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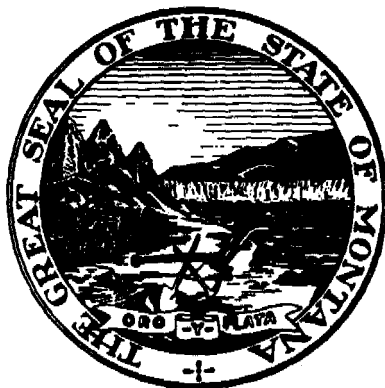
RESERVE

OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

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1987 ISSUE NO. 15
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amend-)	NOTICE OF PUBLIC HEARING ON
ment and adoption of Rules	)	THE PROPOSED AMENDMENT AND
2.13.101 and 2.13.102 and	)	ADOPTION OF RULES 2.13.101
Rules I thru V pertaining	)	AND 2.13.102 AND RULES I
to the use of the State's	)	THRU V PERTAINING TO THE USE
telecommunications	)	OF THE STATE'S TELECOM-
systems and facilities	)	MUNICATIONS SYSTEMS AND
	)	FACILITIES

TO: All Interested Parties

1. On September 9, 1987, at 12:00 p.m., a public hearing will be held in the Room 136 of the Mitchell Building, 125 N. Roberts, Helena, Montana to consider the proposed amendment and adoption of Rules 2.13.101 and 2.13.102 and Rules I thru V pertaining to the use of the State's telecommunications systems and facilities.

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

2.13.101 APPROVAL OF INSTALLATIONS, MODIFICATIONS, OR REMOVAL REQUIRED (1) The communications division department of administration must approve the installation, modification, or removal of all telephone equipment which constitutes an integral part of the Montana state telephone system. Payment may be withheld in the event that unauthorized installations or modifications are made- telecommunication systems. In approving installations, modifications, and removals the department shall consult with and consider the needs of the various state agencies and the overall implications to all state telecommunication systems.

AUTH: 2-17-302 MCA; IMP: 2-17-302, MCA.

2.13.102 NON-GOVERNMENTAL USE OF STATE TELEPHONE FACILITIES PROHIBITED (1) The facilities of the state's telephone network are provided for use by governmental agencies only. Non-governmental connected use of state telephone facilities is prohibited. USE OF THE STATE'S TELECOMMUNICATION SYSTEMS (1) The facilities of the state's telecommunication systems are provided for the conduct of state business. In addition to state business, the state's telecommunication systems may be used by state employees and officials for local and long distance calls to latch-key children, teachers, doctors, day-care centers and baby sitters, to family members to inform them of unexpected schedule changes, and for other essential personal business. The use of the state's telecommunication systems for essential personal business must be kept to a minimum, and not interfere with the conduct of state

business. Essential personal long distance calls must be either collect, charged to a third party non-state number, or charged to a personal credit card.

AUTH: 2-17-302, MCA; IMP: 2-17-302, MCA.

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

RULE I STATE AGENCIES RESPONSIBLE FOR THE ENFORCEMENT OF REGULATIONS RELATING TO THE USE OF THE STATE'S TELECOMMUNICATION SYSTEMS (1) All state agencies are individually responsible for enforcing rules relating to the use of the state's telecommunication systems.

(2) All state agencies are individually responsible for all costs incurred in the operation of the telecommunications systems utilized by each agency.

AUTH: 2-17-302, MCA; IMP: 2-17-302, MCA.

RULE II STATE TELECOMMUNICATION SYSTEMS DEFINED (1) The state's telecommunication systems include any state owned, leased, contracted for, operated or maintained telecommunications equipment, services or facilities including: private branch exchanges; telephone key systems; teleconferencing systems; local and long distance telecommunication circuits; data communications equipment; video capabilities; land mobile radio equipment; telephone credit cards, or facsimile equipment.

AUTH: 2-17-302, MCA; IMP: 2-17-302, MCA.

RULE III POLITICAL SUBDIVISION USE OF STATE TELECOMMUNICATION SYSTEMS ALLOWED (1) The state telecommunication systems are available for use by political subdivisions of the state. A subdivision must make a written request to the department of administration for access to its systems. Such use shall be authorized by the department based upon the technical requirements of the political subdivision's needs as indicated by the request and the potential impact on state agency use of the systems. The department will approve or disapprove requests for access within 180 days of receipt of written requests. Political subdivisions will be billed for use of the state's telecommunication systems under procedures and at rates developed by the department.

(2) For purposes of this rule "political subdivision" means any county, city, municipal corporation, school district, special improvement district or taxing jurisdiction, or any other political subdivision or public corporation.

AUTH: 2-17-302, MCA; IMP: 2-17-302, MCA.

RULE IV NON-PROFIT ORGANIZATION USE OF THE STATE TELECOMMUNICATION SYSTEMS ALLOWED (1) The state telecommunication systems are available for use by in-state non-profit organizations that meet one of the following three criteria:

(a) there is a close connection between the organization and the state;

(b) the state is significantly involved in the activities of the organization;

(c) the organization performs a public function traditionally performed by the state.

(2) Non-profit organizations must make written requests to the department of administration for access to its systems. These written requests must provide adequate detailed information for the department to determine if the non-profit organization meets any of the criteria defined above. Use of the state's telecommunication systems shall be authorized for organizations meeting the criteria based upon the technical requirements of the non-profit organization's needs as indicated by the request and the potential impact on state agency use of the systems. The department will approve or disapprove requests for access by non-profit organizations within 180 days of receipt of written requests. Non-profit organizations will be billed for use of the state's telecommunication systems under procedures and at rates developed by the department.

AUTH: 2-17-302, MCA; IMP: 2-17-302, MCA.

RULE V ALL TELECOMMUNICATIONS RECORDS ARE PUBLIC DOCUMENTS

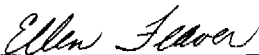
(1) All records of use of the telecommunication systems created, maintained and managed by the department are public documents and subject to review by the public, unless protected by statute.

AUTH: 2-17-302, MCA; IMP: 2-17-302, MCA.

4. Proposed ARM amendments and adoption of rules are intended to clarify and establish policies and procedures that address the use of the state's telecommunication systems.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Chief Legal Counsel, Director's Office, Department of Administration, Room 155, Mitchell Building, Helena, Mt. 59620, no later than September 16, 1987.

6. The Chief Legal Counsel of the Department of Administration has been designated to preside over and conduct the hearing.



Director, Department of
Administration

Certified to the Secretary of State July 27, 1987.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF HEARING ON PROPOSED
adoption of new rules	)	ADOPTION OF RULES PERTAINING
pertaining to the	)	TO THE ADMINISTRATION OF THE
administration of the	)	ALFALFA LEAF-CUTTING BEE
alfalfa leaf-cutting	)	PROGRAM AND THE REPEAL OF
bee program	)	RULES 4.12.1201, 4.12.1203
	)	THROUGH RULE 4.12.1209

TO: All Interested Persons:

1. On September 8, 1987, 10:00 a.m. in Room 225, Agriculture/Livestock Building, Helena, Montana, a public hearing will be held to consider the adoption of new rules to implement changes to the alfalfa leaf-cutting bee program.

2. The text of the rules reads as follows:

RULE I. PURPOSE OF RULES (1) The purpose of these rules is to implement HB 815 enacted by the 1987 Montana Legislature (80-6-1101 MCA, et. seq.).

AUTH: 80-6-1103, MCA IMP: 80-6-1103, MCA

RULE II. REGISTRATION PROCEDURES AND FEES (1) All persons who own, possess or control alfalfa leaf-cutting bees shall register their bees with the department of agriculture.

(2) All registration requests shall be made on forms provided by the department.

(3) The registration fee shall be transmitted with each registration request.

(4) Annual registration shall be from November 1 to January 1 for each year.

(5) Any person owning or possessing bees that are not reregistered on or before January 1 of each year shall be considered to be unregistered and shall be subject to the late penalty imposed under Section 5 HB 815 of the 1987 Session.

(6) Any bees not reregistered after April 1 may in addition to the late registration penalty be subject to penalties set forth in Section 80-6-1110, MCA.

(7) Each person who registers bees shall pay a registration fee of \$50.00. Upon payment of the registration fee, the registrant shall send in one sample for laboratory analysis for pathogens and parasites. Additional laboratory services may be provided upon request based on appropriate fee schedules.

- (8) Parasites and pathogens that the bees are to be especially examined for include:
- (a) Parasites;
 - (i) Minute chalcid (*Telrastichus megachi*),
 - (ii) Sapyra wasp (*Sapyga pumila*),
 - (iii) Canadian chalcid (*Pteromalus venustus*),
 - (iv) Imported chalcid (*Monodontomerus obscurus*).
 - (b) Pathogens which include alfalfa leaf-cutting bee chalkbrood (*Ascospaera* sp.).

AUTH: 80-6-1103, MCA IMP: Section 5 HB 815 1987 Session
80-6-1109, MCA 80-6-1109, MCA

RULE III. MINIMUM STANDARD FOR LEAF-CUTTING BEES REGISTERED BY THE DEPARTMENT (1) Alfalfa leaf-cutting bees registered with the department and determined as containing parasite infestation levels above 25% or pathogen levels above 30% shall be designated as failing minimum standards. The bees shall be destroyed (under department supervision) within 30 days of the issuance of said designation. Equipment shall be placed under quarantine and properly sterilized within 30 days of said designation.

AUTH: 80-6-1103, MCA IMP: Section 5 HB 815 1987 Session
80-6-1103, MCA

RULE IV. SAMPLING PROCEDURE FOR THE REGISTRATION OF BEES

- (1) The following procedure shall be used by beekeepers to sample bees registered with the department:
- (a) All bees must be loose cell stage before samples can be taken.
 - (b) A two ounce sample shall be taken from each 20 pounds of bees. A sample size shall consist of at least eight ounces (8 oz.). Only one composite sample shall be required to register the bees. The sample shall be submitted in a sample container provided by the department.
 - (c) All samples shall be collected by the beekeeper using a random sampling procedure.
 - (2) All samples shall become the property of the department.

AUTH: 80-6-1103, MCA IMP: Section 5 HB 815 1987 Session

RULE V. OFFICIAL CERTIFICATION PROCEDURES AND FEES (1) In addition to the required registration of bees, beekeepers may certify bees according to the following procedure:

- (a) All requests for official certification shall be made on forms provided by the department of agriculture.
- (b) All certification fees shall be transmitted within 10 days after the official sampling has been completed.
- (c) Any person owning or possessing bees within Montana who desires to apply for certification shall do so on or before April 1, and arrange a date for sampling of said lot(s) of bees.

(d) A certification fee of .36 cents per pound will be assessed for all bees certified by the state. Each person requesting certification shall pay a laboratory fee of \$35.00 per sample.

(e) The certification fee shall provide laboratory services for the determination of pathogens, parasites, percent of emergence, predators, nest destroyers, live larvae count, and sex ratio.

(2) The certification fee may provide for limited amount of field service work.

AUTH: 80-6-1103, 80-6-1104, MCA

IMP: 80-6-1103, 80-6-1105, & 80-6-1109, MCA

RULE VI. BEE SAMPLING PROCEDURE FOR THE CERTIFICATION OF

BEES (1) The following procedure shall be used to sample bees under the bee certification program:

(a) All bees must be in loose cell stage before samples can be taken.

(b) A two ounce (2 oz.) sample shall be taken from each 20 pounds of bees owned or possessed by a beekeeper. An official sample size shall not consist of less than eight ounces (8 oz.). If the beekeeper owns or possesses more than 200 pounds, then the cocoon larvae will be divided into 200 pound lots and official samples shall be obtained from each lot. All official samples shall become the property of the department.

(c) Once the official sample has been obtained, the remaining composite sample shall be officially sealed and left in the possession of the owner/manager. The owner/manager has 30 days from date of receipt of certification to appeal the original laboratory test results.

(d) All samples shall be collected using a random sampling procedure, i.e., a uniform sample from the top, middle, and bottom within the bee storage containers.

(e) All official samples shall be obtained by department personnel in the presence of the owner/manager of the bees or the owner/manager under the direct supervision of the department.

(f) All official sample containers shall be sealed with a label showing lot number, data sampled, and signature of department employee.

(g) All official sample lot numbers must correspond with lot numbers attached to beekeeper storage containers.

(h) A grower whose total bees consist of less than 100 pounds may have an official sample consisting of a 2 ounce (2 oz.) sample drawn from each 20 pounds of bees; and from a composite sample an official sample of 4 ounces (4 oz.) may be drawn.

AUTH: 80-6-1103, MCA IMP: 80-6-1105, MCA

RULE VII. MINIMUM STANDARD FOR LEAF-CUTTING BEES CERTIFIED BY THE DEPARTMENT (1) The following bee certification standards apply to the official sample analyzed at a designated laboratory.

(a) Unconditional certification: Alfalfa leaf-cutting bees that have been officially examined and analyzed and determined to contain less than 10% composite infestation by parasites and contain 0% infestation by designated pathogens, shall be eligible for unconditional certification for:

- (i) possession within the state;
- (ii) for sale within or without the state;
- (iii) import into the state of Montana.

Zero percent means nondetected within the official sample.

(b) Restricted certification: Alfalfa leaf-cutting bees that are officially reported as containing composite parasite infestation levels of 10% to 25%, or composite pathogens infestation levels of more than 0% to 30% shall be designated as being restricted certification and,

- (i) may be sold out-of-state;
- (ii) shall not be imported, transferred, or distributed in the state without prior written approval of the department.

(2) Parasites and pathogens that bees are to specifically be examined for are:

- (a) Parasites;
 - (i) Minute chalcid (*Telrastichus megachi*),
 - (ii) Sapyga wasp (*Sapyga pumila*),
 - (iii) Canadian chalcid (*Pteromalus venustus*),
 - (iv) Imported chalcid (*Monodontomerus obscurus*).

(b) Pathogens:

- (i) Alfalfa leaf-cutting bee chalkbrood (*Ascosphaera* sp.).

AUTH: 80-6-1103, MCA IMP: 80-6-1103 & 80-6-1105, MCA

RULE VIII. IMPORTED ALFALFA LEAF-CUTTING BEES - CERTIFICATION

(1) Alfalfa leaf-cutting bees imported from any state or foreign country must meet the standards for certification of alfalfa leaf-cutting bees set forth in these rules.

(2) Alfalfa leaf-cutting bees that do not meet the unconditional certification standards shall not be released for distribution or delivery within the state without written approval.

(3) The importer of the bees shall be notified by certified mail of the fact of noncertification, together with a notice that said bees must be removed from the state of Montana, at the importer's expense, within 30 days, or the said bees will be destroyed.

AUTH: 80-6-1103, MCA IMP: 80-6-1103 and 80-6-1105, MCA

RULE IX. SALES OF BEES (1) All sales of bees shall be reported to the department. These sales reports shall contain the name, address, pounds sold and location of the new owners. These sales shall be reported to the department within 30 days of sale.

AUTH: 80-6-1103, MCA IMP: 80-6-1105, MCA

RULE X. FEES ESTABLISHED FOR SERVICE SAMPLES (1) Laboratory analysis - \$35.00 per sample which includes pathogens and parasites. Additional services and respective fees are:

- (a) Larvae count/lb. - \$10.00 per sample.
- (b) Sex ratio and percent emergence - \$15.00 per sample.
- (c) Percent Emergence - \$10.00 per sample.
- (d) Field service - current Montana rates for mileage/per diem.

AUTH: 80-6-1103, MCA IMP: 80-6-1109, MCA

RULE XI. DISEASE CONTROL - WILD TRAPPING PERMIT - FEE

(1) A person intending to engage in wild trapping shall apply to the department for a permit prior to commencing trapping activities.

(2) The application for a permit to trap wild bees shall contain: name, address, location of wild trapping activities, (1/4 section, township, range), number of bee boxes, and permission of property owners.

(3) The fee for wild trapping shall be set at \$10.00 per laminated board.

(4) Only new laminated boards or laminated boards sterilized using approved department methods will be used for wild trapping.

(5) The person applying for a permit shall obtain the signature of the property owner on which the bees are to be wild trapped.

(6) Any person keeping bees or nesting materials on property other than their own, shall clearly mark the trapping materials with his or her correct name, mailing address, and phone number. The lettering shall not be less than 1 inch in size.

AUTH: 80-6-1103 & 80-6-1109, MCA IMP: 80-6-1108, MCA

3. The Department proposes to repeal ARM 4.12.1201 PURPOSE OF RULES; 4.12.1203 STANDARDS FOR CERTIFICATION; 4.12.1204 ALFALFA LEAFCUTTING BEES NOT MEETING CERTIFICATION STANDARDS; 4.12.1205 CERTIFICATION OF IMPORTED ALFALFA LEAFCUTTING BEES; 4.12.1206 ALFALFA LEAFCUTTING BEE SAMPLING PROCEDURE; 4.12.1207 CERTIFICATION PROCEDURES AND FEES;

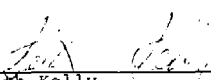
4.12.1208 SAMPLING/ANALYSIS FEES; 4.12.1209 FOR THE PURPOSES OF DISEASE CONTROL - WILD TRAPPING PERMIT PROCEDURE; found at pages 4-415 through 4-419 of the Administrative Rules of Montana. Authority sections for these repeals are found at 80-6-1103 and 80-6-1109 MCA.

4. On March 31, 1987 the Legislature enacted House Bill 815, generally revising the alfalfa leaf-cutting bee laws. The department adopted emergency rules to immediately establish the revised alfalfa leaf-cutting bee program. It is therefore imperative to establish permanent rules in order to meet the legislative mandate of implementing the revised program. During the past few years the alfalfa leaf-cutting bee program has suffered from the lack of revenue of certification fees due to the depressed agricultural economic climate. The revised statutes remedy some of the sources of problems the program is facing by easing the registration process and by making the regulations more workable. It is the belief of the department that by implementing these rules that the department can generate the necessary revenue needed to keep the bee lab and related program going. The rules also better establish a workable method of controlling parasites and pathogens. Therefore these rules are necessary to permanently implement the statutory changes made by the 1987 legislature.

5. Interested persons may present their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to O. Roy Bjornson, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than September 11, 1987.

6. Garth Jacobson, Agriculture/Livestock Building, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. These rules are authorized under section 80-6-1103 and 80-6-1109, MCA. They implement sections 80-6-1103, 80-6-1105, 80-6-1106 Section 5 HB 815 1987 Legislative Session, and 80-6-1109, MCA.



Keith Kelly
Director

Certified to the Secretary of State August 3, 1987.

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed)
adoption of rules pertaining) NOTICE OF PUBLIC HEARING
to health maintenance)
organizations .)

1. On September 15, 1987, at 9:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building at Helena, Montana, to consider the adoption of rules pertaining to health maintenance organizations.

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

3. The text of the proposed rules is as follows:

RULE I PURPOSE The purpose of these rules is to implement the Montana Health Maintenance Organization Act to assure the availability, accessibility, and continuity of services provided by health maintenance organizations and to provide reasonable standards for terms and provisions contained in health maintenance organization contracts and evidences of coverage.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-101 through 33-31-405, MCA (SB 353, 1987)

RULE II APPLICABILITY AND SCOPE These rules apply on or after their effective date to all health maintenance organizations that are required to obtain a certificate of authority in this state. If these rules conflict with other rules adopted by the commissioner, these rules control as to health maintenance organizations.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-101 through 33-31-405, MCA (SB 353, 1987)

RULE III EFFECTIVE DATE (1) A new contract or evidence of coverage may not be delivered or issued for delivery in this state on or after the effective date of these rules unless it complies with these rules.

(2) A contract or evidence of coverage may not be reissued, renewed, amended, or extended in this state on or after the effective date of these rules unless it complies with these rules. A contract or evidence of coverage approved before the effective date of these rules is considered to be reissued, renewed, amended, or extended on the date the health maintenance organization changes the terms of the contract or evidence of coverage or adjusts the premiums charged. A contract or evidence of coverage must comply with these rules

when it is amended or within 12 months after the effective date of these rules, whichever is earlier.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-101 through 33-31-405, MCA (SB 353, 1987)

RULE IV. DEFINITIONS A contract or evidence of coverage delivered or issued for delivery to any person by a health maintenance organization required to obtain a certificate of authority in this state may not contain definitions respecting the words defined in the Montana Health Maintenance Organization Act or this rule unless the definitions comply with the definitions contained in the Montana Health Maintenance Organization Act and this rule. Definitions other than those set forth in the Montana Health Maintenance Organization Act or this rule may be used if they do not extend, modify, or conflict with the definitions contained in the Montana Health Maintenance Organization Act and this rule. All definitions used in the contract and evidence of coverage must be in alphabetical order. As used in these rules and for the purpose of any terms used in the contract and evidence of coverage:

(1) "Basic health care services" means basic health care services as defined in 33-31-102(2), MCA.

(2) "Contract holder" means a person or entity consisting of employees or eligible persons that has entered into a group contract with a health maintenance organization for the provision of specified health care services to its eligible employees or eligible persons.

(3) "Copayment" means the amount a subscriber must pay at the time of service to receive a specific service that is not fully prepaid.

(4) "Eligible dependent" means:

(a) a spouse of the subscriber;

(b) an unmarried dependent child of the subscriber who has not reached age 18,

(c) an unmarried dependent child of the subscriber age 18 or over, who is both incapable of self-support because of mental retardation, mental illness, or physical incapacity and chiefly dependent upon the subscriber for support and maintenance; or

(d) an unmarried dependent child of the subscriber who is attending a recognized college, university, or trade or secondary school on a full-time basis. As used in this definition, "dependent child" means:

(i) related to the subscriber as either a natural child, a legally adopted child, or a stepchild; or

(ii) any other child residing in the subscriber's household who qualifies as a dependent of the subscriber or the subscriber's spouse under the United States Internal Revenue Code and the Federal Tax Regulations.

(5) "Emergency care services" means:

(a) within the service area, covered health care services rendered by affiliated or non-affiliated providers under unforeseen conditions that require immediate medical

attention; emergency care services within the service area include covered health care services from non-affiliated providers only when delay in receiving care from the health maintenance organization could reasonably be expected to cause severe jeopardy to the enrollee's condition.

(b) outside the service area, medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the health maintenance organization's service area.

(6) "Enrollee" means an enrollee as defined in 33-31-102(6), MCA.

(7) "Evidence of coverage" means an evidence of coverage as defined in 33-31-102(7), MCA.

(8) "Group contract" means a contract for health care services that by its terms limits eligibility to members of a specified group.

(9) "Health care services" means health care services as defined in 33-31-102(8), MCA.

(10) "Health professional" means any professional engaged in the delivery of health care services who, if a license is required by law, is licensed and practicing within the scope of the license.

(11) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. The term "hospital" does not include a convalescent facility, nursing home, or any institution or part thereof, that is used principally as a convalescent facility, rest facility, nursing facility, or facility for the aged.

(12) "Individual contract" means a contract for health care services issued to and covering an individual or a family.

(13) "Medically necessary" means appropriate and necessary services as determined by a provider affiliated with the health maintenance organization that are rendered to an enrollee for any condition requiring, according to generally accepted principles of good medical practice, the diagnosis or direct care and treatment of an illness or injury.

(14) "Out-of-area services" means the health care services that a health maintenance organization covers when its enrollees are outside of the service area.

(15) "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of such a license.

(16) "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees; initiates their referral for specialist care; and maintains continuity of patient care.

(17) "Provider" means a provider as defined in 33-31-102(13), MCA. "Person", as used in that definition, means a person as defined in 33-31-102(11), MCA.

(18) "Service area" means the geographical area approved by the commissioner within which the health maintenance organization provides or arranges for health care services

that are available and accessible to enrollees.

(19) "Skilled nursing facility" means a facility that is operated pursuant to law and primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician.

(20) "Subscriber" means the individual whose employment or other status, except for family dependency, is the basis for eligibility for enrollment in the health maintenance organization.

(21) "Supplemental health care services" means health care services other than basic health care services.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-101 through 33-31-405, MCA (SB 353, 1987)

RULE V FILING EXEMPTION FOR HEALTH MAINTENANCE OPERATED BY INSURER OR HEALTH SERVICE CORPORATION AS A PLAN A health maintenance organization operated as a plan (defined in 33-31-102(12), MCA) need not file with the commissioner, as part of its application for a certificate of authority, the financial statement required by 33-31-201(3)(d)(vi), MCA, if the same financial statement has been filed under other laws or rules administered by the commissioner.

