants with life-threatening conditions.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 89

OIL AND GAS - Application of Corner Recordation Act to notice of intention to drill;
SURVEYORS - Application of Corner Recordation Act to notice of intention to drill;
ADMINISTRATIVE RULES OF MONTANA - Section 36.22.602;
MONTANA CODE ANNOTATED - Sections 37-67-331(1)(e), 70-22-102, 70-22-104, 82-11-111, 82-11-122.

HELD: Survey plats submitted with a notice of intention to drill under section 82-11-122, MCA, must be completed in conformance with the Corner Recordation Act, §§ 70-22-101 to 110, MCA.

31 October 1986

Denzil R. Young
Fallon County Attorney
Fallon County Courthouse
Baker MT 59313

Dear Mr. Young:

You have requested my opinion on the following question:

> Whether the survey plat required in connection with the written notice of intention to drill under section 82-11-122, MCA, is the sort of "survey" which, under the provisions of section 70-22-104, MCA, must result in a "corner record" being filed by the surveyor.

I conclude that the involved statutes and relevant administrative regulations require compliance with section 70-22-104, MCA, as to such notices of intent to drill.

Section 82-11-122, MCA, creates an obligation on the part of any person who intends to drill an oil or gas well to notify both the surface owner and the Board of Oil and Gas Conservation (hereinafter "the Board"). This statute reads as follows:

> It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

The written notice that must be filed with the Board is the subject of administrative rules promulgated by the Board under a statutory delegation of authority. See § 82-11-111(2)(c), MCA. The particular rule that is determinative of the question you have submitted is section 36.22.602, ARM. Quoted in full this rule provides: "Notice of intention to drill shall be accompanied by a survey plat certified by a registered surveyor."

All survey plats that are certified by the registered surveyors of this state must be completed in conformance with the Corner Recordation Act, §§ 70-22-101 to 110, MCA. In fact, compliance with the Act is compelled by licensing statutes applicable to engineers and land surveyors. The Board of Professional Engineers and Professional Land Surveyors may revoke, suspend, or refuse to renew the certificate of a registered surveyor who is found guilty of failing to comply with the Corner Recordation Act. § 37-67-331(1)(e), MCA.

Language within the Act itself dictates that surveyors are under a mandatory duty to file descriptions on all undescribed corner records. This duty was established to accomplish the purpose of the Act:

> [T]o protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners ....

§ 70-22-102, MCA. The original monuments and corners of government surveys are of great significance for they are conclusive evidence of the true location of those corners, whether such location is right or wrong. Stephens v. Hurly, 172 Mont. 269, 563 P.2d 546 (1977); Vaught v. McClymond, 116 Mont. 542, 155 P.2d 612 (1945). To perpetuate these corners the Act provides:

> A surveyor shall complete, sign, stamp with his seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor and within 90 days thereafter unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part.

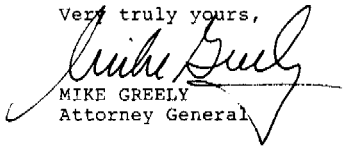
§ 70-22-104, MCA. The exception contained within the statute must be noted. If a description of the corner record is already on record with the county clerk and recorder, additional descriptions need not be filed. The drafters of the legislation obviously recognized that redundant descriptions serve no purpose once a monument has been established.

When the Legislature passed the Corner Recordation Act in 1963 it echoed the policy that reestablishment of the original land surveys in our state was a noteworthy goal because of our vast expanses of rural land, mineral resources, and the potential for property disputes. The Act does place a significant burden on land surveyors who often are not compensated for their time filing corner records discovered during survey work that was previously bid. Nonetheless, the language of the Corner Recordation Act as presently drafted is clear and unambiguous and must be complied with in all circumstances.

THEREFORE, IT IS MY OPINION:

Survey plats submitted with a notice of intention to drill under section 82-11-122, MCA, must be completed in conformance with the Corner Recordation Act, §§ 70-22-101 to 110, MCA.

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 the 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 statutes 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 list 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, 1986. This table includes those rules adopted during the period June 30, 1986 through September 30, 1986 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, 1986, 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 1986 Montana Administrative Register.

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