AUTH: 33-31-103 and 33-31-201(7), MCA (SB 353, 1987); IMP: 33-31-201, MCA (SB 353, 1987)

RULE VI REQUIREMENTS FOR CONTRACTS AND EVIDENCES OF COVERAGE (1) Each subscriber is entitled to a contract or evidence of coverage as approved by the commissioner. The contract or evidence of coverage must be delivered or issued for delivery to a subscriber within a reasonable time after enrollment, but not more than 15 days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment.

(2) A health maintenance organization contract and evidence of coverage must contain:

(a) the name, address, and telephone number of the health maintenance organization and the location of and the manner in which information is available as to how services may be obtained;

(b) a statement that the contract, all applications, and any amendments thereto constitute the entire agreement between the parties. No portion of the charter, bylaws, or other document of the health maintenance organization may be part of the contract and evidence of coverage unless set forth in full in the contract and evidence of coverage or attached thereto.

(c) the time and date of occurrence upon which coverage takes effect, including any applicable waiting periods, or describe how the time and date of occurrence upon which coverage takes effect is determined. The contract and evidence of coverage must contain the time and date of occurrence upon which coverage will terminate.

(d) eligibility requirements indicating the conditions that must be met to enroll as a subscriber or eligible

dependent; the limiting age for subscribers and eligible dependents, including the effects of medicare eligibility; and a clear statement regarding coverage of newborn children. However, a health maintenance organization contract and evidence of coverage may not contain any provision excluding or limiting coverage for a newborn child. Medically diagnosed congenital defects and birth abnormalities must be treated the same as any other illness or injury for which coverage is provided.

(e) a specific description of benefits and services available within the service area and out of the service area;

(f) a specific description of benefits available for emergency care services 24 hours a day, seven days a week, including disclosure of any restrictions on emergency care services. A contract and evidence of coverage may not limit the coverage of emergency care services within the service area to affiliated providers only.

(g) a description of the copayments, limitations, or exclusions on the services, kind of services, benefits, or kind of benefits to be provided, including the copayments, limitations, or exclusions due to preexisting conditions, waiting periods, or an enrollee's refusal of treatment;

(h) the conditions upon which the health maintenance organization or the subscriber may cancel coverage;

(i) the conditions for, and any restrictions upon, the subscriber's right to renewal and right to reinstatement;

(j) a grace period of not less than 30 days for the payment of any premium except the first, during which coverage remains in effect if payment is made during the grace period. During the grace period, the health maintenance organization remains liable for providing the services and benefits contracted for, the contract holder remains liable for paying the premium for the time coverage was in effect during the grace period, and the subscriber remains liable for any copayments owed.

(k) procedures for filing claims that include:

(i) required notice to the health maintenance organization;

(ii) if any claim forms are required, how, when, and where to obtain and submit them;

(iii) requirements for filing proper proofs of loss;

(iv) time limit of payment of claims;

(v) notice of requirements for resolving disputed claims including arbitration; and

(vi) a statement of restrictions, if any, on assignment of sums payable to the enrollee by the health maintenance organization.

(l) in compliance with subsection (4) of Rule IX, a description of the health maintenance organization's method for resolving enrollee complaints, incorporating procedures to be followed by the enrollee if a dispute arises under the contract, including any requirements for arbitration;

(m) if it is a group contract and group evidence of coverage, a provision that an enrollee who is an inpatient in a hospital or a skilled nursing facility on the date of

cancellation of the group contract is covered in accordance with the terms of the group contract until discharged from the hospital or skilled nursing facility. The enrollee may be charged the appropriate premium for coverage that was in effect prior to cancellation of the group contract.

(n)(i) a provision granting each enrollee the right to convert coverage to an individual contract in the following circumstances:

(A) upon termination of eligibility for coverage under a group or individual contract; or

(B) upon cancellation of the group contract. To obtain the conversion contract, an enrollee shall submit a written application and the applicable premium payment within 31 days after the date the enrollee's eligibility for coverage terminates.

(ii) A conversion contract is not required to be made available if:

(A) the enrollee's cancellation of coverage occurred for any of the reasons listed in subsections (3)(a), (3)(e), (3)(f), or (3)(g) of 33-31-312, MCA;

(B) the enrollee is covered by or is eligible for benefits under Title XVII of the United States Social Security Act;

(C) the enrollee is covered by or is eligible for similar hospital, medical, or surgical benefits under state or federal law;

(D) the enrollee is covered by or is eligible for similar hospital, medical, or surgical benefits under any arrangement of coverage for individuals in a group;

(E) the enrollee is covered for similar benefits by an individual policy or contract; or

(F) the enrollee has not been continuously covered during the three-month period immediately preceding that person's cancellation of coverage.

(iii) The conversion contract must:

(A) provide as a minimum to its enrollees basic health care services;

(B) provide coverage without requiring evidence of insurability and may not impose any preexisting condition limitations or exclusions as described in subsection (1) of Rule VII other than those remaining unexpired under the contract from which conversion is exercised. Any probationary or waiting period set forth in the conversion contract is considered to commence on the effective date of the enrollee's coverage under the prior contract.

(C) begin coverage of the enrollee formerly covered under the group or individual contract on the date of termination from the group or the former individual contract.

(o) if it is a group contract issued by a health maintenance organization, a reasonable extension of benefits upon discontinuance of the group contract with respect to enrollees who become totally disabled while enrolled under the contract and who continue to be totally disabled on the date the contract was discontinued. Upon payment of premium at the current group rate, coverage must remain in full force and

effect for a reasonable period of time not less than 180 days, or until such time as the enrollee is no longer totally disabled, or until such time as a succeeding carrier elects to provide replacement coverage to that enrollee without limitation as to the disabling condition. Upon termination of the extension of benefits, the enrollee has the right to convert coverage as provided in subsection (1)(n) of Rule VI.

(p) a provision that a subscriber may return the contract within 10 days of receiving it and receive a refund of the premium paid if the person is not satisfied with the contract for any reason. If the contract or evidence of coverage is returned to the health maintenance organization or to the agent through whom it was purchased, it is considered void from the beginning. However, if services are rendered or claims are paid to an enrollee covered under the contract or evidence of coverage by the health maintenance organization during the 10-day examination period, the enrollee may return the contract and receive a refund of the premium paid.

(3) The contract and evidence of coverage may contain a provision for coordination of benefits consistent with the coordination of benefit rules applicable to other insurers in the jurisdiction. The provisions or rules for coordination of benefits established by a health maintenance organization may not relieve a health maintenance organization of its duty to provide or arrange for a covered health care service to any enrollee because the enrollee is entitled to coverage under any other contract, policy, or plan, including coverage provided under government programs. The health maintenance organization shall provide covered health care services first and then, at its option, seek coordination of benefits.

(4) The contract and evidence of coverage may not contain any provisions concerning subrogation for injuries caused by third parties unless the wording has been approved by the commissioner.

(5) A contract and evidence of coverage that contains a provision not in conformity with the Montana Health Maintenance Organization Act is not invalid but must be construed and applied as if it were in full compliance with these rules and the Montana Health Maintenance Organization Act.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-301, MCA (SB 353, 1987)

RULE VII PROHIBITED PRACTICES (1)(a) A health maintenance organization may include in its individual contract and evidence of coverage a provision setting forth reasonable exclusions or limitations of services for preexisting conditions at the time of enrollment. However, an exclusion or limitation may not be for a period greater than two years.

(b) A health maintenance organization may not exclude or limit services for a preexisting condition when the enrollee transfers coverage from one individual contract to another or when the enrollee converts coverage under his conversion

option, except to the extent of a preexisting condition limitation or exclusion remaining unexpired under the prior contract. Any required probationary or waiting period is considered to have commenced on the effective date of coverage under the prior contract. The health maintenance organization contract must disclose any preexisting condition, limitation, or exclusion that applies when an enrollee transfers from a prior health maintenance organization contract.

(c) A preexisting condition may not be defined more restrictively than the following:

(i) the existence of symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment within a two-year period preceding the effective date of coverage under the health care plan; or

(ii) a condition for which medical advice or treatment was recommended by a physician or received from a physician within a two-year period preceding the effective date of coverage under the health care plan.

(d) A group contract or evidence of coverage may not exclude or limit services for a preexisting condition.

(2)(a) A health maintenance organization may not cancel or terminate an enrollee's coverage for services provided under a health maintenance organization contract without giving the enrollee written notice of cancellation that is effective at least 15 days from the date of mailing or, if not mailed, from the date of delivery and that includes the reason for cancellation. For cancellation due to nonpayment of premium, the grace period as required in subsection (1)(j) of Rule VI applies. A written notice of cancellation is not required to be given for cancellation due to non-payment of premium.

(b) A health maintenance organization that provides in the contract and evidence of coverage that coverage of a dependent child terminates upon attainment of the limiting age for dependent children may not cancel the coverage of the child if the child is and continues to be both:

(i) incapable of self-support because of mental retardation, mental illness, or physical incapacity, and

(ii) chiefly dependent upon the subscriber for support and maintenance. The subscriber must furnish proof of such incapacity and dependency to the health maintenance organization within 31 days of the child's attainment of the limiting age and subsequently as reasonably required by the health maintenance organization.

(3)(a) A health maintenance organization may not unfairly discriminate against any enrollee or applicant for enrollment on the basis of the age, sex, race, color, creed, national origin, ancestry, religion, marital status, or lawful occupation of an enrollee, or because of the frequency of utilization of services of an enrollee.

(b) A health maintenance organization may not disenroll, cancel, or refuse to re-enroll any enrollee nor refuse to enroll individual members of a group on the basis of the health status or health care needs of the individual enrollee or member.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-18-206,
33-31-301(3)(c), and 33-31-312, MCA (SB 353, 1987)

RULE VIII SERVICES (1)(a) A health maintenance organization shall establish and maintain adequate arrangements to provide the health services contracted for by its subscribers including:

(i) reasonable proximity to the business or personal residences of the enrollees so as not to result in unreasonable barriers to accessibility;

(ii) reasonable hours of operation and after-hours services;

(iii) emergency care services available and accessible within the service area 24 hours a day, seven days a week; and

(iv) sufficient providers and personnel, including health professionals, administrators and support staff, to assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of enrollees.

(b) A health maintenance organization shall make available to each enrollee a primary care physician and provide accessibility to medically necessary specialists through staffing, contracting, or referral. A health maintenance organization shall provide for continuity of care for enrollees referred to specialists.

(c) A health maintenance organization shall have written procedures governing the availability of frequently utilized services contracted for by subscribers, including at least the following:

(i) well-patient examinations and immunizations;

(ii) emergency telephone consultation on a 24 hours per day, seven days per week basis;

(iii) treatment of emergencies;

(iv) treatment of minor illness; and

(v) treatment of chronic illnesses.

(2) A health maintenance organization shall provide or arrange for the provision of emergency care and basic health care services, including the following:

(a) emergency care services, as defined in Rule IV;

(b) inpatient hospital care, meaning medically necessary hospital care services including, but not limited to, room and board; general nursing care; special diets when medically necessary; use of operating room and related facilities; use of intensive care units and services; x-ray, laboratory, and other diagnostic tests; drugs, medications, biologicals, anesthesia, and oxygen services; special nursing when medically necessary; physical therapy, radiation therapy, and inhalation therapy; administration of whole blood and blood plasma; and short-term rehabilitation services;

(c) inpatient provider care, meaning medically necessary health care services performed, prescribed, or supervised by providers or other health professionals including diagnostic, therapeutic, medical, surgical, preventive, referral, and consultative health care services.

(d) outpatient medical services, meaning preventive and

medically necessary health care services provided in a physician's office, a non-hospital-based health care facility, or a hospital. Outpatient medical services include but are not limited to diagnostic services; treatment services; laboratory services; x-ray services; referral services; and physical therapy, radiation therapy, and inhalation therapy. Outpatient services also include preventive health services which include at least a broad range of voluntary family planning services, services for infertility, well-child care from birth, periodic health evaluations for adults, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice.

(3)(a) Out-of-area services are subject to the same copayment requirements set forth in subsection (3) of Rule IX.

(b) When an enrollee is traveling or temporarily residing out of a health maintenance organization's service area, a health maintenance organization shall provide benefits for reimbursement for emergency care services and transportation that is medically necessary and appropriate under the circumstances to return the enrollee to a health maintenance organization provider, subject to the following conditions:

(i) the condition could not reasonably have been foreseen;

(ii) the enrollee could not reasonably arrange to return to the service area to receive treatment from the health maintenance organization's provider;

(iii) the travel or temporary residence is for some purpose other than the receipt of medical treatments; and

(iv) the health maintenance organization is notified by telephone within 24 hours of the commencement of such care unless it is shown that it was not reasonably possible to communicate with the health maintenance organization within such time limits.

(c) Services received by an enrollee outside of the health maintenance organization's service area are covered only so long as it is unreasonable to return the enrollee to the service area.

(4) In addition to the basic health care services required to be provided in subsection (2) of this rule, a health maintenance organization may offer to its enrollee any supplemental health care services it chooses to provide. Limitations as to time and cost may vary from those applicable to basic health care services.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-102(2), 33-31-202(3), and 33-31-301(3), MCA (SB 353, 1987)

RULE IX OTHER REQUIREMENTS (1)(a) A health maintenance organization shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the contract and evidence of coverage are issued and upon request thereafter. If a provider is no longer affiliated with a health maintenance

organization, the health maintenance organization shall provide notice of such change to its affected subscribers in a timely manner. Subject to the approval of the commissioner, a health maintenance organization may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a health maintenance organization shall make a list of all providers available to subscribers upon request.

(b) Any list of providers must contain a notice regarding the availability of the listed primary care physicians. The notice must be in not less than 12-point type and be placed in a prominent place on the list of providers. The notice must contain the following or similar language: "Enrolling in [name of health maintenance organization] does not guarantee services by a particular provider on this list. If you wish to be sure of receiving care from specific providers listed, you should contact those providers to be sure that they are accepting additional patients for [name of health maintenance organization]."

(2) A health maintenance organization shall provide its subscribers with a description of its service area no later than the time of enrollment or the time the contract and evidence of coverage is issued and upon request thereafter. If the description of the service area is changed, the health maintenance organization shall provide at such time a new description of the service area to its subscribers.

(3) A health maintenance organization may require copayments of enrollees as a condition for the receipt of specific health care services. Copayments for basic health care services must be shown in the contract and evidence of coverage as a specified dollar amount. Copayments are the only allowable charge, other than premiums, assessed to subscribers for basic and supplemental health care services.

(4)(a) A health maintenance organization must establish and maintain a complaint system to provide reasonable procedures for the prompt and effective resolution of written complaints.

(b) A health maintenance organization shall provide complaint forms to be given to enrollees who wish to register written complaints. The forms must include the address and telephone number to which complaints must be directed and must also specify any required time limits imposed by the health maintenance organization.

(c) The complaint system must require the health maintenance organization to acknowledge a complaint in writing within 10 days and resolve or make a final determination of the complaint within 60 days from the date the complaint is registered. This period may be extended if:

(i) there is a delay in obtaining the documents or records necessary for resolving the complaint; or

(ii) the health maintenance organization and the enrollee mutually agree in writing.

(d) Pending the resolution of a written complaint filed by a subscriber or enrollee, coverage may not be terminated for any reason which is the subject of the written complaint,

unless the health maintenance organization has, in good faith, made a reasonable effort to resolve the written complaint through its complaint system and coverage is being terminated as provided for in subsection (2) of Rule VII.

(e) If an enrollee's complaint and grievance may be resolved through a specified arbitration agreement, the enrollee shall be advised in writing of his rights and duties under the agreement at the time the complaint is registered. An agreement must be accompanied by a statement setting forth in writing the terms and conditions of binding arbitration. A health maintenance organization that makes binding arbitration a condition of enrollment must fully disclose this requirement to its enrollees in the contract and evidence of coverage.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-202(3)(c), 33-31-301(3)(c), and 33-31-303, MCA (SB 353, 1987)

RULE X PENALTIES A violation of these rules is punishable as provided for in 33-31-402 and 33-31-405, MCA, and any other applicable law of this state.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: 33-31-101 through 33-31-405, MCA (SB 353, 1987)


4. Proposed rules I, II, III, IV, and X are reasonably necessary to effectuate the purpose of 33-31-101 through 33-31-405, MCA. Rule V is reasonably necessary to avoid requiring an insurer or a health service corporation to file more than one financial statement simply because it operates a health maintenance organization as a plan. Rule VI is reasonably necessary to notify a health maintenance organization subscriber about the health care services, benefits, information, complaint resolution methods, definitions, newborn infant coverages, and continuation and conversion rights that a health maintenance organization must provide and the limitations on services or benefits, including deductibles or copayments, to which a health maintenance organization may subject an enrollee. Rule VII is reasonably necessary to clarify that a health maintenance organization may include a preexisting condition limitation in an individual contract, that a cancellation of an enrollee's coverage is not effective until 15 days from the date of mailing or delivery of the notice of cancellation, coverage of a child who has attained the limiting age may not be cancelled if the subscriber proves the child's incapacity and dependency to the health maintenance organization, that a health maintenance organization may not discriminate against an enrollee or applicant for enrollment, and that a health maintenance organization may not disenroll an enrollee because of health status. Rule VIII is reasonably necessary to clarify to a health maintenance organization the services it must provide to "effectively provide or arrange for the provision of basic health care services", as required by 33-31-202(3)(c), MCA; to define the meaning of words contained

in the definition of "basic health care services" in 33-31-102(2), MCA; and to define out-of-area services. Rule IX is reasonably necessary to clarify to a health maintenance organization the information it must provide to (1) "effectively provide or arrange for the provision of basic health care services", as required by 33-31-202(3)(c), MCA; and (2) disclose limitations to access to services relating to providers and service area. Rule IX also clarifies the manner in which a health maintenance organization must (1) show a copayment in the contract and evidence of coverage; and (2) handle complaints.

5. Interested persons may present their data, views, or arguments either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kathy M. Irigoin, State Auditor's Office, Mitchell Building, P.O. Box 4009, Helena, Montana 59604, no later than September 14, 1987.

6. Tanya Ask has been designated to preside over and conduct the hearing.

7. The authority for the commissioner to adopt the proposed rules is 33-31-103, MCA (SB 353, 1987), and the rules implement 33-31-502(2), MCA.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 31st day of July, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the proposed amendment of rules pertaining to meetings, fees and the adoption of a new rule pertaining to mortuary licenses)
NOTICE OF PROPOSED AMENDMENT OF 8.30.401 BOARD MEETINGS, 8.30.407 FEE SCHEDULE AND THE ADOPTION OF NEW RULE I. TRANSFER OR SALE OF MORTUARY LICENSE - NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 14, 1987, the Board of Morticians proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.30.401 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-927, Administrative Rules of Montana)

"8.30.401 BOARD MEETINGS (1) A board meeting shall be conducted the second Tuesday immediately preceding the second Wednesday of July each year in Helena and at other times and places as the board considers necessary. At the July meeting, the board shall elect from its members a chairman, vice-chairman and secretary."

Auth: 37-19-202, MCA Imp: 37-19-202, MCA

REASON: This rule is proposed to synchronize the annual meeting date with the statutory license examination date established by section 37-19-303, MCA.

3. The proposed amendment of 8.30.407 will read as follows: (new matter underlined, deleted matter interlined) (full text of the Rule is located at page 8-929, Administrative Rules of Montana)

"8.30.407 FEE SCHEDULE (1) through (5)(c) will remain the same.

(d) Late renewal penalty - morticians \$25.00 \$50.00
license (paid in addition to renewal fee)

(e) Late renewal penalty - mortuary \$100.00
license (paid in addition to renewal fee)

(6) will remain the same."

Auth: 37-1-134, 37-19-201, MCA Imp: 37-1-134, 37-19-301, 304, 306, 403, MCA

REASON: The board proposed to raise the penalty for late renewals due to the time and costs required takes to process additional renewal notices, send out suspension letters and maintain office records, requiring increased revenue in order for the board to operate in a fiscally sound manner.

4. Proposed new rule I Transfer or Sale of Mortuary License will read as follows:

"I. TRANSFER OR SALE OF MORTUARY LICENSE (1) Upon the transfer or sale of a mortuary, the original license number may be retained by the mortuary facility upon written request to the board."

Auth: 37-19-202, 403, MCA Imp: 37-19-403, MCA

REASON: This rule is proposed in order to relate the license number to the facility. A mortuary business does not change when the ownership changes. There have been requests for retention of original license numbers.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Morticians, 1424 9th Avenue, Helena, Montana 59620-0407, no later than September 10, 1987.

6. If a person who is directly affected by the proposed amendments and adoption 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 Morticians, 1424 9th Avenue, Helena, Montana 59620-0407, no later than September 10, 1987.

7. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, 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 40 based on the 400 licensees in Montana.

BOARD OF MORTICIANS
WILLIAM B. BROWN, CHAIRMAN

BY:


GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 3, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment and adoption of	)	OF 8.32.306 APPLICATION FOR
rules pertaining to applica-	)	RECOGNITION, 8.32.407 CERTI-
tions, certificates, renewals	)	FICATE OF NURSE-MIDWIFERY,
and verification of licenses	)	8.32.411 RENEWALS AND THE
	)	PROPOSED ADOPTION OF NEW
	)	RULE I VERIFICATION OF
	)	LICENSE TO ANOTHER STATE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 10, 1987, the Board of Nursing proposes to amend and adopt the above-stated rules:

2. The proposed amendment of 8.32.306 Application for Recognition will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule appears at page 8-971, Administrative Rules of Montana)

"8.32.306 APPLICATION FOR RECOGNITION (1) will remain the same.

(2) The application fee for specialty area recognition shall be \$25.00 and a fee of ~~\$5.00~~ \$10.00 for each annual renewal thereafter."

Auth: 37-1-131(1), 37-8-202(2), MCA Imp: 37-1-134, 37-8-202(3), 37-8-431(1)(2), MCA

3. The proposed amendment of 8.32.407 Certificate of Nurse-Midwifery will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule appears at page 8-977, Administrative Rules of Montana)

"8.32.407 CERTIFICATE OF NURSE-MIDWIFERY (1) will remain the same.

(2) The application fee for amendment of license and certification shall be \$25.00 and a fee of ~~\$5.00~~ \$10.00 shall be assessed for each annual renewal thereafter. Such certification shall be subject to the provisions for renewal, suspension and revocation which are applicable to licensing under the provisions of Title 37, Chapter 8, MCA."

Auth: 37-1-131(1), 37-8-202(2), MCA Imp: 37-1-134, 37-8-202(3), 37-8-431(1)(2), MCA

4. The proposed amendment of 8.32.411 Renewals will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-978.1, Administrative Rules of Montana)

"8.32.411 RENEWALS (1) In November of each year, the board of nursing shall mail an application for renewal of

license to all persons currently licensed. The licensee must fill out the application and return it to the board BEFORE January 1, together with the renewal fee of ~~\$10.00~~ \$20.00. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1, and expiring December 31.

(2) To place a licensee on active status the licensee pays the renewal fee of ~~\$10.00~~ \$20.00 for the current year at the time that practice is resumed.

(3) Registered professional nurses and licensed practical nurses failing to renew their license by January 1 or requesting reinstatement of a lapsed license will pay a late fee of \$5.00 plus the ~~\$10.00~~ \$20.00 renewal fee which will be due upon application."

Auth: 37-1-131(1), 37-8-202(2), MCA Imp: 37-1-134, 37-8-202(3), 37-8-431(1)(2), MCA

5. The amendments to ARM 8.32.306, 8.32.407 and 8.32.411 are being proposed in order for the Board of Nursing to fund its mandated functions, programs and activities fully as no revenues are received from the general fund. The annual renewal fees were increased to \$10.00 in the 1972 renewal period and have remained at that level. As costs have increased, appropriations have exceeded revenue.

During the past six years the Board's statutory duties and the costs associated with carrying out those duties have increased significantly. General operational, material and administrative program costs have continued to rise. The awareness and concern of the consumer and licensees regarding the quality of nursing care being delivered has increased the number and type of complaints against licensees, resulting in increased costs for investigations, legal services and hearings. Costs, including litigation, associated with the recognition of licensees in the specialty areas of nursing continue to be significant. Ongoing changes in nursing practice, and clarification and revisions of Board standards and policies have resulted in additional expense in preparation and education of the licensee and the public. The adoption of these proposed amendments will compensate for the increased Board costs and negate the disruption of its required programs.

6. Proposed new rule I Verification of License to Another State will read as follows:

"I. VERIFICATION OF LICENSE TO ANOTHER STATE Licensees requesting verification and documentation of Montana licensure status to another United States jurisdiction or foreign country shall submit a fee of \$10.00 with the request."

Auth: 37-1-131(1), 37-8-202(2), MCA Imp: 37-1-134, 37-8-202(3), 37-8-431(1), MCA

7. The Board is proposing adoption of the new rule to establish a fee commensurate with the cost of verifying and documenting the licensure status of a licensee to another jurisdiction or foreign country. The proposed fee for this service will be consistent with the cost of gathering the information data, preparation of the requested document, postage and handling.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Nursing, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 10, 1987.

9. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views, or arguments either orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Nursing, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620-0407, no later than September 10, 1987.

10. If the Board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, 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 1207 based on the 12,070 licensees in Montana.

BOARD OF NURSING
DONNA MAE SNODGRASS, RN

BY:


GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 3, 1987.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.58.411 FEE SCHEDULE
to fees)

NO PUBLIC HEARING CONTEMPLATED

T0: All Interested Persons:

1. On September 14, 1987, the Board of Realty Regulation proposes to amend the above-stated rule.

2. The proposed amendment of 8.58.411 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1605, Administrative Rules of Montana)

"8.58.411 FEE SCHEDULE (1) through (3) will remain the same.

(4)	For each rescheduling of examination	\$20.00	<u>\$25.00</u>
(5)	For each original resident broker's license	\$50.00	<u>\$65.00</u>
(6)	For each annual renewal of a resident broker's license	\$30.00	<u>\$65.00</u>
(7)	For each original non-resident broker's license	\$50.00	<u>\$65.00</u>
(8)	For each annual renewal of a non-resident broker's license	\$30.00	<u>\$65.00</u>
(9)	For each original salesman's license	\$25.00	<u>\$35.00</u>
(10)	For each annual renewal of salesman's license	\$15.00	<u>\$35.00</u>
(11)	For each additional office or place of business, an annual fee	\$25.00	<u>\$30.00</u>
(12)	For each change of place of business or change of employer or contractual associate	\$25.00	<u>\$30.00</u>
(13)	For each duplicate license, where the original is lost or destroyed	\$10.00	<u>\$15.00</u>
(14)	For each duplicate pocket card, where the original is lost or destroyed and affidavit is made thereof	\$10.00	<u>\$15.00</u>
(15)	Notice of intention	\$50.00	<u>\$65.00</u>
(16)	Questionnaire	\$100.00	<u>\$125.00</u>
(17)	Application for registration of subdivided lands	\$500.00	<u>\$600.00</u>
(18)	Reinstatement of a license suspended or revoked within a license period	\$25.00	<u>\$50.00</u>
(19)	For placing active license on inactive status	\$-5.00	<u>\$10.00</u>

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(20) will remain the same."

Auth: 37-51-203, MCA Imp: 37-51-207, MCA

3. For the past seven years the Board of Realty Regulation has been practicing deficit spending to eliminate the large cash surplus that had accumulated in the Board's cash reserve. The Board no longer has a cash reserve and must increase fees to meet Board expenses.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, no later than September 10, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, no later than September 10, 1987.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 487 based on the 4879 licensees in Montana.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

BY:


GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 3, 1987.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

IN THE MATTER OF THE TRANSFER)	NOTICE OF PUBLIC HEARING on
AND AMENDMENTS to 42.7.101)	PROPOSED TRANSFER AND
(8.124.101) through 42.7.229)	AMENDMENTS to 42.7.101 (8.
(8.124.229) and ADOPTION of)	124.101) through 42.7.229
RULES I through VIII relating)	(8.124.229) and ADOPTION OF
to Title 23, Chapter 5, part 6)	Rules I through VIII and
)	42.7.104, 42.7.121, 42.7.
)	225 and 42.7.226 relating
)	to Video Gaming Machines

TO: All Interested Persons:

1. On September 2, 1987, at 9:30 a.m. in the Scott Hart Building Auditorium, 303 Roberts, Helena, Montana, a public hearing will be held regarding the Department of Commerce's proposal to amend rules 42.7.101 through 42.7.229 and the repeal of 42.7.104, 121, 225, and 226 and the adoption of new rules I through VIII relating to the Video Gaming Control Act.

2. The amendments to rules 42.7.101 (8.124.101) through 42.7.229 (8.124.229) and new rules I through VIII as proposed to be adopted provide as follows:

"8.124.101 STATEMENT OF DEPARTMENT POLICY (1)

The public health, safety, and welfare, is the primary consideration in promulgating electronic video ~~draw-poker~~ gaming machine rules and shall continue to be the primary consideration in their application and enforcement."

AUTH: Sec. 23-5-605, MCA

IMP: Sec. 23-5-605, MCA

8.124.102 DEFINITIONS (1) As used throughout this chapter, the following definitions apply:

(a)(1) "Act" means the Video-Draw-Poker-Machine-Control Law-of-1985, Title 23, chapter 5, part 6, MCA.

(b)(2) "Applicant" means any person who has applied for or is about to apply for a license for a video ~~draw-poker~~ gaming machine.

(c)(3) "Draw poker" means a game of poker in which each player makes a wager, then is dealt 5 cards. After the initial deal, the player may raise his wager (if that option is available), discard one or all unwanted cards and then receive in return that same number of cards prior to playing out the hand.

(4) "Video bingo" is a machine that offers for play a game of chance commonly known as bingo. The game is played with video images of cards bearing numbers of other designations, five on any one line, the machine drawing similarly numbered objects using a random number generator, and the game being won by person who first covers a previously designated arrangement of numbers on such a card.

(5) "Video keno" is a form of bingo using a fixed playing field of 1 - 80 numbers, the player chooses any allowed number combination. The machine draws a prescribed number of balls, numbered 1 - 80, using a random number generator. The game is won by the machine picking the same numbers as the player.

(6) "Video gaming machine" is a machine that is eligible for licensure within the state of Montana. These include video draw poker machines, video keno machines, and video bingo machines.

(d)(7) "License" means machine license.

(f)(8) "Machine license" means a license issued by the state of Montana which authorizes a specific machine to be operated as an electronic video draw-poker gaming machine.

(g)(9) "Simulates the game of poker" means plays by or mimics the generally accepted rules or methods of any of the various card games known as "poker", whether played against another player or the house. Methods include, but are not limited to, symbols used for or in place of images of playing cards, description, and wagering techniques. For purposes of this definition, a determination that a machine plays the game of poker is not solely based on the name of the game.

(10) "Valid ticket voucher" is a ticket produced by a machine that is the result of bonafide play of a gaming machine.

(11) "Duly authorized representative" means a person or other entity that has been designated in a formal signed written agreement to be a duly authorized representative of the video gaming control bureau. Such designation shall be in effect only during the term of the agreement.

(12) "Designated representative" means a person designated on forms provided by the department to be a representative of the licensee of a machine. This designation is made for the purposes of filing quarterly reporting documents, receiving of forms, etc. It does not include applications for licensing or necessarily relieve the licensee of responsibility for incorrect information being provided to the department.

(13) "Destruction of a machine" may be the result of deliberate or accidental causes. However, in all cases a machine shall be considered destroyed only if it results in the machine never being able to function again. Such a claim must be verified to the satisfaction of the department."

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Sec. 23-5-605, MCA

"8.124.103 APPLICATION FOR LICENSE, LICENSE FEE, AND LICENSING REQUIREMENT (1) An application to license an electronic video draw-poker gaming machine must be submitted to the video poker-program gaming control bureau of the department of revenue commerce upon forms prescribed by the department. The application is not complete unless it

is dated and signed by the applicant, and contains all information and statements required by the department.

(2) A separate application must be completed for each machine.

(3) The license fee required by 23-5-612(1), MCA, must accompany each license application.

(4) ~~(a)~~ A machine licensed under 23-5-612(2)(3), MCA, must comply with all required specifications in these rules and the act except 23-5-606(4)(j), ~~(k)~~, and ~~(e)~~; ~~MGA~~ section 8, chapter 603, session laws of 1987.

~~(b) -- A license issued under 23-5-612(2), MGA, will be issued for one year from the date of issuance.~~

~~(c) -- Further licensure of a machine licensed for one year under 23-5-612(2), MGA, requires adding the ticket-voucher printer required at 23-5-606(4)(j), ~~(k)~~, and ~~(e)~~; MGA.~~

~~(5) -- A machine licensed under 23-5-612(1), MGA, must comply with all specifications of 23-5-606, MGA, of the law and these rules.~~

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Sec. 23-5-612, MCA

ARM 42.7.104 IS PROPOSED TO BE REPEALED and can be found on page 42-706 of the ARM.

"8.124.105 REFUND OF LICENSE FEE (1) Refund of a license fee will be allowed only if the application for license is denied or withdrawn before issuance of the license. No license fee in part or whole, will be refunded after a license is issued, regardless of whether the license is used after issuance.

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Sec. 23-5-612, MCA

"8.124.106 DISTRIBUTION OF LICENSE-FEE NET MACHINE INCOME TAX TO LOCAL GOVERNING BODY (1) The department shall pay quarterly to each treasurer of the local governing body the proportion of the license-fee net machine income tax as provided by 23-5-612(2), MGA 23-5-610, MCA.

AUTH: Sec. 11, Ch. 603, L. 1987

IMP: Sec. 23-5-610, MCA

"8.124.107 ISSUANCE OF LICENSE DECAL (1) Upon approval of an application and payment of a license fee, the department will issue a license decal.

(2) The licensee must affix the license decal to the machine cabinet as instructed by the department so that the decal is visible and easily read. The machine may not abut another machine, wall, or other obstruction which would obscure a person's ability to see and read the license decal.

(3) The license decal must be affixed to a machine before a machine is placed in service.

(4) A license decal may only be affixed to the machine licensed and is not transferable to any other machine."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605 and 23-5-612(2), MCA

"RULE I. LICENSES ISSUED UNDER TEMPORARY AUTHORITY (1) When temporary authority to operate an establishment licensed for on-premises consumption of alcoholic beverages is granted by the department of revenue, liquor division, pursuant to 16-4-404(6), MCA, the bureau may license a video gaming machine to the recorded holder of "temporary authority" if that holder:

(a) supplies written proof of temporary authority at time of application;

(b) provides written proof of all extensions of temporary authority (prior to expiration of authority).

(2) When the liquor division issues a "final agency decision" in the transfer of license all machines issued under these provisions will be final.

(3) In the event of an adverse decision by the liquor division or temporary authority lapses with no proof supplied the bureau, the bureau shall revoke all machine licenses issued under these provisions without notice."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605, 23-5-611, and 23-5-612(1), MCA

RULE 42.7.121 IS PROPOSED TO BE REPEALED and can be found on page 42.713 of the ARM.

"8.124.122 LICENSE NOT TRANSFERABLE (1) A license to operate an electronic video draw-poker gaming machine is only valid for the licensee and the premises identified on the license application.

(2) A license is further restricted to the particular machine approved by the department and identified on the license application. No additional license fee will be charged when:

(a) a licensed machine remains in the same licensed establishment after a transfer of the alcoholic beverage license; or,

(b) a licensed establishment changes its location and its licensed gaming machines also move to the new location. When a licensed machine remains on the same premises after a transfer of ownership of an on-premises consumption alcoholic beverages license, no additional license fee will be charged to an applicant seeking to license the same machine at the same premises for the remainder of the license year.

(3) A license issued pursuant to the act and these rules is a privilege and not personal property.

(4) A machine may not be moved from a licensee's establishment and placed in service at another establishment unless a new application is made for an electronic video draw poker gaming machine license, describing the new location; ~~the machine is inspected~~; the license fee is paid, and a new license is issued. A new license is required even if a machine has a current, unexpired license for the former location.

(5) If a machine is destroyed and then replaced by a newly licensed machine, the unused portion of the fee paid on the destroyed machine will be applied as a credit to the fee due on the replacement machine. The department may require proof of destruction before credit is applied."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605, 23-5-611, and 23-5-612(1), MCA

"8.124.123 EXPIRATION -- RENEWAL OF LICENSE (1)

All licenses, except licenses originally issued under 23-5-612(2), MCA commence on July 1, and expire at midnight of June 30.

(2) An application for a new license must be submitted to the video poker-program gaming control bureau of the department upon forms prescribed by the department, the license fee paid, new license issued, and a new license decal affixed to the machine before a previously licensed machine may be operated after midnight of June 30.

(3) The department will consider the same criteria for renewal of license as for the original issuance of license. Failure to satisfy licensing criteria contained in the act and these rules may result in denial of renewal of license."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605 and 23-5-612(1), MCA

"8.124.124 LICENSEE BUSINESS RELATIONSHIPS (1)

The department may deny an application, suspend, or revoke a license or revoke approval of a machine when it finds that a business relationship between a licensee and another person or business entity is unsuitable or endangers the health, safety, or welfare of the citizens of this state. In determining the suitability of other persons or business entities in a business relationship, the department may consider the person or business entity's:

(a) general character, including honesty and integrity;
(b) financial security and stability, competency, and business experience in the capacity of the relationship;

(c) record, if any, of violations which may affect the legal and proper operation of a machine including a violation affecting another licensee and any violation of the laws of this state, other states, and countries without limitations as to the nature of the violation;

(d) refusal to provide access to records, information, equipment, or premises to the department or peace officers when such access is reasonably necessary to ensure or protect public health, safety, or welfare.

(2) The licensee remains responsible for the legal operation of a machine and is liable for any violation involving a machine or its operation."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605 and 23-5-613, MCA

"8.124.125 LICENSEE QUALIFICATIONS - DENIAL OF APPLICATION--NONRENEWAL OF LICENSE - FAIR HEARING -- JUDICIAL REVIEW (1) When the department's video ~~draw-poker-program~~ gaming control bureau denies an application for license or renewal of license, the applicant may request a fair hearing. Upon the department's receipt of written request, a fair hearing shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

(2) Administrative procedures conducted by the department are subject to judicial review in accordance with the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 7, MCA."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605, 23-5-611, and 23-5-612(1), MCA

"8.124.126 QUARTERLY REPORTING REQUIREMENTS PENALTY FOR LATE FILING Licensee quarterly reporting requirements are as follows:

(1) For each machine the licensee or his designated representative must file with the department a quarterly ~~video draw-poker-machine-meter~~ tax report signed by the licensee or his designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by ~~23-5-606(4)(i), MCA, and the electronic meters as required by 23-5-606(4)(m), MCA;~~ the act. The report will be used by the department to verify the payment of all taxes and the winning percentage of the machine as required by 23-5-607, MCA; the act. The following requirements apply:

(a) the report must be delivered to the Department of ~~revenue Commerce, Video draw-poker-program,--Mitchell-Building,~~ Gaming Control Bureau, 1219 - 8th Avenue, Helena, Montana ~~59620,~~ or bear a United States postal service postmark not later than midnight of the 15th of each month following the quarters ending March 31, June 30, September 30, and December 31 of each ~~calendar~~ fiscal year;

(b) the meter readings must be taken and recorded for the report within 7 days of the close of the licensee's last day of business in the reporting quarter; ~~and~~

(c) the report is due on each machine after it has been licensed. ~~regardless of whether the machine was in use during a subsequent quarter of the licensed year.~~

(2) If a licensee leases, rents, or shares machine ownership, or a machine's revenues with another person or business entity, the licensee or his designated representative must provide upon the same quarterly tax form prescribed by the department in subsection (1) above, quarterly information for each machine as follows:

(a) full identification including name, address, and social security number (or federal identification number) of all persons or business entities involved in the above-mentioned business relationship;

(b) percentages of participation in machine income by each person or business entity involved in the above-mentioned business relationship; and

(c) specific machine income (total collections less amounts paid to players without adjustment for expenses) paid to and/or received by each person or business entity involved in the above-mentioned business relationship.

(3) Machine income losses resulting from theft, tampering, etc. must be reported on the quarterly report and a copy of the police report regarding the incident must be attached in order for credit to be given.

(4) Failure for late filing and payment of the required machine income tax will result in the following penalty schedule being applied:

(a) 0 - 30 days late = 10% of tax due;

(b) 31 - 60 days late = 25% of tax due;

(c) 61 - 90 days late = 50% of tax due;

(d) 91 days or more = 100% of tax due;

(5) The imposition of these penalties does not preclude the department from taking further action against the licensee.

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Sec. 23-5-610, MCA

"8.124.127 RECORD RETENTION REQUIREMENTS Record requirements are as follows:

(1) Machine operation records must be maintained and made available for inspection by the department upon request. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law.

(2) The records must, but are not limited to, include:

(a) the accounting ticket provided by 23-5-606(4)(o), MCA, and corresponding licensee records containing the performance synopsis of the machine;

(b) the exact copy of the printed ticket voucher as provided by 23-5-606(4)(k), MCA, and

(c) in the event a licensed machine qualifies as a used video machine which does not produce the ticket copies, records and books necessary to provide the performance

synopsis of the machine. The information shall be obtained from the electronic and mechanical meters required by 23-5-606, MCA, and must be recorded each time the cash area is accessed.

(3)(d) The licensee's records required by this rule must be maintained in the state of Montana by the licensee or his designated representative for a minimum of 3 years."

AUTH: Sec. 23-5-605, MCA

IMP: Sec. 23-5-605, MCA

"8.124.201 GENERAL SPECIFICATIONS OF VIDEO DRAW-POKER GAMING MACHINES (1) Detailed specifications for video draw-poker gaming machines are required by the department in addition to those specifications provided by 23-5-601 through 23-5-615, MCA. Such specifications are required to ensure the legal operation and integrity of each machine and provide the department with methods to monitor the machines.

(2) All hardware and software modifications made to a licensed video draw-poker gaming machine must be submitted to the department for approval prior to installation.

(3) The department may suspend, or revoke a license or revoke approval of a machine at any time when it finds that any machine or machine component does not comply with statutes and rules governing electronic video draw-poker-gaming machines. The department may also suspend, or revoke the licenses or revoke approval of other similar model machines or machine components in use in the state."

AUTH: Sec. 23-5-605, MCA

IMP: Sec. 23-5-606, MCA

"8.124.202 HARDWARE SPECIFICATIONS A video draw poker gaming machine must include the following hardware specifications:

(1) All electrical and mechanical parts and design principles shall follow acceptable industrial codes and standards in both design and manufacture.

(2) A video draw-poker gaming machine shall be designed to ensure that the player will not be subjected to any physical, electrical, or mechanical hazards.

(3) A machine shall be equipped with a surge protector that will feed all A.C. electrical current to the machine and a battery backup power supply capable of maintaining for a 30 day period to maintain the accuracy of all electronic meters, date, and time during power fluctuations and loss. The battery must be in a state of charge during normal operation of the machine.

(4) The design of a machine shall ensure there are no readily accessible game function related points which would allow any input and that there is no access to input or output circuits unless it is necessary for the proper operation of the machine. No switches or other controlling devices may be added to the machine that would prohibit a player from

operating a machine in the manner in which it was designed to play (to include devices known as knockoff switches).

(5) The non-resettable mechanical meters required by 23-5-606(4)(i), MCA, the act must: meet the following specifications:

(a) -- either the meters must be located so they can be viewed and read externally from the front of the machine or the keys to the cash area must be immediately available at the licensed premises;

(a) be placed in any readily accessible, locked machine area. Immediate access to the locked area where the meters are located must be provided. Keys to this area may be provided to the department or must be immediately available at the premise.

(b) the meters shall be situated in a left to right or top to bottom configuration according to function and visibly labeled as follows:

(i) credits in bill acceptor, if applicable;

(ii) coins in;

(iii) credits played;

(iv) credits won;

(v) credits paid; and

(c) the mechanical meters shall be manufactured in such away as to prevent access to the internal parts without destroying of the meter. These meters must be hard wired (no quick connects will be allowed in the meter wiring system).

(6) The department may require and provide a validating identification sticker to be attached to the mechanical meters to verify the meters are assigned to a specific licensed machine.

(7) A machine must have a separate and locked area for the logic board and software as provided by 23-5-606(4)(g), MCA. The department must be allowed immediate access to this locked area. Access may be provided by retaining a key for the locked area immediately available at the licensed premises.

(8) The ticket printing mechanism provided in 23-5-606(4)(j), MCA, must be located in the locked logic area to ensure the safekeeping of the audit copy provided by 23-5-606(4)(k), MCA. The printing mechanism must produce a printed original and duplicate that will remain legible throughout the retention period required by these rules. Upon cash out by a player, the ticket printing mechanism must record the full value of the credits due the player in dollars and cents, as well as all information required by 23-5-606(4)(j), MCA.

(9) The logic and printer interface boards shall be mounted within the logic area so they are not visible upon opening the logic area door.

(10) A machine must have a non-removable identification device externally attached to the machine which shall include the following information about the machine:

(a) manufacturer;

(b) serial number;
 (c) model or make; and
 (d) any other information required by the department.
 (11) The logic board must have a unique serial number that may be used to identify the board for approval and inspection purposes. ~~The serial number shall be a configuration of not more than 10 symbols. The manufacturer must be identified within the first 4 symbols. The logic board must be identified within the remaining 6 symbols of the 10 symbol configuration.~~

~~(12)(a) The electronic meters provided in 23-5-606(4)(m), MGA, shall be able to maintain totals no less than 8 digits in length with the exception of the following which shall be at least 6 digits in length:~~

~~(i) one pair;
 (ii) two pair;
 (iii) three of a kind;
 (iv) straight;
 (v) flush;
 (vi) full house;
 (vii) four of a kind;
 (viii) straight flush;
 (ix) five of a kind; and
 (x) errors from the logic board random access memory.
 (b) In addition to the above totals, the electronic meters for all machines not licensed under 23-6-612(2), MGA, must keep 2 additional 6 digit totals:
 (1) the number of times the logic board was accessed;
 and
 (2) the number of times the cash area was accessed.~~

(12) Each machine must have the electronic meters that meet the requirements specified in the applicable software section of the rules.

(13) Printing of all totals from the electronic meters shall occur automatically, by means of a switch attached to either the door or the lock for that door each time access to either the logic compartment or the cash area occurs. If the machine has a bill acceptor device and it collects the bills in an area separate from the cash compartment this area must be locked and it must have a switch that records cash compartment accesses made to this area and prints an audit ticket each time an access occurs.

(14) Any necessary resetting of electronic meters shall be done in a manner that is easily verifiable by the department. Each machine must produce a full accounting ticket whenever electronic meters are reset. This ticket must be printed before and after the meters are reset. This audit ticket must print the identity of the program contained in the game (to include program and revision number).

(15) Each machine must print an audit ticket on a daily (24 hour) basis.

(16) Each machine must print an audit ticket whenever the machine is powered up.

~~(15)~~(17) The face of each machine shall be clearly labelled so as to inform the public that no one under the age of 18 years is allowed to play.

~~(16)~~(18) The printer mechanism shall have a paper sensing device that ~~will prevent play if there is insufficient paper to print a ticket for a customer or an audit ticket.~~ Upon sensing a "paper low" or "paper out" condition, the machine must display a message to that effect on the monitor. Upon sensing a "paper low" condition will allow the machine to finish printing the ticket and then prevent further play.

(19) No machine may offer for play more than one pay table per program.

(20) Each machine must recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket.

(21) Each machine must pass a static discharge test that is determined by the department."

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987, Sec. 2, Ch. 640, L. 1987, Sec. 10, Ch. 211, L. 1987

IMP: Secs. 23-5-606, 23-5-607 and 23-5-609, MCA

"8.124.203 VIDEO DRAW POKER MACHINE SOFTWARE SPECIFICATIONS (1) A machine is required to possess software specifications that enable it to play the game of draw poker with the operation set forth by 23-5-606(4), MCA. The software logic must have the following characteristics:

~~(1)~~(2) The logic of the program must not intervene in anyway with expected random play.

~~(2)~~(3) The random number selection process shall conform to an acceptable random order of occurrence and uniformity of distribution.

~~(3)~~(4) The deck of cards used must consist of 52 standard playing cards. Jokers may also be used as long as the payback odds are set to meet the 80% minimum payback.

~~(4)~~(5) After the shuffle and before the deal, the deck is to be frozen, with all cards used for play taken in order from the top of the deck. For the initial 5 card deal, all possible 5 card combinations from the original playing deck must have equal probability of being dealt. All unused cards must have equal probability of replacing discarded cards.

~~(5)~~(6) The logic must be programmed to have an identifiable routine that:

(a) shuffles one deck of cards after each hand by using a random number generator;

(b) deals the first 5 cards from the top of that deck; and

(c) replaces discarded cards with remaining cards in that deck starting with the sixth card and drawing any additional cards in the order of that deck.

~~(6)~~(7) If there is a distinction made for payoff purposes between a straight flush and a royal flush,

provisions must be made in the electronic meters to track those totals separately.

~~47~~(8) Any variable data, e.g., location name, shall not reside on the PROM modules that contain the poker program.

(9) The electronic meters provided for in the act shall be able to maintain totals no less than 8 digits in length with the exception of the following which shall be at least 6 digits in length:

- (a) one pair,
 - (b) two pair,
 - (c) three of a kind,
 - (d) straight,
 - (e) flush,
 - (f) full house,
 - (g) straight flush,
 - (h) royal flush (if applicable),
 - (i) five of a kind and
 - (j) errors from the logic board random access memory.
- (10) These errors are defined to be:

(a) in those cases where the machine has redundant memories for the purposes of comparison a ram error is recorded when the comparison fails.

(b) if subsection (a) does not apply then ram errors will record "CMOS CLEARS" or where the electronic meters are cleared.

(11) In addition all machines must keep two additional 6 digit totals,

- (a) number of times logic area was accessed; and
- (b) number of times the cash area was accessed.

(c) total credits meter is defined as being the total of coins in 1, coins in 2, and credits from the bill acceptor (if applicable).

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-606 and 23-5-607, MCA

"RULE II SOFTWARE SPECIFICATIONS FOR VIDEO BINGO MACHINES (1) Each video bingo machine must meet the following specifications for licensure within the state of Montana:

(a) Each machine must utilize a field of numbers 1 to 75.

(b) The machine must have one memory location for each number in the field.

(c) The machine must mix the field of numbers after each game by utilizing a random number generator.

(d) The machine must freeze the field of numbers after they have been mixed and before the start of each game. The numbers will be drawn in order from the frozen deck.

(e) The machine may offer to the player no more than four cards for play. Each card must contain 24 numbered spaces per card and one free spot. No cards may be identical.

(f) Each playing card must be generated by utilizing a random number generator.

- (g) The machine must contain one 6 digit electronic meter for each breakdown in the paytable; and include,
 - (i) errors from the logic board random access memory, defined to be;
 - (A) in cases where the machine has redundant memories for the purposes of comparison a ram error is recorded when the comparison fails.
 - (B) if subsection (A) does not apply then ram errors will record "CMOS CLEARS" or where the electronic meters are cleared.
 - (ii) Total credits meter is defined as being the total of coins in 1, coins in 2 and credits from the bill acceptor (if applicable)
 - (iii) In addition all machines must keep two additional 6 digit totals:
 - (A) number of times the logic area was accessed; and
 - (B) number of times the cash area was accessed.
 - (h) The game must play a standard game of bingo. No optional or bonus features are allowed.
 - (i) A bingo must be attained during each game.
 - (j) The machine must display the number of balls picked and the credits awarded for the number of balls drawn in order to obtain a bingo.
 - (k) The machine must pay back or award credits at a minimum rate of 80%.
 - (l) The machine must offer only the game of bingo for play.
 - (m) The machine allows the player the choice of cards on which to play not to exceed 4. All winning cards must be available for display on the screen, including any that may be played by the machine in any game.
 - (n) The machine may play coverall bingo.
 - (o) In any game the machine must not allow a bet to exceed \$2 or award credits at a rate to exceed \$100 regardless of the number of cards played.
 - (p) Any variable data, e.g. location name, shall not reside on the PROM modules that contain the bingo program."

AUTH: Sec. 11, Ch. 603, L. 1987
IMP: Sec. 23-5-609, MCA

"RULE III SOFTWARE SPECIFICATIONS FOR VIDEO KENO MACHINES (1) Each video keno machine must meet the following specifications for licensure within the state of Montana;

- (a) Each machine will display a fixed playing field of numbers from 1 - 80.
- (b) Each machine will have one memory location for each number in the field.
- (c) The machine will mix the field of numbers after each game by utilizing a random number generator.
- (d) The machine must freeze the field of numbers after it is mixed and before the start of the game. The numbers will be drawn in order from the frozen field.

(e) The machine will only accept a bet on a minimum of 2 spots and a maximum of 10 spots per game.

(f) The machine must display the balls picked.

(g) The machine must payback or award credits at a minimum rate of 80%.

(h) The machine may offer only the game of keno for play.

(i) The machine must contain one 6 digit electronic meter for each breakdown in the payable; and include,

(1) errors from the logic board random access memory, defined to be;

(A) in those cases where the machine has redundant memories for the purposes of comparison a ram error is recorded when the comparison fails.

(B) if subsection (A) does not apply then ram errors will record "CMOS CLEARS" or where the electronic meters are cleared.

(ii) Total credits meter is defined as being the total of coins in 1, coins in 2 and credits from the bill acceptor (if applicable).

(iii) In addition all machines must keep two additional 6 digit totals.

(A) Number of times the logic area was accessed; and

(B) Number of times the cash area was accessed.

(j) Any variable data, e.g. location name, shall not reside on the PROM modules that contain the keno program.

(k) All cards played must be displayed on the screen.

(l) The game of keno must conform to standard rules and must not offer any optional or bonus features.

(m) The machine must display the total number of player spots picked at the end of each game, the machine must display the number of balls drawn that matched the players picks (this may be shown as 3 out of 8, 8 out of 10, etc.) and any credits awarded for these combinations.

(n) The maximum bet allowed is \$2 and the payout per card is not to exceed \$100. No more than 8 cards may be played in anyone game."

AUTH: Sec. 11, Ch. 603, L. 1987

IMP: Sec. 23-5-609, MCA

"RULE IV GENERAL VIDEO GAMING MACHINE SOFTWARE

SPECIFICATIONS (1) A program for a video gaming machine may be configured in the following manner. A machine may have:

(a) random number generator;

(b) shuffle;

(c) deck;

(d) metering;

(e) main program number;

(f) audit controls;

(g) printer controls;

(2) A personality program that includes but is no limited to the following:

- (a) payable (limited to one per program);
- (b) graphics;
- (c) deal;
- (d) optional features to include but not limited to:
 - (i) raise;
 - (ii) auto-bet;
 - (iii) hold and discard;
- (e) personality program number."

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Secs. 23-5-606 and 23-5-609, MCA

"8.124.204 SOFTWARE INFORMATION TO BE PROVIDED TO THE DEPARTMENT (1) A licensee may be required to provide information to the department necessary to ensure the machine's software and logic are in compliance with the act and these rules. The information may be provided directly by the licensee, the distributor or the manufacturer of the machine. The information shall include, but not be limited to:

- (1)(a) all technical manuals, instructions, wiring, and logic diagrams for the machine;
- (2)(b) all microprocessor manuals;
- (3)(c) all source listings, including programmer's comments, and flow charts for the poker programs and printer routines;
- (4)(d) a hexadecimal dump of all compiled programs;
- (5)(e) model PROM's containing compiled poker programs and character sets, including those that may reside on the printer interface board;
- (6)(f) access to a compiler for the programming language used if the department is unable to compile the program with the equipment it has available;
- (7)(g) the algorithm for the random number generator along with a written description;
- (8)(h) a photo or drawing of the display which shows all setup and test modes with detailed written descriptions and instructions;
- (9)(i) a listing of the payback values and the probabilities of the outcome of winning hands for the program logic used;
- (10)(j) the schedule of proposed payout odds and overall payback percentage;
- (11)(k) using a no draw algorithm provide tabulated results of 5 separate simulations of not less than 200,000 hands-of-poker games using the poker game program;
- (12)(l) instructions on the means, including assumptions made, by which the simulations in subsection (11) were created so the department can verify the simulation results; and
- (13)(m) a description of the methods of all testing criteria if performed and the results of the tests for the following:
 - (1) random number generator;

- (ii) electro-mechanical interference;
- (iii) radio frequency interference;
- (iv) FCC standards;
- (v) A.C. line noise;
- (vi) static electricity; and
- (vii) extreme temperature conditions."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605, 23-5-606, and 23-5-607,, MCA

"8.124.205 RESTRICTIONS ON OPTIONAL GAME FORMAT OR FEATURES (1) A machine licensee shall only offer the game of draw poker, keno or bingo as provided by the act and these rules and shall not offer any other game or variant which will award free games, credits or any other inducement for a player's performance. This restriction applies to bonus, progressive, or any other means of awarding games, credits, or inducements which deviate from the award of games or credits for a winning hand game of draw poker, keno or bingo.

(2) The department shall determine what optional features may be allowed and such features must be approved by the department prior to inclusion in a machine's game format."

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Secs. 23-5-606 and 23-5-607, MCA

"8.124.216 PROHIBITED MACHINES (1) Any machine including an amusement machine which, in substance, simulates the game of poker, keno, or bingo without conforming to the requirements of the act or these rules and is placed in service for play by the public is prohibited. The machine is subject to immediate seizure and destruction in accordance with the provisions of 23-5-121 and 23-5-122, MCA.

(2) Any person who owns or operates a machine described in subsection (1) is in violation of the act, these rules and Title 23, part 3, MCA. The civil and criminal penalties provided in those titles shall apply.

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605, 23-5-606, 23-5-607, 23-5-608, and 23-5-613,, MCA

"8.124.217 POSSESSION OF UNLICENSED MACHINES BY MANUFACTURER, SUPPLIER, DISTRIBUTOR, OWNER, OR REPAIR SERVICE

(1) A manufacturer, supplier, distributor, owner, or repair service may possess or own unlicensed machines, logic boards, meters, and machine components which conform to the statutory requirements and rules relating to electronic video ~~draw-poker~~ gaming machines. Such machines possessed or owned may not be operated except when inspected, licensed, and placed on a licensee's premises."

AUTH: Sec. 23-5-605, MCA
IMP: Sec. 23-5-605, MCA

"8.124.218 LOCATION OF MACHINES ON PREMISES (1) An electronic video draw poker gaming machine must be placed in such a manner that:

(a) each machine remains within the sight and control of the licensee or employees of the licensee;

(b) each machine is segregated from amusement machines in such a manner that a minor who tries to play a machine is immediately observed by the licensee or the licensee's employees; and

(c) public access is, to the greatest extent possible, limited to persons over the age of 18.

(2) ~~If a licensee's premises are operated in conjunction with another business, a machine is located in an establishment where alcoholic beverages are sold the machine must be confined to located in that part of the premises area of business that issued primarily for the consumption of alcoholic those beverages.~~

AUTH: Sec. 23-5-605, MCA
IMP: Secs. 23-5-603 and 23-5-605, MCA

"8.124.219 CONDITIONAL APPROVAL OF VIDEO DRAW-POKER GAMING MACHINES BY DEPARTMENT (1) The department may conditionally approve specific models of machines based on its finding that the machines conform to the act and these rules.

(a) Final approval of each machine is required even if a machine has been conditionally approved.

(b) Conditional or final approval may be withdrawn by the department subsequent to finding that a machine does not conform to specifications, including new or revised requirements that differ from those in effect at the time conditional or final approval was granted.

(2) Approval includes inspection of the hardware and software and all information provided to the department under the administrative rules of Montana ARM-42-7-204 to determine whether a machine meets all requirements of the act and these rules.

(3) The department may accept shipment of a machine for the purpose of providing conditional approval of that particular make or model provided the following conditions are met:

(a) the department will not be responsible for any purchase, shipping, or handling charges;

(b) all the information required in ARM 42.7.204 (8.124.204) must accompany the machine; and

(c) prior to shipment, the department approved such shipment of a machine for scheduled testing and approval.

(4) New rules may be adopted which redefine or set forth new specifications that previously approved machines do not comply with. In such cases, and only in such cases, the

department shall allow up to 90 days for a licensee to bring a machine into compliance with a new or modified specification."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605 and 23-5-606, MCA

"8.124.220 DISSEMINATION OF INFORMATION (1) Certain information collected by the department is known to contain confidential information. The information in subsection (2) is confidential and may not be revealed by the department except under order of a court of competent jurisdiction.

(2) Information designated as confidential includes but is not limited to the following:

(a) technical manuals, instructions, wiring, or logic diagrams for the machine;

(b) listings of source codes and flow charts;

(c) results of simulations and related information explaining simulation methodology;

(d) model PROMS or logic boards containing compiled programs; or

(e) background information on applicants, licensees, and business relationships.

(3) Information relating to the results of actual operations as shown on a machine's meters is not confidential and may be used to compile studies or reports.

(4) Persons with access to confidential information as described in subsection (2) may not use or reveal anything of a confidential nature outside the scope of its intended purpose.

(5) The department shall secure confidential information and restrict all persons from access, except designated employees whose duties include testing and interpretation of the information. Such information is not public record and may not be released to any member of the public."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605 and 23-5-606, MCA

"8.124.221 REPAIRING MACHINES - APPROVAL (1) When the department approves the software and logic board of a machine, it may use a prescribed security seal process to guard against any unauthorized tampering or changes to the method by which the game ~~of draw poker~~ is played on the machine.

(2) Any repair or replacement of a machine's logic board which may cause a loss of memory or change in the meter reading must be reported to the video ~~poker-program gaming control bureau~~ of the department of ~~revenue commerce~~ on forms prescribed by the department at the time of the repair. The report requires the disclosure of the following information:

(a) final electronic and mechanical meter readings before repair;

(b) initial electronic and mechanical meter readings after repair; and

(c) the nature of the problem encountered which necessitated the repair.

(3) Any repair made to a machine's logic board which requires the breaking of a department seal must be reported to the department before the seal is removed or broken. After repair, the logic board must be reapproved by the video poker-program gaming control bureau before being reused in a machine.

(4) Any repair or replacement made to a machine's meters must be reported to the video poker program gaming control bureau before a seal is removed or broken and the readings of the machine's electronic and mechanical meters must be provided to the video poker-program gaming control bureau. After repair, the initial readings of the electronic and mechanical meters must be provided before the machine is again placed in operation. The department must subsequently be given access to the machine to reseal the meters and verify their proper operation.

(5) To assure the integrity, security, and monitoring of machines in service, a licensed machine may not be substituted or replaced until the replacement machine has been licensed by the department."

AUTH: Sec. 23-5-605, MCA

IMP: Secs. 23-5-605 and 23-5-606, MCA

"8.124.222 DEPARTMENT INVESTIGATORS - PEACE OFFICER

STATUS (1) In accordance with 23-5-605(4), MCA, the department designates ~~all its investigators~~ video gaming control bureau chief and other duly authorized representatives as "peace officers" for the purpose of this act."

AUTH: Sec. 23-6-605, MCA, Sec. 10, Ch. 211, L. 1987

IMP: Sec. 23-5-605, MCA

"8.124.223 INSPECTION AND SEIZURE OF MACHINES (1) The department or its duly authorized representative has the right at all times to make an examination of any machine being used to play or simulate video draw poker, video keno or video bingo. Such right of inspection includes immediate access to all machines and unlimited inspection of all machine parts. The department or its authorized representatives may immediately seize and remove any machine or device which violates state law or these rules.

(2) Given reasonable cause, the department may remove a machine or parts from a machine for laboratory testing and analysis.

(3) The department may seal any machine left on the licensee's premises pending the department's investigation. The breaking or removal of the department's seal will subject the licensee to seizure of the entire machine and suspension or revocation of the license."

AUTH: Sec. 11, Ch. 603, L. 1987, Sec. 23-5-605, MCA
IMP: Secs. 23-5-605 and 23-5-613, MCA

"8.124.224 INVESTIGATION OF LICENSEE (1) The department may, upon its own motion, and shall upon receipt of a written, verified complaint of any person, investigate the actions of any licensee and the operations of any machine. The investigation shall be undertaken for the purpose of gathering evidence and determining whether a violation of the act or these rules has occurred."

AUTH: Sec. 23-5-605, MCA
IMP: Sec. 23-5-613, MCA

"RULES 42.7.225 and 42.7.226 ARE PROPOSED TO BE REPEALED and can be found on pages 42-754 and 42-755 of ARM.

"8.124.227 ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW

- (1) The department shall conduct a fair hearing:
(a) following the emergency suspension of a license, and
(b) prior to the revocation of a license.

(2) All fair hearings must be held in accordance with the Montana Administrative Procedure Act.

(3) Administrative procedures conducted by the department are subject to judicial review in accordance with the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 7, MCA."

AUTH: Sec. 23-5-605, MCA
IMP: Secs. 23-5-611 and 23-5-613, MCA

"8.124.228 TRANSPORTATION OF MACHINES INTO STATE

(1) All shipments of video draw-poker gaming machines into this state must comply with the act of the congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being Ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. 1171-1177."

AUTH: Sec. 23-5-605, MCA
IMP: Sec. 23-5-605, MCA

"8.124.229 REGISTRATION OF MANUFACTURERS, SUPPLIERS, OR DISTRIBUTORS OF VIDEO DRAW POKER GAMING MACHINES (1) Any person desiring to sell, distribute, lease, or rent video draw poker gaming machines in this state must:

(a) be issued and maintain all required federal, state, county, and municipal licenses;

(b) apply to the department on forms prescribed by the department for registration; and

(c) furnish to the department monthly reports identifying the quantities and models of machines the manufacturer, supplier, distributor, or coin operator ships into Montana or receives from outside Montana, and such other

information the department may determine is necessary to regulate and control video draw-poker gaming machines in accordance with the act and these rules.

(2) Any person desiring to participate in the income from a video draw-poker gaming machine by or through ownership, operation, lease, rental, or sharing of the machine with a licensee in this state must:

(a) be issued and maintain all required federal, state, county, and municipal licenses; and

(b) apply to the department on forms prescribed by the department for registration.

(3) No person shall take revenue from a video draw-poker gaming machine operated in this state or ship a video draw poker gaming machine into this state until his application for registration is granted by the department.

(4) Registration may be suspended or revoked by the department upon the department's determination, after notice and opportunity for fair hearing, that the registrant has not complied with the conditions of registration.

(5) A person licensed as a manufacturer/distributor or as a producer of associated equipment for video draw poker machines is considered to be registered."

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Secs. 23-5-605, 23-5-609, MCA

"RULE V MANUFACTURERS/DISTRIBUTORS AND PRODUCERS OF ASSOCIATED EQUIPMENT OF VIDEO DRAW POKER MACHINES

(1) The department may issue to an applicant for a manufacturers/distributors license or an applicant for a producer of associated equipment license for video draw poker machines a provisional license pending the results of the investigation into their suitability for licensure. A provisional license will be revoked upon a determination that the applicant does not qualify for licensure. Upon a final determination that the applicant does qualify for licensure the bureau will issue final approval and remove the license from provisional status. This license fee is nonrefundable once the bureau has begun processing the license.

(2) The bureau will assess a one-time administrative fee of \$45.00 to cover the costs of processing the license.

(3) A person licensed under this section must comply with all laws and rules of the state of Montana and the department of commerce."

AUTH: Sec. 23-5-605, MCA, Sec. 8, Ch. 317, L. 1987

IMP: Sec. 2, Ch. 317, L. 1987, Sec. 3, Ch. 317, L. 1987

"RULE VI GENERAL REQUIREMENTS OF MANUFACTURERS, SUPPLIERS, AND DISTRIBUTORS OF VIDEO GAMING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT

(1) A registered manufacturer/distributor or producer of associated equipment must retain for a period of three years all records relating

to the operation of or sales of video gaming machines in Montana.

(2) A registered manufacturer/distributor or producer of associated equipment must provide the bureau with a current list of all video gaming machines kept in their storage in Montana at the time of application and provide monthly thereafter. These reports must include the following information;

- (a) manufacturer,
- (b) model,
- (c) serial number,
- (d) location machine is stored."

AUTH: Sec. 23-5-605, MCA

IMP: Sec. 23-5-605, MCA

"RULE VII VIDEO POKER MACHINES TESTING, FEES (1) Each entity submitting a video draw poker machine or a modification that changes the play or operation of a video draw poker machine for testing and department approval must:

(a) be licensed as a manufacturer/distributor or as a producer of associated equipment within the state of Montana;

(b) at the time of submission deposit with the department a sum of money to cover the costs of the testing service. This sum is to be as follows:

(i) video draw poker machines, \$2,000.00;

(ii) modification to a machine that alters the play or operation of the machine and requires approval, \$200.00.

(c) this account will be charged at the rate of \$25.00 per hour.

(d) the bureau will provide an accounting to the submitting person for charges assessed to them and will refund any overpayment at the time department final approval is given. The department will notify the submitting person of any underpayment and collect that money prior to giving any department approval."

AUTH: Sec. 23-5-605, MCA, Sec. 8, Ch. 317, L. 1987

IMP: Sec. 6, Ch. 317, L. 1987.

"RULE VIII USED KENO MACHINES (1) A used keno machine as defined by the act must have the following meters:

- (a) coins in;
- (b) credits played;
- (c) credits awarded;
- (d) coins paid;

(2) These meters may be electronic or mechanical or any combination thereof. These meters are required to verify earning of machines for tax purposes and to verify the 80% payback requirement."

AUTH: Sec. 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987

IMP: Sec. 23-5-609, MCA

3. The amendments to these rules are necessary because of legislation passed by the 1987 legislature. These changes generally consider the move of the bureau from the department of revenue to the department of commerce; the addition of keno and bingo to the bureaus functions; the collection of a 15% net machine income tax and efforts to improve the integrity of the memory system and audit records keeping systems.

The new rules are necessary because of legislative changes and to remove administrative licensing problems. These new rules consider the establishment of authority to issue a machine license to a bonafide holder of temporary authority issued by the department of revenue, liquor division; to issue "provisional" licenses to manufacturer distributors; the establishment of testing fees and the hourly rate charged.

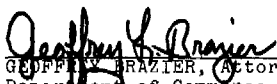
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Kathy Anderson
Department of Commerce
Video Gaming Control Bureau
1219 - 8th Avenue
Helena, Montana 59620

no later than September 10, 1987.

5. Geoffrey Brazier, Attorney, Department of Commerce, has been designated to preside over and conduct the hearing.

VIDEO GAMING CONTROL BUREAU



GEOFFREY BRAZIER, Attorney
Department of Commerce

Certified to Secretary of State, August 3, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA STATE LOTTERY

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.127.1201 PRIZES
to prizes)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 14, 1987, the Montana State Lottery proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-4897, Administrative Rules of Montana)

"8.127.1201 PRIZES (1) and (2) will remain the same.

~~(3) A claimant authorizes the use of claimant's name and photograph for publicity purposes upon award of the prize. The claimant's name, city of residence, and amount of prize is public information. The Lottery may use a claimant's name and photograph for publicity purposes only upon written authorization by the claimant.~~

(4) through (12) will remain the same."

Auth: 23-5-1007(3), MCA AUTH Extension, Sec. 13, Ch. 161, L. 1987 Imp: 23-5-1007, MCA

3. This rule is being amended to avoid possible encroachment upon the individual's right of privacy.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana State Lottery, 2525 North Montana, Helena, Montana 59620, no later than September 10, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana State Lottery, 2525 North Montana, Helena, Montana 59620, no later than September 10, 1987.

6. If the Lottery receives requests for a public hearing on the proposed amendment from either 10% of 25, whichever is less, of those persons who are directly affected by the proposed amendment from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later

date. Notice of the hearing will be published in the Montana Administrative Register.

MONTANA STATE LOTTERY
DIANA DOWLING, DIRECTOR

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 3, 1987.

BEFORE THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the Matter of the)	
Amendment of Rules	)	NOTICE OF PUBLIC HEARING ON
26.2.401, 26.3.129	)	THE PROPOSED AMENDMENTS AND
26.3.137, 26.3.140	)	ADOPTION OF THE RULES RELATING
26.3.144, 26.3.145	)	TO SURFACE LEASING OF STATE
26.3.146, 26.3.147	)	LANDS
26.3.148, 26.3.149)	

TO: All Interested Persons:

1. On September 14, 1987 at 7:00 P.M. at the City/County Library Meeting Room in Glasgow, Montana; on September 15, 1987 at 7:00 P.M. at the Custer County Court-house Annex in Miles City, Montana; on September 16, 1987 at 7:00 P.M. at the Fergus County Sheriff's Complex Meeting Room in Lewistown, Montana; on September 17, 1987 at 7:00 P.M. at the Department of State Lands Conference Room in Helena, Montana, public hearings will be held to consider the amendment of those rules referenced above and the adoption of RULE 1, as set forth below.

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

26.2.401 SCHEDULE OF FEES The department of state lands shall collect the following non-refundable administrative fees:

(1) through (37) remain the same.

(38) Pasturing Agreement Application 25.00
(AUTH, 2-4-201, 77-1-302 MCA; IMP, Sec. 77-1-302 MCA).

26.3.129 DEFINITIONS When used in this subchapter of the ARM, unless a different meaning clearly appears from the context:

(1) through (15) remain the same.

(16) "Pasturing agreement" means an-approved a sublease in which the lessee personally retains full management and control of the land and livestock.

(17) through (21) remain the same.

(22) "Sublease" means any agreement, written or oral, between a lessee and a third party whereby the third party is accorded the use of all or any part of the lessee's leasehold interest, including pasturing agreements;

(23) through (27) remain the same.

(28) "User" means any lessee, sublessee, licensee or permittee. (AUTH: 77-1-209 MCA; IMP: Sec. 77-1-202, MCA)

26.3.137 MINIMUM RENTAL RATES (1) through (4) remain the same.

(5) A lessee or licensee who grazes the stubble of harvested crops or hayland, or who grazes unharvested or damaged crops or hayland, shall contact the department

regarding payment for such grazing on classified agricultural land. The department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under 77-6-507, MCA. Failure or refusal to pay said rental or to notify the department of such grazing may be cause for cancellation of the lease.

(5) remains the same but will be renumbered. (AUTH, 77-1-209 MCA; AUTH Extension, Sec. 2, Ch. 54, L. 1985, and Sec. 7, Ch. 488, L. 1985; IMP, Secs. 77-1-208, 77-6-201, 501, 502 and 504 MCA)

26.3.140 LEASE AND LICENSE REPORTS (1) remains the same.

~~-----{2}--The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. The state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. (AUTH, 77-1-209 MCA; IMP, Secs. 77-1-202 and 301 MCA)~~

26.3.144 RENEWAL OF LEASE OR LICENSE AND PREFERENCE RIGHT (1) and (2) remain the same.

~~{3}--A lessee or licensee who has allowed another person to use or operate more than 1/3 of the land included in a lease or license for more than 30% of the term of the lease or license shall not be entitled to exercise the preference right to meet any high bid offered for the lease or license. As examples, the lessee or licensee may allow 1/3 or less of the land to be used by another for the entire term of the lease or license, or may allow all of the land to be used by another for 30% or less of the lease or license term and still be entitled to exercise the preference right. However, all such arrangements must be reported to the department and approved as a sublease. A lessee or licensee who has accorded another the use of all, or a portion of, the allowable yearly AUMs during one year will be deemed, for the purposes of this section, to have subleased the entire tract for that year.~~

(3) As set forth in section 77-6-212, MCA, for leases or licenses issued for a new lease or license term beginning in 1987 and thereafter, a lessee or licensee who subleases more than 1/3 of the land under the lease or license may not exercise the preference right at lease renewal if he has subleased the land for more than 2 years during the term of the lease or license. If such lessee or licensee subleases more than one-third of the land for more than 3 years during the term of the lease, the department shall cancel the lease.

(a) For leases or licenses issued before 1987, a lessee or licensee who has subleased prior to April 7, 1987 under the lease or license may exercise the preference right

at renewal if he has not subleased for more than 30% of the term of the lease at the time of renewal. If such lessee or licensee subleases at any time after April 7, 1987, the provisions of (3)(a) apply.

(b) For leases or licenses issued before 1987, that have been subleased for two years prior to April 7, 1987, the lessee or licensee may sublease only one year after April 7, 1987, during the current lease term and retain the preference right at renewal.

(c) For leases or licenses issued before 1987, that have been subleased for one year prior to April 7, 1987, the lessee or licensee may sublease only two years after April 7, 1987, during the current lease term and retain the preference right at renewal.

(d) For leases or licenses issued before 1987 that have not been subleased prior to April 7, 1987, then the provisions of (3)(a) apply.

(e) For all leases and licenses the lessee or licensee may sublease the land for a period of not more than 5 years without losing the preference right or subjecting the lease to cancellation during the term of the lease, if the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(f) A lessee or licensee who has accorded another the use of all, or a portion of, the allowable A.U.M.'s during one year will be deemed, for the purposes of these rules, to have subleased the entire tract for that year.

(g) The provisions of this rule which state that a preference right will be lost, or that a lease will be cancelled for subleasing, do not apply in those instances where the approved sublease involved 1/3 or less of the total acreage in the lease or license, or where the sublease is considered to be a pasturing agreement pursuant to ARM 26.3.147.

(4) through (9) remain the same. (AUTH, 77-1-209 MCA; AUTH. EXTENSION, Sec. 2, Ch. 687, L. 1985, Eff 10/1/85 and Sec. 7 Ch. 488, L. 1985, Eff. 10/1/85; IMP, Secs. 77-6-205, 77-2-333, MCA, AUTH. EXTENSION, Sec. 5, Ch. 383, L. 1987; IMP. Secs. 2, 3, and 4, CH. 383, L. 1987.)

26.3.145 ASSIGNMENTS (1) Lessees' or licensees desiring to assign a lease or license may apply on the standard application form prescribed by the department. No assignment will be approved unless it is made upon the form prescribed by the department. An assignment in order to be binding on the state must be approved by the department. An assignment will not be approved if all rentals or payments due have not been paid or the terms of the lease or license have been violated. The department may disapprove any assignment application which is not in the best interests of the state. The state will not approve the assignment of any lease or license which is subject to a pledge or mortgage without written approval from the pledgee or mortgagee. If an assignment is made upon terms less advantageous to the assignee, than terms given by the state, the assignment shall not be approved. Assignments

which result in a profit to the assignor over and above the value of improvements may result in cancellation of the lease subject to the appeal procedures under ARM 26.3.148. An assignment which is signed by both parties shall be construed to be conclusive proof that all payments for improvements have been paid to the assignor from the assignee. The department will not approve conditional assignments. Such transactions may only be accommodated through the subleasing procedure contained in ARM 26.3.146. The department will only accept assignments containing the original signatures of all appropriate parties.

(2) Remains the same.

(AUTH, 77-1-209 MCA, IMP, Sec. 77-6-208 MCA)

26.3.146 SUBLEASING (1) Remains the same.

(2) The sublessee may only compensate the lessee based upon a \$/A.U.M. rate for grazing lands, or a crop share or cash basis on agricultural land depending upon the terms of the state lease. Such rate may not exceed the rate charged by the state for such lease. Failure to comply with this provision may be grounds for cancellation of the lease pursuant to ARM 26.3.148.

(2)(3) The subleasing of state land may result in loss of preference right to meet the high bid offered for the lease or license at renewal, as provided in ARM 26.3.144, section 77-6-208, MCA, and section 4, Ch. 383, L. 1987. In addition, pursuant to the same rules and statutes, subleasing may cause the loss of the lease.

(3) and (4) remain the same, but will be renumbered.

45(6) Custom farming shall not be considered a subleasing situation for the purposes of these rules. Management of the lease or license must be exercised at all times by the lessee or licensee. Failure to provide such management in the absence of an approved sublease may be sufficient grounds for cancellation of the lease or license and/or loss of the preference right at the time of renewal. The state shall not be subject to any reduction in rentals due to custom farming methods. Lessees engaged in custom farming shall file a copy of the custom farming agreement with the department. Such agreement shall set forth the names of the parties involved, the cost of services rendered, the duration of the agreement, and the state leases or licenses involved. Under no circumstances may the cost of services be based upon a percentage of the crop grown on state lands.

(7) If livestock are present on state land, there will be a conclusive presumption that the livestock either belong to the lessee or licensee, or that such livestock were placed on the state land with the lessee's or licensee's permission. (AUTH, 77-1-209 MCA; IMP, 77-6-208 MCA)

26.3.147 PASTURING AGREEMENTS (1) A lessee or licensee who has filed and obtained approval for an annual pasturing agreement prior to entering into such agreement shall be exempt from ARM 26.3.144(3) if he has complied with the terms of such agreement as approved by the department.

Such pasturing agreement shall allow a lessee or licensee to take in livestock belonging to another individual on state land if the lessee provides-all-elements-of or licensee personally retains management and-labor and physical control of the land and livestock associated with the utilization of the lease or license.

(2) "Management" as used in these rules means (as provided in section 77-6-212, MCA, but is not limited to:

"(a) Providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

"(b) Making all decisions regarding rotation or other placement of livestock on state land;

"(c) Making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

"(d) Making all decisions regarding proper range management, including placement of water, fencing, and salt."

~~(2)~~ (3) The lessee or licensee in addition to the lease, rental rate may charge a management fee when there is an approved pasturing agreement, but may not charge a management fee which exceeds the minimum grazing rental for that lease or license, as set forth in section 77-6-507, MCA. All such management fees shall be based upon a per A.U.M. basis. No other basis for payment of management fees will be approved by the department. ~~more-for-the-combined grazing-and-management-fees-than-2-times-the-grazing-rate charged-by-the-state-for-the-lease-or-licensee.~~ The pasturing agreement shall be on a form furnished by the department and shall state the rate charged for grazing on an A.U.M. basis and the amount of the management fee if any. The agreement must be signed by the lessee or licensee and sublessee, and be notarized and approved by the department. The department may charge a filing fee for such agreement. Failure to obtain an approved pasturing agreement may result in cancellation of the lease under ARM 26.3.446 148.

(4) A pasturing agreement will not be approved if the lessee or licensee employs hired help that have retained a personal interest in the livestock being grazed on the state land. Such an arrangement shall be considered a sublease. (AUTH: 77-1-209 MCA; IMP, Sec. 77-6-208 MCA, AUTH EXTENSION, Sec. 5, Ch. 383, L. 1987; IMP, Sec. 4, Ch. 383, L. 1987)

26.3.148 CANCELLATION OF LEASE OR LICENSE (1) remains the same.

(2) As provided in section 77-6-211, MCA, the department shall immediately notify the lessee or licensee by certified mail of the cancellation and the reason for it, and the lease or license shall be deemed cancelled 15 days after such notice is received by the lessee or licensee, unless the lessee or licensee files a notice of appeal with the department prior to the expiration of the 15-day period, in which case the lease or license remains in effect until the board decides the matter. Within 10 days after receipt of notice of appeal the department shall notify the lessee or licensee of the time and place of the hearing before the

board. The time and place of the hearing may be changed by the board after 10 days notice to the lessee or licensee. The board shall conduct an open hearing under the rules set out in the Montana Administrative Procedure Act, section 2-4-101 et seq., MCA. A hearings examiner may be appointed to conduct the hearing. The burden of proof to show why the lease or license should not be cancelled shall be borne by the lessee or licensee. The board may reinstate the lease or license where it finds that the violation is not serious enough to warrant cancellation and restore all rights and privileges upon payment of a penalty up to three times the annual rental against the lessee or licensee. Payment of the penalty may be considered as a notice of appeal for the purpose of keeping the lease in effect until the board decides the matter. If the board does not reinstate the lease or license, the land shall be readvertised for lease or license in accordance with ARM 26.3.142. (AUTH, 77-1-209 MCA; IMP, Secs. 77-6-210 and 211 MCA)

26.3.149 MORTGAGES AND PLEDGES (1) remains the same.

(2) If a lessee or licensee mortgages his leasehold interest in state lands pursuant to section 77-6-401, MCA, then there must be an assignment, signed by the lessee or licensee/mortgagor and the mortgagee, and placed in escrow. A copy of such escrow assignment must be filed with the department. A new escrow assignment, signed by the lessee or the licensee/mortgagor, and the mortgagee, must be placed in escrow and a copy filed with the department each time a lease is renewed. Failure to execute the terms of this rule shall be cause for the department not to recognize the mortgage. (AUTH, 77-1-209 MCA; IMP, 77-6-401 through 404 MCA).

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

RULE I. FEDERAL FARM PROGRAM COMPLIANCE (1) If a lessee or licensee has his lease or license cancelled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payments or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license, he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a crop share, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose

of receiving the state's share of the federal farm payments. (AUMH, 77-1-209 MCA; IMP, Secs. 77-1-202 and 301 MCA)

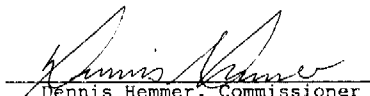
5. The proposed amendments are primarily proposed to make the rules consistent with Chapter 383, Laws of Montana, 1987. With this enactment the Montana Legislature changed the laws relating to subleasing state lands. As a result, it was necessary to amend ARM 26.3.144, 26.3.145 and 26.3.147. The other proposed changes are necessary refinements of the existing rules, which allow the Board of Land Commissioners and the Department of State Lands to properly administer the state lands in accordance with their constitutionally and statutorily mandated fiduciary duties.

6. The Department and Board of Land Commissioners have also proposed a new rule. The substance of this rule was taken primarily from former ARM 26.3.140(2), with some additional material. The additional material is necessary to resolve current ambiguities concerning the receipt by the state of its proportional share of federal farm payments. It was also deemed to be necessary to have a separate rule regarding the federal farm programs, rather than having such matters contained in a rule regarding "reports."

7. It was necessary to amend 26.2.401 ARM to include a fee for filing pasturing agreements.

8. Interested persons may present data, views, or arguments, either orally or in writing, at the hearings. Written data, views or arguments may also be submitted to Dennis Hemmer, Commissioner, Department of State Lands, Capitol Station, Helena, Montana 59620, no later than September 28, 1987.

9. Kelly Blake has been designated to preside over and conduct the above-mentioned hearings.


Dennis Hemmer, Commissioner
Department of State Lands

Certified to the Secretary of State August 3, 1987.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMEND-
amendment of rule 32.3.216	)	MENT OF RULE 32.3.216
for the purpose of adding	)	INVOLVING HORSES, MULES
Equine Quarantine Stations	)	AND ASSES

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On September 13, 1987 the Board of Livestock proposes to amend Rule 32.3.216 by allowing for the establishment of Equine Quarantine Stations and providing the guidelines therefor.

2. The proposed amendment provides as follows:

32.3.216 HORSES, MULES AND ASSES

(1) remains the same.

(2) Stallions or mares imported from foreign countries, receipt prohibited except at approved equine quarantine stations. No person may receive in this state any stallion or mare which is imported from a foreign country in which contagious equine metritis has been reported unless the stallion or mares is imported directly to an approved equine quarantine station in a sealed vehicle. The sealed vehicle shall have been sealed at a federal or federally approved quarantine station by a federal or federally approved agent. The imported stallion or mare shall be accompanied by an import permit issued by the Animal Health Division prior to the date on which the stallion or mare is brought into this state. The vehicle seal may not be removed except by an authorized employee or agent of the Department of Livestock at an approved equine quarantine station. All equine animals, including test mares, which are received at an approved equine quarantine station shall be identified with an individual identification of a type approved by the Department.

(a) An imported stallion or mare received at an approved equine quarantine station under paragraph 2 is quarantined until the quarantine is released by the Department in writing. A quarantined equine animal may not be removed from the quarantine premises or be allowed in contact with other equine animals on adjacent premises. Contact between a quarantined equine animal and a test mare is permitted, but only pursuant to a written agreement with the Department under sub-paragraph (d). A test mare which has been in contact with an imported quarantined stallion is quarantined until the quarantine is released by the Department in writing.

(b) No person may operate an approved equine quarantine

station in Montana without annual written permission from the Animal Health Division, Department of Livestock. Permits shall expire December 31 of each year. Applications for a permit shall be made in writing as required by the Department. The Department shall grant or deny a permit application within 90 days after the application is received provided that the application is accompanied by all requisite information and documentation. Every application shall include;

(i) the name and mailing address of the applicant and any trade or business name to be used by the applicant;

(ii) a statement indicating whether the applicant is an individual, partnership, corporation, cooperative corporation, or other business association or entity;

(iii) the location of the equine quarantine station specified by county, township, and section;

(iv) the name and address of the accredited veterinarian who will perform all identification, handling, testing, and treatment of equine animals at the approved equine quarantine station under procedures or protocols established by the Department; and

(v) other information which the Department may require if the information is reasonably relevant to the Department's action on the permit request.

(c) Approved equine quarantine stations shall be constructed and maintained to prevent contact between quarantined equine animals and any other equine animals on the premises, including test mares. An approved equine quarantine station shall be maintained in a clean and sanitary manner.

(d) Before permission is granted for the operation of an approved equine quarantine station, the station operator and the accredited veterinarian designated under sub-paragraph (b) (iv) shall enter into a written agreement with the Department establishing procedures and protocols to be followed in the identification, handling, testing, and treatment of equine animals quarantined at the station. The approved equine quarantine station shall be operated in compliance with the agreed procedures and protocols. Procedures and protocols shall be performed by the designated veterinarian except as otherwise authorized by the Department.

(e) The operator of an approved equine quarantine station shall keep complete and accurate records which shall be made available for inspection and copies of which shall be supplied to the Department upon request. Records shall be kept for at least two years after they are made and shall include;

(1) the identification, date of arrival, and date of removal of each imported equine animal received at the quarantine station;

(ii) the name and address of the owner of each equine animal received at the quarantine station correlated with a specific identification of the equine animal; and

(iii) a complete record of the procedures and protocols followed in conjunction with the identification, handling, testing, and treatment of each imported animal.

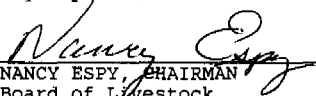
3. The Board of Livestock has been petitioned by Montana citizens for the establishment of an equine importation facility for horses imported from Europe. In order to apply necessary industry safeguards and acceptable technology to the proposed facility and at the same time achieve USDA recognition for it while protecting the public, legal authority to enforce those procedures is required. This amendment will provide that authority.


4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than September 12, 1987.

5. If a person who is directly affected by the proposed rule wishes to express his data, views, and arguments orally or in writing at a public hearing he must make a written request for a hearing and submit this request along with any written comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than September 12, 1987.

6. If the agency receives requests for a public hearing on the proposed adoption 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 not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed amendment is based on sections 81-2-101 MCA. They implement Section 81-2-102 MCA.


NANCY ESPY, CHAIRMAN
Board of Livestock

BY 
LES GRAHAM, Executive Secretary
To the Board of Livestock

Certified to the Secretary of State August 3, 1987.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of rule 32.3.219 for the purpose	)	AMENDMENT OF RULE
protecting the Montana swine	)	32.3.219 "SPECIAL
industry against the importation	)	REQUIREMENTS OF
of disease	)	SWINE"

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On September 13, 1987 the Board of Livestock proposes to amend rule 32.3.219 with regard to clarifying certain requirements involving pseudorabies.
2. The proposed amendment provides as follows:

32.3.219. SPECIAL REQUIREMENTS FOR SWINE

(1) remains the same
(2) remains the same
(3) With regards to pseudorabies, ~~all breeding swine 3 months of age and over must no swine will be permitted from herds that have had evidence of pseudorabies infection within the past 12 months. No pseudorabies vaccinated swine will be permitted.~~

~~(a) --Be negative to the serum neutralization (SN) test or any other USDA approved test for detection of pseudorabies, administered not more than 30 days before importation; and~~

~~(a) All breeding swine must:~~

~~(i) be from an official qualified pseudorabies negative herd. Herd number to be available at time of request for permit, or~~

~~(ii) be officially tested negative for pseudorabies within 30 days of entry into Montana, be held separate under quarantine on arrival, and be retested negative for pseudorabies in from 30 to 45 days at owners' expense before release.~~

~~(b) Be --from --a --swine --herd --which --the --inspecting veterinarian can certify as having had no clinical evidence of pseudorabies in the previous 12 months-~~

~~(b) All feeder swine must:~~

~~(i) originate in a recognized pseudorabies monitored herd or an officially qualified negative herd, or be officially tested for pseudorabies within 30 days of entry, and~~

~~(ii) move direct to a farm feeding premises where they are kept separate from other swine, and leave that premises only direct to slaughter.~~

NEW: (c) Slaughter swine may, if apparently healthy:

(i) move directly to a recognized U.S.D.A. slaughter establishment, or

(ii) move directly to a licensed livestock market approved to receive such swine for immediate sale direct to a recognized slaughter establishment.

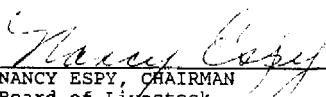
3. Pseudorabies is a dangerous disease to swine. Current restrictions on feeder pigs are insufficient to adequately protect the Montana swine industry. This rule change remedies that situation while allowing pseudorabies qualified "free" herds to be safely imported without costly testing.

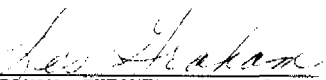
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than September 12, 1987.

5. If a person who is directly affected by the proposed rule 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 Les Graham, Executive Secretary to the Board of Livestock, no later than September 12, 1987.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every swine producer in the state. In the event that the department receives requests for a public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to adopt the proposed amendments is based upon Section 81-2-102 MCA. They implement Section 81-2-102 MCA.


NANCY ESPY, CHAIRMAN
Board of Livestock

BY: 
LES GRAHAM, EXECUTIVE SECRETARY
To the Board of Livestock

Certified to the Secretary of State August 3, 1987.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of rule 32.3.104 for the purpose	)	AMENDMENT OF RULE
of including contagious equine	)	32.3.104 SUBJECT DISEASES
metritis and vesicular stomatitis	)	<u>OR CONDITIONS</u>

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. On September 13, 1987 the Board of Livestock proposes to amend rule 32.3.104 by adding language which would include (2) additional diseases clarifying the necessity of quarantine.
2. The proposed amendment would provide as follows:

32.3.104 SUBJECT DISEASES OR CONDITIONS

(1) Diseases or conditions requiring quarantine under department rules are:

Brucellosis,
Tuberculosis,
Scabies,
Anthrax,
Rabies,
Pseudorabies,
New Castle Disease,
Contagious Equine Metritis,
Vesicular Stomatitis,

Foot rot in sheep, Pediculosis in sheep, and other domestic and exotic dangerous diseases.

- (2) remains the same
- (3) remains the same

3. The reason for the amendment is to remove any possibility of differing interpretation of the rule. In order to reduce the impact of the disease(s), quarantine restrictions are recommended nationally and supported locally. In order to maintain our ability to reduce that impact subjecting the disease to specific quarantine action is necessary.

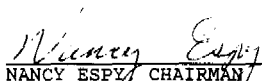
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than September 12, 1987.

5. If a person who is directly affected by the proposed rule 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 Les Graham, Executive Secretary to the Board of Livestock, no later than September 12, 1987.


6. If the agency 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 hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (250) persons, based on a survey by the Montana Stockgrowers Association.

7. The authority to adopt the proposed amendments is based upon Section 81-2-102 MCA. They implement Section 81-2-102 MCA.



NANCY ESPY, CHAIRMAN
Board of Livestock

BY: 

LES GRAHAM, EXECUTIVE SECRETARY
To the Board of Livestock

Certified to the Secretary of State August 3, 1987

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of rules 32.3.401, 32.3.410,	)	AMENDMENT OF RULES
32.3.412, 32.3.425, and 32.3.431;	)	32.3.401, 32.3.410,
repeal of 32.3.426; and adoption	)	32.3.412, 32.3.425,
of a new rule for the purpose of	)	REPEAL OF 32.3.426,
controlling "Brucellosis"		ADOPTION OF NEW RULE
		"BRUCELLOSIS"

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. On September 13, 1987 the Board of Livestock proposes to amend, repeal and adopt the above-stated rules clarifying Board of Livestock authority for control of the disease "Brucellosis" while at the same time enumerating certain affected herd owner rights and obligations.

2. The proposed amendments provide as follows:

32.3.401 DEFINITIONS

- (1) remains the same
- (2) remains the same
- (3) remains the same
- (4) remains the same

(5) An "official vaccination" for bovine brucellosis is the subcutaneous inoculation of a female bovine by a deputy state veterinarian or other persons approved by the state veterinarian, with a Brucella abortus vaccine licensed by the veterinary biologics division, United States Department of Agriculture. The vaccine will contain ~~300-million-to-3-billion live organisms per dose~~ three billion to ten billion live organisms per 2 ml dose. The female bovine animal must be ~~4 through-12-months~~ 4 - 12 months (120 to 365 days) of age at the time of vaccination with a licensed Brucella abortus vaccine. An official vaccination shall include proper permanent identification of the animal at the time of vaccination and the issuance of a completed form SV-64.

- (6) through (19) remain the same

(20) "emergency circumstances" means events or situations which, in the opinion of the Board of Livestock, pose an immediate or impending economic or livestock health danger to the livestock industry.

The authority to adopt the proposed amendments is based upon Section 81-2-102, MCA. The implement Section 81-2-102, MCA.

32.3.410 QUARANTINE OF HERDS, HANDLING OF REACTORS AND SUSPECTS, EXCEPTIONS TO PROVISIONS OF QUARANTINE

- (1) through (6) remains the same

~~{7}--Calves; both heifer and bull; 6 months of age and under; which are born of negative dams; may be released from quarantine under the provisions of ARM-32-3-425.~~

†8† (7) All other non-reactor animals in a quarantined herd may be confined to the quarantined premises until the herd is released from quarantine or are disposed of under the provisions of ARM-32-3.425 must be confined unless excepted until the herd is released.

The authority to adopt the proposed amendments is based upon Section 81-2-102, MCA. The implement Section 81-2-102, MCA.

32.3.412 MEMORANDUM OF UNDERSTANDING

(1) Using the epidemiological report required by ARM 32.3.411 as its basis, a memorandum of understanding must be developed between the owner of the infected herd and the department to establish a disease eradication effort for the infected herd. The memorandum shall cover at least the following points:

(a) Herd management practices that will be employed to facilitate disease eradication or interim disease control leading to eradication.

(b) remains the same

(c) remains the same

(2) remains the same

(3) The memorandum of understanding is the basis for management of the quarantined herd until the quarantine is released. Any modifications of the memorandum must be made in writing and subscribed to by both parties. En the event of emergency circumstances, the department may take such actions as are lawful and necessary to control the disease, beyond the terms of the memorandum. Any agreement to depopulate the herd is part of the memorandum of understanding.

(a) If, in the opinion of the department emergency circumstances warrant action beyond the terms of the memorandum, the department through the Board of Livestock may take such actions as are lawful and necessary to control and eradicate this disease. This may include an ordered depopulation of the herd with or without indemnity, as authorized by law.

(4) The memorandum of understanding shall be considered a binding agreement between the parties having the force of an order as contemplated under section 81-2-102, MCA. Failure by a quarantined herd owner or his agent to come to an agreement on the memorandum of understanding within 90 days of the imposition of quarantine or to follow it's terms shall be considered a violation of orders under that section of the statutes, and shall be an emergency circumstance in which the department may immediately slaughter or cause to be slaughtered any quarantined animals.

The authority to adopt the proposed amendments is based upon Section 81-2-102, MCA. The implement Section 81-2-102, MCA.

32.3.425 MOVEMENT AND DISPOSITION OF ANIMALS OTHER THAN REACTORS IN A QUARANTINED HERD

(1) remains the same through (d)

~~(c) -- A permit may be issued for the movement of calves, of either sex, 6 months of age and under, from negative dams, within 10 days after a negative official test of the dam for brucellosis, to any destination with no requirement that such calves be slaughtered.~~

(f) (e) A permit may be issued for the movement of calves, of either sex, 6 months of age and under, from negative dams, within 10 days after a negative official test of the dam for brucellosis, to any destination with no requirement that such calves be slaughtered.

(i), (ii), and (iii) remains the same

The authority to adopt the proposed amendments is based upon Section 81-2-102, NCA. The implement Section 81-2-102, MCA.

32.3.426 HANDLING OF PROGENY OF REACTOR DAMS

(Is proposed for repeal, text of rule can be found on page 32-129 of the Administrative Rules of Montana)

RULE 1 NONPARTURIENT FEMALES, CALVES AND BULLS

(1) Nonparturient females and any calves may be released from quarantine if neutered or if released to an approved destination after being branded with an "s" brand under the provisions of ARM 32.3.425.

(2) Bulls may be released sexually intact if the herd is released from quarantine.

The authority to adopt the proposed new rule is based upon Section 81-2-102, MCA. The implement Section 81-2-102, MCA.

32.3.431 REMOVAL OF HERD QUARANTINE, RETEST, AND RECORD KEEPING AFTER QUARANTINE REMOVAL.

(1) A Brucellosis quarantine shall be removed by the department from a quarantined herd when two consecutive negative herd tests have been performed provided the first negative test is made not less than 30 days after the removal of all reactor animals from the herd and the second negative test (the release test) is made not less than 90 180 days after the first negative test removal of the last reactor.

(2) remains the same

(3) remains the same

(4) A shorter time period between tests required for release of quarantine may be granted if either Brucella abortus Strain 19 organisms have been isolated from reactor animals or if in the opinion of the state veterinarian all epidemiological evidence is consistent with a Brucella abortus Strain 19 infection and not with a field strain infector.

3. Experience has taught the Board of Livestock and the Department that a strong position is needed for the handling of any brucellosis infected herd while at the same time allowing the affected herd owner due process of law. These changes reflect both circumstances.


4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than September 12, 1987.

5. If a person who is directly affected by the proposed rules 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 Les Graham, Executive Secretary to the Board of Livestock, no later than September 12, 1987.

6. If the agency receives requests for a public hearing on the proposed adoption(s) from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoptions; 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 hearing will be published on the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (250) persons, based on a survey by the Montana Stockgrowers Association.

7. The authority to adopt the proposed amendments is based upon Section 81-2-102, MCA. The implement Section 81-2-102, MCA.


NANCY ESPY, CHAIRMAN
Board of Livestock

BY: 
LES GRAHAM, EXECUTIVE SECRETARY
To the Board of Livestock

Certified to the Secretary of State August 3, 1987

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL
of rules regarding repealed	)	OF ARM 1.2.331 REMOVAL OF
rules and official reports	)	REPEALED RULES FROM ARM,
from agencies required during	)	AND ARM 1.2.341 OFFICIAL
recodification.	)	REPORT OF THE RECODIFICA-
	)	TION OF TITLE
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On September 12, 1987, the office of the Secretary of State proposes to repeal ARM 1.2.331 and ARM 1.2.341 regarding repeal of rules and official reports from agencies required during the recodification of the Administrative Rules of Montana.

2. The rules proposed to be repealed are found on page 1-23 of the Administrative Rules of Montana.

3. The Secretary of State proposes to repeal these rules because they are outdated and no longer necessary.

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

Kathy Lubke, Bureau Chief
Administrative Rules Bureau
Secretary of State
Room 225
Capitol Building
Helena, MT 59620

no later than September 10, 1987.

5. The authority of the Secretary of State to repeal the rules is based on sections 2-4-201, 2-4-306, 2-4-321 through 2-4-323, MCA, and implements the same.


JIM WALTERMIRE
Secretary of State

Dated this 29th day of July, 1987

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON PRO-
ment of Rules 46.10.321,	)	POSED AMENDMENT OF RULES 46.10.321,
46.12.3401, 46.12.3403 and	)	46.12.3401, 46.12.3403 AND
46.12.3804 pertaining to	)	46.12.3804 PERTAINING TO
Medicaid coverage of preg-	)	MEDICAID COVERAGE OF PREG-
nant women, unborn children	)	NANT WOMEN, UNBORN CHILDREN
and eligible individuals	)	AND ELIGIBLE INDIVIDUALS
under 21 years of age	)	UNDER 21 YEARS OF AGE

TO: All Interested Persons

1. On September 3, 1987, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of rules as cited above pertaining to Medicaid coverage of pregnant women, unborn children and eligible individuals under 21 years of age.

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

46.10.321 NEEDY PREGNANT WOMAN (1) Assistance is provided to an otherwise eligible pregnant woman with no other children receiving assistance when the fact of pregnancy has been verified by a physician or his designee.

(a) AFDC payments will begin no earlier than the third month prior to the month in which the child is expected to be born.

(b) ~~Medicaid coverage will begin with the month in which pregnancy is verified only if, except for (a), the pregnant woman would have received an AFDC payment.~~ In determining medicaid eligibility only, an unborn child is considered a family member.

(c) Medicaid coverage for the pregnant woman will continue for two months after the month pregnancy ends (including stillbirths, miscarriages and medicaid funded abortions) whether or not all financial or non-financial criteria continue to be met so long as she is medicaid eligible when the pregnancy ends.

(i) If an applicant applies for retroactive coverage after the date pregnancy ends, the two month extended coverage is not granted.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-4-231 and 53-6-131, MCA

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) ~~I~~ndividuals receiving AFDC.

(i) An individual is receiving AFDC if his needs are included in determining the AFDC grant amount.

(b) ~~Individuals~~ deemed to be receiving AFDC. ~~These individuals are~~ This coverage is limited to:

(i) those individuals who are not receiving an AFDC check solely because the grant amount was less than \$10;

(ii) ~~pregnant women who would be eligible for an AFDC grant under ARM 46.10.321 except for the prohibition against such grants being made any earlier than the third month prior to the month in which the child is expected to be born;~~ an otherwise eligible pregnant woman with no other children receiving AFDC when the pregnancy has been verified by a physician or his designee;

(iii) individuals under age 21 who currently reside in Montana and are receiving foster care or adoption assistance under Title IV-E of the Social Security Act, whether or not such assistance originated in Montana. Eligibility requirements for Title IV-E foster care and adoption assistance are found in ARM 46.10.307;

(iv) those who do not receive AFDC because of the receipt of an extra periodic paycheck.

(2c) ~~Medicaid will also be provided to~~ families with dependent children who are not receiving AFDC. This coverage is limited to:

(a) individuals who would be eligible for AFDC had they applied within the prior three months;

Subsections (2)(b) through (6) remain the same.

(7) Medicaid will continue for two months after the month pregnancy ends (except if pregnancy ends because of a non-medicaid funded abortion) whether or not all financial and non-financial criteria continue to be met so long as she is medicaid eligible when the pregnancy ends.

(a) If the individual applies for retroactive medicaid coverage after the date pregnancy ends, the two month extended coverage is not available.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-4-231 and 53-6-131 MCA

46.12.3403 FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsection (1) remains the same.

(2) For individuals and families under the heading families with dependent children who are not receiving AFDC, the AFDC financial requirements which are set forth in ARM 46.10.401, ~~through 406~~ 402, 403, 406 and 46.10.505 through 514 will be used to determine whether:

Subsections (2)(a) through (3)(b) remain the same.

(c) In applying the above:

(i) because the individual is not living with his parent, parental income will be considered only when actually

contributed; and

(ii) applicable standards are the child's only standards.

(4) In determining medicaid eligibility, an unborn child is considered a family member.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-4-231 and 53-6-131 MCA

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Income eligibility for both non-institutionalized AFDC-related families and children and SSI-related individuals and couples will be computed using a quarterly (three month) prospective period.

(a) For groups under non-institutionalized AFDC-related families and children, quarterly countable income will be determined using the AFDC income requirements, in particular those with respect to prospective budgeting and including those with respect to the ~~\$30-plus-1/3~~ earned income disregard, set forth in ARM 46.10.401 through 404 and ARM 46.10.505 through 514.

Subsections (1)(a)(i) through (4)(c) remain the same.

(5) In determining medicaid eligibility, an unborn child is considered a family member.

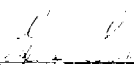
AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-4-231 and 53-6-131 MCA

3. These changes are proposed to ensure that state policy coincides with the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA requires states to: 1) extend medical coverage for two months after pregnancy ends to pregnant women who were eligible for and received Medicaid on the date the pregnancy ended; 2) consider the unborn as family members when determining Medicaid eligibility; and 3) extend medical coverage to all individuals under 21 years of age who currently reside in Montana and are receiving foster care or adoption assistance under Title IV-E of the Social Security Act regardless of which state the assistance originated.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 10, 1987.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1987.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.12.503 and	)	THE PROPOSED AMENDMENT OF
46.12.509 and adoption of	)	RULES 46.12.503 AND
Rules I and II pertaining to	)	46.12.509 AND ADOPTION OF
establishment of an inpatient	)	RULES I AND II PERTAINING
hospital reimbursement system	)	TO ESTABLISHMENT OF AN
based upon Diagnosis Related	)	INPATIENT HOSPITAL REIM-
Groups (DRGs) for the Montana	)	BURSEMENT SYSTEM BASED UPON
Medicaid program	)	DIAGNOSIS RELATED GROUPS
	)	(DRGs) FOR THE MONTANA
	)	MEDICAID PROGRAM

TO: All Interested Persons

1. On September 2, 1987, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.503 and 46.12.509 and adoption of Rules I and II pertaining to establishment of an inpatient hospital reimbursement system based upon Diagnosis Related Groups (DRG's) for the Montana Medicaid program.

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

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITIONS

Subsections (1) through (3) remain the same.

(4) "Sole community hospital" is a hospital classified as such by HCFA in accordance with 42 CFR 412.92(a) thru (d) (1986).

(5) "Distinct part rehabilitation unit" is a unit of an acute care general hospital that meets the requirements in 42 CFR 412.29 (1986).

(6) "Transferring hospital" is the hospital that formally releases an inpatient to another inpatient hospital or inpatient unit of a hospital.

(7) "Discharging hospital" is the hospital that formally releases an inpatient from a hospital. Release of a patient to another hospital as described in transferring hospitals or a leave of absence from the hospital will not be recognized as a discharge. A patient who dies in the hospital is considered a discharge.

(8) "Day outlier" is an extended length of stay case that exceeds the day outlier thresholds as set forth in rule II, subsection (11).

(9) "Cost outlier" is an unusually high cost case that exceeds the cost outlier thresholds as set forth in rule II, subsection (6).

(10) "Administratively necessary days" are those days for which alternative placement of a patient is planned and/or effected and for which there is no medical necessity for acute inpatient hospital care.

AUTH: Sec. 53-6-113 MCA

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

46.12.509 ALL HOSPITAL REIMBURSEMENT, GENERAL (1) Reimbursement for inpatient hospital services ~~will be on a retrospective basis~~ is set forth in rule II. Reimbursement for outpatient hospital services is set forth in rule I. The reimbursement period will be the provider's fiscal year. Cost of hospital services will be determined for inpatient and outpatient care ~~respectively, separately~~. Administratively necessary days are not a benefit of the Montana medicaid program.

(2) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. Such definition of allowable costs is further defined in accordance with the HIM-15. The department hereby adopts and incorporates herein by reference the HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained ~~from~~ through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

~~(3) Hospitals located within the state will be reimbursed on an interim basis during the facility's fiscal year. The interim rate will be based on a percentage of customary charges as determined by the facility's medicare intermediary.~~

~~(4) Hospital services provided to medicaid patients by facilities outside of the state will be limited to the percentage of billed charges rate as computed for the hospital under the medicare reimbursement principles.~~

(53) Facilities located within the state of Montana will be required to submit a medicare cost report in which costs have been allocated to the medicaid program as they relate to charges. The facility shall maintain appropriate accounting records which will enable the facility to fully complete the cost report.

(64) Facilities located within the state of Montana will be required to file a the cost report with the medicare intermediary within 90 days of the facility's fiscal year end or receipt of the department cost settlement detail reports, whichever is later. In the event a provider does not file

within 90 days, or files an incomplete cost report, an amount equal to 10 percent of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete a second month, 20 percent shall be withheld. For each succeeding month the report is overdue or incomplete, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a maximum limitation of one 30-day extension.

(75) Upon receipt of the cost report, the department will instruct the medicare intermediary to perform a desk review or audit of the cost report and determine whether overpayment or underpayment has resulted.

(8) --The facility will be notified of the department's findings. All amounts payable to the facility will be paid within 30 days of notification. All overpayments will be repaid to the department within 30 days of notice unless the department and the provider agree in writing to other terms.

(6) Overpayments and underpayments will be dealt with as follows:

(a) Where the department finds that an overpayment has occurred, the department will notify the provider of the overpayment.

(b) In the event of an overpayment, the department will, within 30 days after the day the department notifies the provider that an overpayment exists, arrange to recover the overpayment by set-off against amounts paid for hospital services or by repayments by the provider.

(c) If repayment is not made within 30 days after notification to the provider, the department will make deductions from rate payments with full recovery to be completed within 60 days from the date of the initial request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment and requests a fair hearing.

(d) In the event an underpayment has occurred, the department will reimburse the provider within 30 days following the department's determination of the amount.

(e) The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from either the payment or from a transfer of assets.

(7) Providers contesting the computation of interim payments or final settlement for capital and medical education costs; coding errors resulting in incorrect DRG assignment; medical necessity determinations; outlier determinations; or, determinations of readmission and transfer shall have the

opportunity for fair hearing in accordance with the procedures set forth in ARM 46.2.202 et seq.

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

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

RULE I OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) The department will reimburse for outpatient hospital services compensable under the Montana medicaid program as follows:

(a) Facilities located within the borders of the state of Montana will be reimbursed on a retrospective basis. Allowable costs will be determined in accordance with ARM 46.12.509(2).

(b) Facilities located outside the borders of the state of Montana (Canada excluded) are limited to a ratio of usual and customary billed charges computed for each hospital under medicare reimbursement principles. If the provider fails to submit financial information necessary to compute the rate, the provider will be reimbursed at 60% of its usual and customary billed charges.

(2) Facilities located within the state of Montana will be reimbursed on an interim basis during the facility's fiscal year. The interim rate will be based on a percentage of customary charges as determined by the facility's medicare intermediary.

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

RULE II INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) The department will reimburse for inpatient hospital services compensable under the Montana medicaid program as follows:

(a) Inpatient hospital services provided within the state of Montana will be reimbursed under the prospective payment system using the methodology in subsection (2) of this rule. Subsequent references to rule subsections refer to subsections of this rule unless otherwise specifically identified. In addition to the prospective rate, the following are reimbursable:

- (i) capital-related costs as set forth in subsection (3);
- (ii) medical education costs as set forth in subsection (4);
- (iii) cost or day outliers as set forth in subsections (5) and (6);
- (iv) for sole community providers, neonate DRG's (386-

390) and rehabilitation units, a stop-loss reimbursement as set forth in subsections (5) and (6).

(b) Inpatient hospital services provided outside the state of Montana, but provided in an area no more than 100 miles from the border (Canada excluded) will be reimbursed under the prospective payment system using the methodology in subsection (2). In addition to the prospective rate, these providers will be reimbursed for day or cost outliers as set forth in subsections (5) and (6).

(c) Inpatient hospital services provided more than 100 miles outside the borders of the state of Montana (Canada excluded) are limited to a ratio of usual and customary billed charges computed for each facility under medicare reimbursement principles. If the provider fails to submit financial information necessary to compute the rate, the provider will be reimbursed at 60% of its usual and customary billed charges.

(2) The department prospective (DRG) payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to diagnosis related groups (DRG) as set forth in subsection (11). The procedure for determining the prospective (DRG) payment rate is as follows:

(a) The department assigns a DRG to each medicaid discharge in accordance with the medicare grouper program version 4.0, as developed by Health Systems International, Inc. The assignment of each DRG is based on:

- (i) the ICD-9-CM principle diagnosis;
- (ii) the ICD-9-CM secondary diagnoses;
- (iii) the ICD-9-CM medical procedures performed during the recipient's hospital stay;
- (iv) the recipient's age;
- (v) the recipient's sex;
- (vi) the recipient's discharge status.

(b) For each DRG, the department determines a relative weight which reflects the cost of hospital resources used to treat cases in that DRG relative to the statewide average cost of all medicaid hospital cases. The relative weight for each DRG is set forth in subsection (11).

(c) The department computes a Montana average base price per case. This average base price per case is \$1,228.39 for fiscal year ending June 30, 1988.

(d) The relative weight for the assigned DRG is multiplied by the average base price per case to compute the prospective (DRG) payment rate for that discharge.

(3) The department shall reimburse inpatient hospital service providers for capital-related costs that are allowable under medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, 1986. The department hereby adopts and incorporates by reference 42 CFR 412.113, sections (a) and (b), as amended through October 1, 1986, which set forth medicare cost reimbursement principles.

Copies of this section may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana 59601.

(a) Prior to settlement based on audited costs, the department shall make interim payments for each facility's capital-related costs as follows:

(i) The department shall identify the facility's total allowable medicaid inpatient capital-related costs from the facility's most recently audited cost report. These costs will be used as a base amount for interim payments. The base amount may be revised if the provider can demonstrate an increase in capital-related costs as a result of an approved certificate of need that is not reflected in the base amount;

(ii) For facilities with a base amount greater than \$1,200 as identified in subsection (3)(a)(i), the department will make interim capital payments at least monthly.

(iii) For facilities with a base amount less than \$1,200 as identified in subsection (3)(a)(i), the department will make a single interim payment of the base amount.

(4) The department shall reimburse inpatient hospital service providers for medical education related costs that are allowable under medicare cost reimbursement principles as set forth at 42 CFR 412.113(b), as amended through October 1, 1986.

(a) Prior to settlement based on audited costs, the department shall make interim payments for each facility's medical education related costs as follows:

(i) The department shall identify the facility's total allowable medicaid inpatient medical education related costs from the facility's most recently audited cost report. These costs will be used as a base amount for interim payments;

(ii) For facilities with a base amount greater than \$1,200 as identified in subsection (3)(a)(i), the department will make interim payments at least monthly;

(iii) For facilities with a base amount less than \$1,200 as identified in subsection (3)(a)(i), the department will make a single interim payment of the base amount.

(5) In addition to the DRG payment, the provider may receive payment for day outliers.

(a) To receive payment for a day outlier under subsection (1)(a)(iii), the inpatient hospital stay of a medicaid recipient must exceed the day outlier threshold for the DRG based on the medically necessary days reviewed by the department. The day outlier thresholds for the DRGs are set forth in subsection (11).

(b) The department determines the outlier reimbursement for day outliers for all hospitals and distinct part units, except for rehabilitation units, neonate DRGs (386-390) and sole community providers by:

(i) computing the per diem amount for the DRG by dividing the prospective (DRG) payment rate by the DRG average

length of stay set forth in subsection (11); and

(ii) multiplying the per diem amount by 60% to establish the day outlier per diem rate for the DRG; and

(iii) subtracting the number of days at the threshold for the DRG as set forth in subsection (11) from the actual number of inpatient days as certified in subsection (5)(a)(iii) to establish the number of outlier days; and

(iv) multiplying the day outlier per diem rate computed in subsection (5)(b)(ii) by the number of outlier days computed in subsection (5)(b)(iii) to establish the day outlier payment.

(c) The department determines the outlier reimbursement for day outliers for rehabilitation units, neonate DRGs (386-390) and providers who maintain sole community hospital designation for medicare as the greater of:

(i) the computed prospective (DRG) payment rate as set forth in subsection (2) and day outlier payment as set forth in subsection (5)(b); or

(ii) estimated marginal cost of the total stay computed by multiplying the total usual and customary charges of the stay charges by 60%.

(6) In addition to the DRG payment, the provider may request payment for cost outliers.

(a) To receive payment for a cost outlier, the cost of the medically necessary days and services of the inpatient hospital stay of a medicaid recipient must exceed 150% of the prospective (DRG) payment rate for the DRG or \$12,000 as computed in subsection (2)(d) and not qualify as a day outlier under subsection (5).

(b) The department determines the outlier reimbursement for cost outliers for all hospitals and distinct part units, except for rehabilitation units, neonate DRGs (386-390) and sole community providers by:

(i) computing an estimated cost for the inpatient hospital stay by multiplying the allowed charges for the stay by the statewide medicaid cost to charge ratio set forth in subsection (11);

(ii) subtracting the lesser of 150% of the prospective (DRG) payment rate or \$12,000 from the estimated costs to compute the cost outlier amount; and

(iii) multiplying the cost outlier amount by 60% to establish the marginal cost outlier payment for the hospital stay.

(c) The department determines the outlier reimbursement for cost outliers for rehabilitation units, neonate DRGs (386-390) and providers who maintain sole community hospital designation for medicare as the greater of:

(i) the computed prospective (DRG) payment rate as set forth in subsection (2) and the cost outlier payment as set forth in subsection (6); or

(ii) the estimated marginal cost of the total stay com-

puted by multiplying the total usual and customary charges for the stay by 60%.

(7) All readmissions occurring within 30 days will be subject to review to determine whether additional payment as a new DRG or as an outlier is warranted. As a result of the readmission review, the following payment changes will be made:

(a) if it is determined that complications have arisen because of an early discharge and/or other treatment errors, then the DRG payment for the first admission shall be altered by combining the two admissions into one for payment purposes; or

(b) if it is determined that the readmission is for the treatment of conditions that could or should have been treated during the previous admission, the department will combine the two admissions into one for payment purposes.

(8) A transfer, for the purpose of this rule, is limited to those instances in which a patient is transferred between two hospitals, one of which is paid under the Montana medicaid prospective payment system.

(a) A transferring hospital reimbursed under subsection (2) is paid the lesser of:

(i) a per diem rate for each day of inpatient care determined by dividing the DRG payment for the case as computed in subsection (2) and the appropriate outlier as computed in subsections (5) or (6) by the statewide average length of stay for the DRG as set forth in subsection (11); or

(ii) the DRG payment for the case as computed in subsection (2) and the appropriate outlier as computed in subsections (5) and (6).

(b) A discharging hospital reimbursed under subsection (2) is paid the full DRG payment plus any appropriate outliers.

(9) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 46.12.303. The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest in writing the principal diagnosis, secondary diagnoses, and names of procedures performed. The following statement must immediately precede the physician's signature: "I certify that the identification of the principals and secondary diagnoses and the procedures performed is accurate and complete to the best of my knowledge. Intentional misrepresentation, concealment, or falsification of this information may, in the case of a medicaid beneficiary, be punishable by imprisonment, fine, or civil penalty." The provider may, at its discretion, add to the language of this statement the word "medicare" so that two separate forms will not be required by the provider to comply with both state and federal requirements. In addition, the provider may not submit a claim until the recipient has been either:

- (a) discharged from the hospital;
- (b) transferred to another hospital; or
- (c) designated by the department as a hospital resident as set forth in subsection (10).

(10) "Hospital resident" means a recipient who is unable to be cared for in a setting other than the acute care hospital.

(a) To obtain hospital residency status, the recipient must meet the following requirements:

- (i) the recipient must utilize a ventilator for a continuous period of not less than eight (8) hours in a twenty-four (24) hour period;

- (ii) require at least ten (10) hours of direct nursing care in a twenty-four (24) hour period. "Direct nursing care" means the care given directly to the patient which requires the skills and expertise of an RN or LPN;

- (iii) recipients must have been an inpatient in an acute care hospital for a minimum of nine (9) continuous months; and
- (iv) providers will have the responsibility of determining whether services could be provided in a skilled nursing care facility or by the home and community based waiver program to a medicaid recipient within the state of Montana. The provider will be required to maintain written documentation consisting of written inquiries and responses to nursing homes and the home and community based waiver program case management team inquiring as to the present and future availability of openings in the nursing homes or programs and indicating if an opening is not available. In addition to an initial determination, a re-determination of nursing home or waiver availability must be made at least every six months.

(b) Payment for hospital residents will be made as follows:

- (i) upon obtaining hospital residency status, claims for that recipient may be billed on an interim basis;

- (ii) payment for the first 180 days of inpatient care will be the DRG payment for the case as computed in subsection (2) and any appropriate outliers as computed in subsection (5) or (6); and

- (iii) payment for all patient care subsequent to 180 days will be reimbursed at a rate computed by multiplying the statewide average cost to charge ratio by the usual and customary billed charges.

(11) DRG relative weights, average lengths of stay, day outlier thresholds, and the statewide average cost to charge ratio are set forth as follows:

- (a) the medicaid statewide average cost to charge ratio equals .790825;

(b) MONTANA MEDICAID DRG RELATIVE WEIGHT VALUES, AVERAGE LENGTH OF STAY (ALOS) AND DAY OUTLIER THRESHOLDS

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
1	Craniotomy Age Greater Than 17 Except for Trauma	5.0618	17.11	37
2	Craniotomy For Trauma Age Greater Than 17	5.0393	14.58	35
3	Craniotomy Age Less Than 18	2.4490	9.39	29
4	Spinal Procedures	3.5563	14.45	34
5	Extracranial Vascular Procedures	31	2.8940	10.59
6	Carpal Tunnel Release	0.6413	2.41	10
7	Periph-Cranial Nerve-Other Nerv Syst Proc Age > 69/or C.C.	2.6137	15.82	36
8	Periph-Cranial Nerve-Other Nerv Syst Proc Age Less Than 70 w/o C.C.	0.9958	3.73	22
9	Spinal Disorders-Injuries	3.2323	19.30	39
10	Nervous System Neoplasms Age Greater Than 69 and/or C.C.	1.7875	9.60	30
11	Nervous System Neoplasms Age Less Than 70 w/o C.C.	1.2949	7.34	27
12	Degenerative Nervous System Disorders	1.9099	10.63	31
13	Multiple Sclerosis-Cerebellar Ataxia	1.6395	9.65	30
14	Specific Cerebrovascular Disorders Except TIA	2.4871	12.21	32
15	Transient Ischemic Attack and Precerebral Occlusions	1.1779	5.98	26
16	Nonspecific Cerebrovascular Disorders with C.C.	1.6566	8.80	29
17	Nonspecific Cerebrovascular Disorders w/o C.C.	1.2876	6.87	27
18	Cranial-Peripheral Nerve Disorders Age Greater Than 69 and/or C.C.	1.3943	8.49	28
19	Cranial-Peripheral Nerve Disorders Age Less Than 70 w/o C.C.	1.1212	5.71	26
20	Nervous System Infection Except Viral Meningitis	1.8528	8.99	29
21	Viral Meningitis	0.7232	3.54	24
22	Hypertensive Encephalopathy	1.5381	6.91	27
23	Nontraumatic Stupor-Coma	1.4846	6.19	26
24	Seizure-Headache Age Greater Than 69 and/or C.C.	1.0728	5.52	26
25	Seizure-Headache Age 18-69 w/o C.C.	0.8469	5.27	25
26	Seizure-Headache Age 0-17	0.6034	4.02	16
27	Traumatic Stupor-Coma, Coma Greater Than 1 HR	2.0869	8.93	29
28	Traumatic Stupor-Coma, Coma < 1 HR Age > 69 &/or C.C.	1.3648	6.21	26
29	Traumatic Stupor-Coma Less Than 1 HR Age 18-69 w/o C.C.	0.8608	4.43	24
30	Traumatic Stupor-Coma Less Than 1 HR Age 0-17	0.4088	2.17	17

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
31	Concussion Age Greater Than 69 and/or C.C.	0.7320	3.40	22
32	Concussion Age 18-69 w/o C.C.	0.5306	2.49	13
33	Concussion Age 0-17	0.3065	1.57	16
34	Other Disorders of Nervous System Age Greater Than 69 and/or C.C.	1.6497	8.61	29
35	Other Disorders of Nervous System Age Less Than 70 w/o C.C.	1.0552	5.34	25
36	Retinal Procedures	1.1752	4.12	16
37	Orbital Procedures	1.1233	3.97	21
38	Primary Iris Procedure	0.6871	2.62	12
39	Lens Procedures With or Without Vitrectomy	0.9596	2.40	10
40	Extraocular Procedures Except Orbit Age Greater Than 17	0.6610	2.10	16
41	Extraocular Procedures Except Orbit Age 0-17	0.4782	1.27	9
42	Intraocular Procedures Except Retina, Iris-Lens	1.1509	3.78	16
43	HypHEMA	0.5353	3.98	15
44	Acute Major Eye Infection	0.7209	4.29	16
45	Neurological Eye Disorders	0.8800	4.32	24
46	Other Disorders of the Eye Age Greater Than 17 with C.C.	0.7577	4.32	24
47	Other Disorders of the Eye Age Greater Than 17 w/o C.C.	0.7175	3.83	24
48	Other Disorders of the Eye Age 0-17	0.4556	2.54	14
49	Major Head-Neck Procedures	4.6556	16.89	37
50	Sialadenectomy	1.0768	3.53	12
51	Salivary Gland Procedures Except Sialoadenectomy	0.7734	3.40	14
52	Cleft Lip-Palate Repair	0.8908	3.74	12
53	Sinus-Mastoid Procedures Age Greater Than 17	0.9288	3.17	13
54	Sinus-Mastoid Procedures Age 0-17	0.8819	2.84	23
55	Miscellaneous Ear, Nose, Throat Procedures	0.6490	2.08	13
56	Rhinoplasty	0.6455	2.14	6
57	T-A Proc Except Tonsillectomy-/or Adenoidectomy Only, Age > 17	0.7487	3.18	16
58	T-A Proc Except Tonsillectomy-/or Adenoidectomy Only, Age 0-17	0.4645	1.37	5
59	Tonsillectomy and/or Adenoidectomy Only Age Greater Than 17	0.5432	1.78	5
60	Tonsillectomy and/or Adenoidectomy Only Age 0-17	0.4694	1.71	11
61	Myringotomy With Tube Insertion Age Greater Than 17	0.3230	1.15	3
62	Myringotomy With Tube Insertion Age 0-17	0.2794	1.03	3
63	Other Ear, Nose, Throat O.R. Procedures	1.1524	5.10	25

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DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
64	Ear, Nose-Throat Malignancy	1.8002	9.03	29
65	Dyssequilibrium	0.7942	4.10	17
66	Epistaxis	0.6414	3.47	23
67	Epiglottitis	1.1739	4.44	18
68	Otitis Media-URI Age Greater Than 69 and/or C.C.	0.8671	4.45	19
69	Otitis Media-URI Age 18-69 w/o C.C.	0.6430	3.37	16
70	Otitis Media-URI Age 0-17	0.4855	3.05	20
71	Laryngotracheitis	0.5062	1.82	15
72	Nasal Trauma-Deformity	0.5297	2.16	10
73	Other Ear, Nose-Throat Diagnoses Age Greater Than 17	0.7513	3.72	24
74	Other Ear, Nose-Throat Diagnoses Age 0-17	0.5713	2.65	22
75	Major Chest Procedures	3.9314	13.55	34
76	Other Respiratory System O.R. Procedures with C.C.	3.4339	15.46	35
77	Other Respiratory System G.R. Procedures w/o C.C.	2.1173	8.19	28
78	Pulmonary Embolism	2.7263	9.92	30
79	Respiratory Infections-Inflamations Age Greater Than 69 and/or C.C.	3.0303	14.35	34
80	Respiratory Infections-Inflamations Age 18-69 w/o C.C.	2.5667	11.00	31
81	Respiratory Infections-Inflamations Age 0-17	1.2766	6.59	27
82	Respiratory Neoplasms	1.6354	8.27	28
83	Major Chest Trauma Age Greater Than Age 69 and/or C.C.	1.4274	6.65	27
84	Major Chest Trauma Age Less Than 70 w/o C.C.	0.9192	4.31	22
85	Pleural Effusion Age Greater Than 69 and/or C.C.	1.7906	9.75	30
86	Pleural Effusion Age Less Than 70 w/o C.C.	1.5465	7.20	27
87	Pulmonary Edema-Respiratory Failure	2.7473	9.55	30
88	Chronic Obstructive Pulmonary Disease	1.5445	9.65	30
89	Simple Pneumonia-Pleurisy Age Greater Than 69 and/or C.C.	1.9056	8.59	29
90	Simple Pneumonia-Pleurisy Age 18-69 w/o C.C.	1.2074	5.43	16
91	Simple Pneumonia-Pleurisy Age 0-17	0.7330	4.27	12
92	Interstitial Lung Disease Age Greater Than 69 and/or C.C.	1.4103	7.44	27
93	Interstitial Lung Disease Age Less Than 70 w/o C.C.	1.1019	5.62	26
94	Pneumothorax Age Greater Than 69 and/or C.C.	1.5475	5.87	26
95	Pneumothorax Age Less Than 70 w/o C.C.	1.1013	5.15	22
96	Bronchitis-Asthma Age Greater Than 69 and/or C.C.	1.2886	6.02	25

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
97	Bronchitis-Asthma Age 18-69 w/o C.C.	0.9724	4.57	11
98	Bronchitis-Asthma Age 0-17	0.6273	3.84	18
99	Respiratory Signs-Symptoms Age Greater Than 69 and/or C.C.	1.3606	6.30	26
100	Respiratory Signs-Symptoms Age Less Than 70 w/o C.C.	0.8580	4.05	24
101	Other Respiratory System Diagnoses Age Greater Than 69 and/or C.C.	1.4137	6.52	27
102	Other Respiratory System Diagnoses Age Less Than 70 w/o C.C.	0.9069	4.42	24
103	Heart Transplant	0.0000	0.00	0
104	Cardiac Valve Procedure with Pump-with Cardiac Cath	9.2997	20.61	41
105	Cardiac Valve Procedure with Pump-w/o Cardiac Cath	7.3683	13.48	33
106	Coronary Bypass with Cardiac Cath	7.0079	15.79	35
107	Coronary Bypass w/o Cardiac Cath	5.8524	11.13	31
108	Other Cardiovascular or Thoracic Proc with Pump	4.4764	10.50	30
109	Cardiothoracic Procedures w/o Pump	4.0904	10.75	31
110	Major Reconstructive Vascular Proc w/o Pump Age > 69 and/or C.C.	5.1665	18.09	38
111	Major Reconstructive Vascular Proc w/o Pump Age < 70 w/o C.C.	3.9538	12.96	33
112	Vascular Procedures Except Major Reconstruction w/o Pump	3.1434	11.24	31
113	Amputation for Circ System Disorders Except Upper Limb-Toe	4.5607	22.07	42
114	Upper Limb-Toe Amputation for Circ System Disorders	3.3924	16.75	37
115	Perm Cardiac Pacemaker Implant with AMI, Heart Failure or Shock	6.4763	15.27	35
116	Perm Cardiac Pacemaker Implant w/o AMI, Heart Failure or Shock	5.0465	10.24	30
117	Cardiac Pacemaker Replace-Revis Exc Pulse Gen Repl Only	3.4163	7.16	22
118	Cardiac Pacemaker Pulse Generator Replacement Only	3.0251	5.33	24
119	Vein Ligation-Stripping	1.1817	4.75	19
120	Other Circulatory System O.R. Procedures	3.3777	15.88	36
121	Circulatory Disorders with AMI-C.V. Comp. Disch. Alive	3.2168	11.41	31
122	Circulatory Disorders with AMI w/o C.V. Comp. Disch. Alive	2.3042	7.35	19
123	Circulatory Disorders with AMI, Expired	2.0636	4.97	25
124	Circulatory Disorders Exc AMI, with Card Cath-Complex Diag	1.8419	7.84	28
125	Circulatory Disorders Exc AMI, with Card Cath w/o Complex Diag	1.0059	3.16	21
126	Acute-Subacute Endocarditis	4.5668	19.54	40
127	Heart Failure-Shock	1.7668	7.88	18
128	Deep Vein Thrombophlebitis	1.4924	8.55	29
129	Cardiac Arrest, Unexplained	3.8298	8.68	29

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
130	Peripheral Vascular Disorders Age Greater Than 69 and/or C.C.	1.6347	9.33	29
131	Peripheral Vascular Disorders Age Less Than 70 w/o C.C.	1.2395	6.81	27
132	Atherosclerosis Age Greater Than 69 and/or C.C.	1.4521	3.49	36
133	Atherosclerosis Age Less Than 70 w/o C.C.	1.1995	4.85	25
134	Hypertension	1.1051	5.74	26
135	Cardiac Congenital-Valvular Disorders Age > 69 and/or C.C.	1.6845	8.61	29
136	Cardiac Congenital-Valvular Disorders Age 18-69 w/o C.C.	1.1504	4.86	25
137	Cardiac Congenital-Valvular Disorders Age 0-17	1.1573	3.99	24
138	Cardiac Arrhythmia-Conduction Disorders Age > 69 and/or C.C.	1.4685	6.35	26
139	Cardiac Arrhythmia-Conduction Disorders Age < 70 w/o C.C.	1.0933	4.60	25
140	Angina Pectoris	1.2509	5.27	25
141	Syncope-Collapse Age Greater Than 69 and/or C.C.	1.0368	4.92	25
142	Syncope-Collapse Age Less Than 70 w/o C.C.	0.8144	3.91	22
143	Chest Pain	0.9447	3.21	16
144	Other Circulatory System Diagnoses with C.C.	1.7541	8.15	28
145	Other Circulatory System Diagnoses w/o C.C.	1.3323	5.76	26
146	Rectal Resection Age Greater Than 69 and/or C.C.	5.2304	19.75	40
147	Rectal Resection Age Less Than 70 w/o C.C.	3.2913	13.05	33
148	Major Small-Large Bowel Procedures Age Greater Than 69 and/or C.C.	4.9836	16.84	37
149	Major Small-Large Bowel Procedures Age Less Than 70 w/o C.C.	3.2128	11.99	32
150	Peritoneal Adhesiolysis Age Greater Than 69 and/or C.C.	3.7388	14.09	34
151	Peritoneal Adhesiolysis Age Less Than 70 w/o C.C.	2.0506	8.38	28
152	Minor Small-Large Bowel Procedures Age Greater Than 69 and/or C.C.	2.2630	10.16	30
153	Minor Small-Large Bowel Procedures Age Less Than 70 w/o C.C.	1.7078	7.82	28
154	Stomach, Esophageal-Duodenal Procedures Age > 69 and/or C.C.	3.9042	13.55	34
155	Stomach, Esophageal-Duodenal Procedures Age 18-69 w/o C.C.	2.4734	9.67	30
156	Stomach, Esophageal-Duodenal Procedures Age 0-17	1.4275	6.60	27
157	Anal and Stomal Procedures Age Greater Than 69 and/or C.C.	1.4379	6.16	26
158	Anal and Stomal Procedures Age Less Than 70 w/o C.C.	0.9282	4.11	16
159	Hernia Procedures Except Inguinal-Femoral Age > 69 and/or C.C.	1.8626	7.65	28
160	Hernia Procedures Except Inguinal-Femoral Age 18-69 w/o C.C.	1.1872	4.78	20
161	Inguinal-Femoral Hernia Procedures Age Greater Than 69 and/or C.C.	1.4547	6.64	27
162	Inguinal-Femoral Hernia Procedures Age 18-69 w/o C.C.	0.8908	3.25	11

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
163	Hernia Procedures Age 0-17	0.5260	1.67	10
164	Appendectomy with Complicated Princ. Diag. Age > 69 and/or C.C.	2.7725	10.33	29
165	Appendectomy with Complicated Princ. Diag. Age < 70 w/o C.C.	1.8896	7.05	27
166	Appendectomy w/o Complicated Princ. Diag. Age > 69 and/or C.C.	1.5940	5.83	20
167	Appendectomy w/o Complicated Princ. Diag. Age Less Than 70 w/o C.C.	1.0360	3.94	16
168	Mouth Procedures Age Greater Than 69 and/or C.C.	1.7290	6.83	27
169	Mouth Procedures Age Less Than 70 w/o C.C.	1.6745	3.81	21
170	Other Digestive System O.R. Procedures Age > 69 and/or C.C.	4.0005	14.87	35
171	Other Digestive System O.R. Procedures Age Less Than 70 w/o C.C.	1.7744	6.73	27
172	Digestive Malignancy Age Greater Than 69 and/or C.C.	2.0031	11.43	31
173	Digestive Malignancy Age Less Than 70 w/o C.C.	1.4287	7.15	27
174	G.I. Hemorrhage Age Greater Than 69 and/or C.C.	1.6178	7.03	27
175	G.I. Hemorrhage Age Less Than 70 w/o C.C.	1.1266	4.94	25
176	Complicated Peptic Ulcer	1.7385	7.08	27
177	Uncomplicated Peptic Ulcer Greater Than 69 and/or C.C.	1.2335	6.21	26
178	Uncomplicated Peptic Ulcer Less Than 70 w/o C.C.	0.9710	4.95	22
179	Inflammatory Bowel Disease	1.4119	7.71	28
180	G.I. Obstruction Age Greater Than 69 and/or C.C.	1.4349	7.58	28
181	G.I. Obstruction Age Less Than 70 w/o C.C.	0.9821	5.18	25
182	Esophagitis, Gastroent., & Misc. Digest. Dis. Age > 69 and/or C.C.	0.9936	4.64	14
183	Esophagitis, Gastroent., & Misc. Digest. Dis. Age 18-69 w/o C.C.	0.8014	3.45	23
184	Esophagitis, Gastroenteritis, & Misc. Digest. Disorders Age 0-17	0.5417	3.07	18
185	Dental & Oral Dis. Exc. Extractions & Restorations, Age > 17	0.9411	4.07	24
186	Dental & Oral Dis. Exc. Extractions & Restorations, Age 0-17	0.5170	2.69	10
187	Dental Extractions & Restorations	0.6345	2.22	9
188	Other Digestive System Diagnoses Age Greater Than 69 and/or C.C.	1.4652	7.01	27
189	Other Digestive System Diagnoses Age 18-69 w/o C.C.	0.7966	3.95	24
190	Other Digestive System Diagnoses Age 0-17	0.5213	2.69	23
191	Major Pancreas, Liver & Shunt Procedures	6.4073	18.09	38
192	Minor Pancreas, Liver & Shunt Procedures	5.8857	22.91	43
193	Biliary Tract Proc Exc Tot Cholecystectomy Age > 69 and/or C.C.	4.8314	17.31	37
194	Biliary Tract Proc Exc Tot Cholecystectomy Age Less Than 70 w/o C.C.	2.7228	10.52	31
195	Total Cholecystectomy with C.D.E. Age Greater Than 69 and/or C.C.	2.9854	12.03	29

DRC	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
196	Total Cholecystectomy with C.D.E. Age Less Than 70 w/o C.C.	2.4112	9.46	21
197	Total Cholecystectomy w/o C.D.E. Age Greater Than 69 and/or C.C.	2.2796	9.02	28
198	Total Cholecystectomy w/o C.D.E. Age Less Than 70 w/o C.C.	1.6580	7.06	13
199	Hepatobiliary Diagnostic Procedure for Malignancy	4.5847	18.55	39
200	Hepatobiliary Diagnostic Procedure for Non-Malignancy	2.7499	10.87	31
201	Other Hepatobiliary or Pancreas O.R. Procedures	4.2752	14.52	35
202	Cirrhosis & Alcoholic Hepatitis	1.8858	6.09	16
203	Malignancy of Hepatobiliary System or Pancreas	1.6460	8.42	28
204	Disorders of Pancreas Except Malignancy	1.2960	6.84	27
205	Disorders of Liver Exc Malig. Cirr. Alc Hepa Age > 69 and/or C.C.	1.7611	8.50	28
206	Disorders of Liver Exc Malig. Cirr. Alc Hepa Age < 70 w/o C.C.	1.0339	5.59	26
207	Disorders of the Biliary Tract Age Greater Than 69 and/or C.C.	1.2583	6.15	26
208	Disorders of the Biliary Tract Age Less Than w/o C.C.	0.8621	4.09	21
209	Major Joint and Limb Reattachment Procedures	3.8504	14.62	35
210	Hip & Femur Procedures Except Major Joint Age > 69 and/or C.C.	3.8530	17.43	37
211	Hip & Femur Procedures Except Major Joint Age 18-69 w/o C.C.	3.1347	13.72	34
212	Hip & Femur Procedures Except Major Joint Age 0-17	1.8793	8.83	29
213	Amputations for Musculoskeletal System-Conn. Tissue Disorders	2.7243	14.14	34
214	Back-Neck Procedures Age Greater Than 69 and/or C.C.	3.2401	15.18	35
215	Back-Neck Procedures Age Less Than 70 w/o C.C.	2.1931	9.80	30
216	Biopsies of Musculoskeletal System-Connective Tissue	2.3987	13.35	33
217	Wnd Debrid-Skin Graft Exc Hand for Musculoskeletal-Conn Tissue Disorder	2.2240	10.88	31
218	Lower Extrem-Humer Proc Exc Hip, Foot, Femur Age > 69 and/or C.C.	2.6124	11.63	32
219	Lower Extrem-Humer Proc Exc Hip, Foot, Femur Age 18-69 w/o C.C.	1.7069	7.07	27
220	Lower Extrem-Humer Proc Exc Hip, Foot, Femur Age 0-17	1.1775	4.64	23
221	Knee Procedures Age Greater Than 69 and/or C.C.	2.1493	13.36	33
222	Knee Procedures Age Less Than 70 w/o C.C.	1.0487	3.90	17
223	Upper Extremity Proc Exc Humerus-Hand Age > 69 and/or C.C.	1.6050	7.33	27
224	Upper Extremity Proc Exc Humerus-Hand Age Less Than 70 w/o C.C.	1.0757	3.94	17
225	Foot Procedures	1.1175	2.99	13
226	Soft Tissue Procedures Age Greater Than 69 and/or C.C.	1.5484	10.30	30
227	Soft Tissue Procedures Age Less Than 70 w/o C.C.	0.8705	3.35	23
228	Ganglion (Hand) Procedures	0.5726	1.78	5

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
229	Hand Procedures Except Ganglion	0.7824	2.48	11
230	Local Excision-Removal of Int Fix Devices of Hip-Femur	1.0576	5.25	25
231	Local Excision-Removal of Int Fix Devices Except Hip-Femur	0.8150	3.49	22
232	Arthroscopy	0.6553	2.33	10
233	Other Musculoskeletal Sys-Conn Tiss O.R. Proc Age > 69 and/or C.C.	2.3546	10.51	31
234	Other Musculoskeletal Sys-Conn Tiss O.R. Proc Age < 70 w/o C.C.	1.1907	5.05	25
235	Fractures of Femur	1.9131	12.91	33
236	Fractures of Hip-Pelvis	1.8523	10.78	31
237	Sprains, Strains-Dislocations of Hip, Pelvis-Thigh	1.1307	5.57	26
238	Osteomyelitis	2.5900	15.95	36
239	Pathological Fractures-Musculoskeletal-Conn. Tiss. Malignancy	1.4541	7.81	28
240	Connective Tissue Disorders Age Greater Than 69 and/or C.C.	1.6778	9.34	29
241	Connective Tissue Disorders Age Less Than 70 w/o C.C.	1.4041	7.56	28
242	Septic Arthritis	1.9061	10.05	30
243	Medical Back Problems	1.0242	7.11	27
244	Bone Diseases-Specific Arthropathies Age > 69 and/or C.C.	1.2511	7.42	27
245	Bone Diseases-Specific Arthropathies Age Less Than 70 w/o C.C.	1.0098	5.60	26
246	Non-Specific Arthropathies	1.0839	6.03	26
247	Signs-Symptoms of Musculoskeletal System-Conn Tissue	0.9008	4.89	25
248	Tendonitis, Myositis-Bursitis	0.8412	4.56	23
249	Aftercare, Musculoskeletal System-Connective Tissue	0.7627	4.42	24
250	Fx. Sprns, Strns-Disl of Forearm, Hand, Foot Age > 69 and/or C.C.	0.9962	4.48	24
251	Fx. Sprns, Strns-Disl of Forearm, Hand, Foot Age 18-69 w/o C.C.	0.7138	3.11	20
252	Fx. Sprns, Strns-Disl of Forearm, Hand, Foot Age 0-17	0.4701	1.73	16
253	Fx. Sprns, Strns-Disl of Uparm, Lowleg Ex Foot Age > 69 and/or C.C.	1.1361	6.90	27
254	Fx. Sprns, Strns-Disl of Uparm, Lowleg Ex Foot Age 18-69 w/o C.C.	0.8125	4.18	24
255	Fx. Sprns, Strns-Disl of Uparm, Lowleg Ex Foot Age 0-17	0.5511	2.82	16
256	Other Diagnoses of Musculoskeletal System-Connective Tissue	0.8971	4.43	24
257	Total Mastectomy for Malignancy Age Greater Than 69 and/or C.C.	2.2927	9.60	27
258	Total Mastectomy for Malignancy Age Less Than 70 w/o C.C.	1.9940	8.18	24
259	Subtotal Mastectomy for Malignancy Age Greater Than 69 and/or C.C.	1.7492	9.15	27
260	Subtotal Mastectomy for Malignancy Age Less Than 70 w/o C.C.	1.2515	5.39	25
261	Breast Proc. for Non-Malignancy Except Biopsy-Local Excision	0.9452	3.46	16

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTTER THRESHOLD
262	Breast Biopsy-Local Excision for Non-Malignancy	0.6661	2.30	14
263	Skin-Grafts and/or Debrid Ulcer or Cellulitis Age > 69 and/or C.C.	3.9076	21.32	41
264	Skin-Graft and/or Debrid Ulcer or Cellulitis Age < 70 w/o C.C.	2.9368	16.80	37
265	Skin-Graft and/or Debrid Exc Skin Ulcer or Cellulitis with C.C.	1.8628	9.51	30
266	Skin-Graft and/or Debrid Exc Skin Ulcer or Cellulitis w/o C.C.	1.3397	6.14	26
267	Perifanal-Pilonidal Procedures	0.7957	3.24	11
268	Skin, Subcutaneous Tissue-Breast Plastic Procedures	0.9026	3.88	24
269	Other Skin, Subcut Tiss-Breast O.R. Proc Age > 69 and/or C.C.	2.1162	9.96	30
270	Other Skin, Subcut Tiss-Breast O.R. Proc Age Less Than 70 w/o C.C.	0.9991	3.98	24
271	Skin Ulcers	1.9279	11.34	31
272	Major Skin Disorders Age Greater Than 69 and/or C.C.	1.4541	9.59	30
273	Major Skin Disorders Age Less Than 70 w/o C.C.	1.3729	8.70	29
274	Malignant Breast Disorders Age Greater Than 69 and/or C.C.	1.5446	8.79	29
275	Malignant Breast Disorders Age Less Than 70 w/o C.C.	0.9089	4.78	25
276	Non-Malignant Breast Disorders	0.7067	3.48	19
277	Cellulitis Age Greater Than 69 and/or C.C.	1.4452	7.55	28
278	Cellulitis Age 18-69 w/o C.C.	1.0985	5.59	26
279	Cellulitis Age 0-17	0.6835	3.90	16
280	Trauma to the Skin, Subcut Tiss-Breast Age > 69 and/or C.C.	0.9002	4.56	25
281	Trauma to the Skin, Subcut Tiss-Breast Age 18-69 w/o C.C.	0.6315	2.90	20
282	Trauma to the Skin, Subcut Tiss-Breast Age 0-17	0.4478	2.20	11
283	Minor Skin Disorders Age Greater Than 69 and/or C.C.	0.9388	5.34	25
284	Minor Skin Disorders Age Less Than 70 w/o C.C.	0.6981	3.81	24
285	Amputation of Lower Limb for Endocrine, Nutrit & Metabolic Dis.	4.6370	21.70	42
286	Adrenal & Pituitary Procedures	3.9848	13.85	34
287	Skin Grafts and Wound Debride for Endoc, Nutrit and Metabolic Dis.	3.6312	20.41	40
288	O.R. Procedures for Obesity	2.4693	8.54	22
289	Parathyroid Procedures	1.7613	7.62	23
290	Thyroid Procedures	1.3178	4.83	15
291	Thyroglossal Procedures	0.6839	2.13	6
292	Other Endocrine, Nutrit & Metab O.R. Proc Age > 69 and/or C.C.	3.4415	14.49	34
293	Other Endocrine, Nutrit & Metab O.R. Proc Age Less Than 70 w/o C.C.	1.9705	9.03	29
294	Diabetes Age Greater Than 35	1.3188	6.49	19

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
295	Diabetes Age 0-35	1.0335	5.77	26
296	Nutritional & Misc. Metabolic Disorders Age > 69 and/or C.C.	1.4525	7.55	28
297	Nutritional & Misc. Metabolic Disorders Age 18-69 w/o C.C.	1.1217	5.65	26
298	Nutritional & Misc. Metabolic Disorders Age 0-17	0.8899	3.31	12
299	Inborn Errors of Metabolism	1.1653	5.31	25
300	Endocrine Disorders Age Greater Than 69 and/or C.C.	1.4489	7.60	28
301	Endocrine Disorders Age Less Than 70 w/o C.C.	0.9974	5.05	25
302	Kidney Transplant	8.9535	26.25	46
303	Kidney, Ureter & Major Bladder Procedure for Neoplasms	4.3316	15.36	35
304	Kidney, Ureter & Maj Bladder Proc for Non-Neopl Age > 69 and/or C.C.	2.9479	12.18	32
305	Kidney, Ureter & Maj Bladder Proc for Non-Neopl Age < 70 w/o C.C.	2.1331	8.69	29
306	Prostatectomy Age Greater Than 69 and/or C.C.	2.2468	14.66	35
307	Prostatectomy Age Less Than 70 w/o C.C.	1.6379	7.82	28
308	Minor Bladder Procedures Age Greater Than 69 and/or C.C.	1.8971	10.22	30
309	Minor Bladder Procedures Age Less Than 70 w/o C.C.	1.3406	6.00	26
310	Transurethral Procedures Age Greater Than 69 and/or C.C.	1.4957	7.01	27
311	Transurethral Procedures Age Less Than 70 w/o C.C.	1.1907	4.66	22
312	Urethral Procedures, Age Greater Than 69 and/or C.C.	1.1861	4.85	22
313	Urethral Procedures, Age 18-69 w/o C.C.	0.9699	4.06	19
314	Urethral Procedures, Age 0-17	0.5612	1.91	9
315	Other Kidney and Urinary Tract O.R. Procedures	2.8866	10.71	31
316	Renal Failure	1.8614	7.89	28
317	Admit for Renal Dialysis	0.5465	1.91	13
318	Kidney and Urinary Tract Neoplasms Age Greater Than 69 and/or C.C.	1.9269	10.10	30
319	Kidney and Urinary Tract Neoplasms Age Less Than 70 w/o C.C.	1.1526	5.46	25
320	Kidney and Urinary Tract Infections Age Greater Than 69 and/or C.C.	1.3190	6.75	27
321	Kidney and Urinary Tract Infections Age 18-69 w/o C.C.	0.9426	4.56	14
322	Kidney and Urinary Tract Infections Age 0-17	0.6491	3.47	14
323	Urinary Stones Age Greater Than 69 and/or C.C.	0.9526	4.75	25
324	Urinary Stones Age Less Than 70 w/o C.C.	0.7132	3.33	23
325	Kidney and Urinary Tract Signs & Symptoms Age > 69 and/or C.C.	1.1390	5.78	26
326	Kidney and Urinary Tract Signs & Symptoms Age 18-69 w/o C.C.	0.8968	4.30	24

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
327	Kidney and Urinary Tract Signs & Symptoms Age 0-17	0.6376	3.09	18
328	Urethral Stricture Age Greater Than 69 and/or C.C.	1.1261	5.53	26
329	Urethral Stricture Age 18-69 w/o C.C.	0.8464	3.68	21
330	Urethral Stricture Age 0-17	0.4740	1.67	6
331	Other Kidney & Urinary Tract Diagnoses Age > 69 and/or C.C.	1.3766	6.98	27
332	Other Kidney & Urinary Tract Diagnoses Age 18-69 w/o C.C.	1.0550	5.14	25
333	Other Kidney & Urinary Tract Diagnoses Age 0-17	0.7559	3.55	24
334	Major Male Pelvic Procedures with C.C.	3.4140	13.87	34
335	Major Male Pelvic Procedures w/o C.C.	2.2648	11.18	31
336	Transurethral Prostatectomy Age Greater Than 69 and/or C.C.	2.1021	10.21	30
337	Transurethral Prostatectomy Age Less Than 70 w/o C.C.	1.5769	7.13	23
338	Testes Procedures, for Malignancy	1.5482	5.77	26
339	Testes Procedures, Non-Malignant Age Greater Than 17	0.8384	2.87	12
340	Testes Procedures, Non-Malignant Age 0-17	0.6076	1.94	6
341	Penis Procedures	0.9845	4.28	22
342	Circumcision Age Greater Than 17	0.5190	1.82	6
343	Circumcision Age 0-17	0.4006	1.31	5
344	Other Male Reproductive System O.R. Procedures for Malignancy	2.2155	9.55	30
345	Other Male Reproductive System O.R. Proced. Except for Malignancy	1.2368	5.36	24
346	Malignancy, Male Reproductive System, Age > 69 and/or C.C.	1.5628	8.02	28
347	Malignancy, Male Reproductive System, Age Less Than 70 w/o C.C.	1.0702	5.63	26
348	Benign Prostatic Hypertrophy Age Greater Than 69 and/or C.C.	1.2199	5.64	26
349	Benign Prostatic Hypertrophy Less Than 70 w/o C.C.	1.0866	5.17	25
350	Inflammation of the Male Reproductive System	0.7259	3.86	18
351	Sterilization, Male	0.4140	1.31	6
352	Other Male Reproductive System Diagnoses	1.0729	2.38	14
353	Pelvic Evisceration, Radical Hysterectomy & Vulvectomy	2.3246	9.95	30
354	Non-Radical Hysterectomy Age Greater Than 69 and/or C.C.	2.1089	8.56	22
355	Non-Radical Hysterectomy Age Less Than 70 w/o C.C.	1.5746	6.02	17
356	Female Reproductive System Reconstructive Procedures	1.3913	6.21	29
357	Uterus & Adnexa Procedures, for Malignancy	2.4232	9.15	22
358	Uterus & Adnexa Proced. for Non-Malignancy Except Tubal Interruption	1.2798	4.72	21
359	Incisional Tubal Interruption for Non-Malignancy	0.6813	2.07	14

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
360	Vagina, Cervix & Vulva Procedures	0.6676	2.46	20
361	Laparoscopy & Endoscopy (Female) Except Tubal Interruption	0.8100	2.40	21
362	Laparoscopic Tubal Interruption	0.4734	1.30	14
363	D&C, Conization & Radio-Implant., for Malignancy	0.7663	3.31	19
364	D&C, Conization Except for Malignancy	0.5897	1.76	12
365	Other Female Reproductive System O.R. Procedures	1.5045	6.41	26
366	Malignancy, Female Reproductive System Age > 69 and/or C.C.	1.5299	7.78	28
367	Malignancy, Female Reproductive System Age Less Than 70 w/o C.C.	0.8990	4.24	24
368	Infections, Female Reproductive System	0.8470	4.22	18
369	Menstrual and Other Female Reproductive System Disorders	0.5783	3.53	23
370	Cesarean Section with C.C.	1.7082	6.89	22
371	Cesarean Section w/o C.C.	1.3453	5.34	14
372	Vaginal Delivery with Complicating Diagnoses	0.9174	3.37	15
373	Vaginal Delivery w/o Complicating Diagnoses	0.7158	2.46	11
374	Vaginal Delivery with Sterilization and/or D&C	1.0246	3.25	14
375	Vaginal Delivery with O.R. Proc Except Sterilization and/or D&C	0.9358	3.41	11
376	Postpartum and Postabortion Diagnoses w/o O.R. Procedure	0.6176	2.99	12
377	Postpartum and Postabortion with O.R. Procedure	0.7471	2.32	12
378	Ectopic Pregnancy	1.2175	4.42	12
379	Threatened Abortion	0.4088	2.34	16
380	Abortion w/o D&C	0.3783	1.54	9
381	Abortion with D&C, Aspiration Curettage or Hysterotomy	0.5027	2.23	6
382	False labor	0.2271	1.70	7
383	Other Antepartum Diagnoses with Medical Complications	0.5610	3.46	12
384	Other Antepartum Diagnoses w/o Medical Complications	0.5029	3.31	10
385	Neonates, Died or Transferred	1.0287	7.37	15
386	Extreme Immaturity or Respiratory Distress Syndrome, Neonate	6.3851	23.68	44
387	Prematurity with Major Problems	3.4706	17.98	35
388	Prematurity w/o Major Problems	2.7161	13.33	33
389	Full Term Neonate with Major Problem	1.1617	7.33	21
390	Neonates with Other Significant Problems	0.8817	5.54	20
391	Normal Newborns	0.2735	2.95	15
392	Splenectomy Age Greater Than 17	3.1837	12.11	32

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
393	Splenectomy Age 0-17	1.9682	6.52	16
394	Other O.R. Procedures of the Blood and Blood Forming Organs	1.0836	4.29	24
395	Red Blood Cell Disorders Age Greater Than 17	1.1769	6.37	26
396	Red Blood Cell Disorders Age 0-17	0.6781	3.69	19
397	Coagulation Disorders	1.0518	4.65	25
398	Reticuloendothelial and Immunity Disorders Age > 69 and/or C.C.	1.2052	7.11	27
399	Reticuloendothelial and Immunity Disorders Age < 70 w/o C.C.	0.8179	4.58	25
400	Lymphoma or Leukemia with Major O.R. Procedure	3.4464	13.19	33
401	Lymphoma or Leukemia with Other O.R. Procedure Age > 69 and/or C.C.	2.9336	9.89	30
402	Lymphoma or Leukemia with Other O.R. Procedure Age < 70 w/o C.C.	1.8652	8.14	28
403	Lymphoma or Leukemia Age Greater Than 69 and/or C.C.	2.4564	11.23	31
404	Lymphoma or Leukemia Age 18-69 w/o C.C.	1.4734	6.65	27
405	Lymphoma or Leukemia Age 0-17	1.1639	5.60	26
406	Myeloprolif Dis. or Poorly Diff Neopl. with Major O.R. Proc and C.C.	4.0245	16.48	36
407	Myeloprolif Dis. or Poorly Diff Neopl. with Major O.R. Proc w/o C.C.	2.2293	8.72	29
408	Myeloprolif Disorder or Poorly Diff. Neopl. with Other O.R. Proc	1.3904	6.81	27
409	Radiotherapy	1.1431	6.47	26
410	Chemotherapy	0.5552	2.91	16
411	History of Malignancy w/o Endoscopy	0.8435	3.99	24
412	History of Malignancy with Endoscopy	0.6842	2.86	19
413	Other Myeloprolif Dis. or Poorly Diff Neopl. Dx Age > 69 and/or C.C.	1.9479	10.30	30
414	Other Myeloprolif Dis. or Poorly Diff Neopl. Dx Age < 70 w/o C.C.	1.1297	5.93	26
415	O.R. Procedure for Infectious and Parasitic Diseases	3.2096	14.19	34
416	Septicemia Age Greater Than 17	2.8036	12.00	32
417	Septicemia Age 0-17	0.9039	4.71	25
418	Postoperative and Post-Traumatic Infections	1.0511	6.28	26
419	Fever of Unknown Origin Age Greater Than 69 and/or C.C.	1.3009	6.66	27
420	Fever of Unknown Origin Age 18-69 w/o C.C.	0.9420	5.03	25
421	Viral Illness Age Greater Than 17	0.7437	3.86	16
422	Viral Illness and Fever of Unknown Origin Age 0-17	0.5102	2.93	10
423	Other Infectious Parasitic Diseases and Diagnoses	1.1905	6.47	26
424	O.R. Procedures with Principal Diagnosis of Mental Illness	2.0683	10.91	31
425	Acute Adjust React & Disturbances of Psychosocial Dysfunction	0.9698	5.85	24

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
426	Depressive Neuroses	1.0247	5.55	20
427	Neuroses Except Depressive	0.9117	5.52	26
428	Disorders of Personality and Impulse Control	1.1690	7.00	27
429	Organic Disturbances and Mental Retardation	1.2053	7.34	27
430	Psychoses	1.4710	10.36	30
431	Childhood Mental Disorders	1.3037	6.15	26
432	Other Diagnoses of Mental Disorders	1.1412	5.37	25
433	Substance Use and Induced Organic Mental Disorders, Left AMA	0.3897	2.77	10
434	Subst Abuse, Intox Induc Mental Syn Exc Depend and/or Oth Sympt Trt	0.8586	5.70	24
435	Substance Dependence, Detox and/or Other Symptomatic Treatment	0.7779	5.21	21
436	Substance Dependence with Rehabilitation Therapy	0.7762	6.44	26
437	Substance Dependence, Combined Rehabilitation and Detox Therapy	0.5424	2.70	13
438	No Longer Valid	0.0000	0.00	0
439	Skin Grafts for Injuries	2.1281	11.57	32
440	Wound Debridements for Injuries	1.6979	8.16	28
441	Hand Procedures for Injuries	0.9053	3.42	22
442	Other O.R. Procedures for Injuries Age Greater Than 69 and/or C.C.	2.9564	11.61	32
443	Other O.R. Procedures for Injuries Age Less Than 70 w/o C.C.	1.7994	6.47	26
444	Multiple Trauma Age Greater Than 69 and/or C.C.	1.2940	6.61	27
445	Multiple Trauma Age 18-69 w/o C.C.	0.7736	3.83	24
446	Multiple Trauma Age 0-17	0.5431	2.65	23
447	Allergic Reactions Age Greater Than 17	0.5852	3.03	23
448	Allergic Reactions Age 0-17	0.3897	2.41	10
449	Poisoning and Toxic Effects of Drugs Age > 69 and/or C.C.	1.0254	4.87	25
450	Poisoning and Toxic Effects of Drugs Age 18-69 w/o C.C.	0.7069	2.20	26
451	Poisoning and Toxic Effects of Drugs Age 0-17	0.4166	1.62	18
452	Complications of Treatment Age Greater Than 69 and/or C.C.	1.3040	6.60	27
453	Complications of Treatment Age Less Than 70 w/o C.C.	0.6882	3.82	24
454	Other Injuries, Poisonings and Toxic Eff Diag, Age > 69 and/or C.C.	1.4825	8.00	28
455	Other Injuries, Poisonings and Toxic Eff Diag, Age < 70 w/o C.C.	0.6927	3.56	24
456	Burns, Transferred to Another Acute Care Facility	1.0835	2.02	8
457	Extensive Burns	11.5233	29.36	48
458	Non-Extensive Burns with Skin Grafts	4.4784	18.13	38
459	Non-Extensive Burns with Would Debridement and Other O.R. Procedure	2.5962	12.30	32

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
460	Non-Extensive Burns w/o O.R. Procedure	1.2311	5.87	26
461	O.P. Procedure with Diagnoses of Other Contact with Health Services	1.3024	4.37	24
462	Rehabilitation	2.0134	16.31	36
463	Signs and Symptoms with C.C.	1.3384	7.46	27
464	Signs and Symptoms w/o C.C.	0.9820	5.11	25
465	Aftercare with History of Malignancy as Secondary Diagnosis	0.7287	3.98	21
466	Aftercare w/o History of Malignancy as Secondary Diagnosis	0.5864	3.16	22
467	Other Factors Influencing Health Status	0.6954	2.47	17
468	Unrelated O.R. Procedure	1.8747	13.59	34
469	Primary Diagnosis Invalid as Discharge Diagnosis	0.0000	0.00	0
470	Ungroupable	0.0000	0.00	0
471	Bilateral or Multiple Major Joint Procedures of Lower Extremity	3.8994	20.31	33

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

4. Currently, Montana Medicaid reimburses providers of inpatient hospital services on the basis of reasonable cost. This method insures that Medicaid reimburses providers the cost of the service, but does not provide incentives to control those costs. Inpatient hospital average cost per case in Montana rose 16.8% in 1983 and 10.3% in 1984.

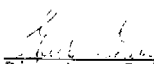
The Montana Medicaid Program proposes to utilize a prospective reimbursement system based on the classification of each inpatient hospital Medicaid discharge into one of 471 diagnosis-related groups (DRGs). Each DRG is assigned a weight relative to the resource consumption of the DRG. For each discharge, this weight is multiplied by the Montana average base price per case to determine the payment for the service. This method provides the hospitals with incentives to contain cost by paying a set price per service. If the service can be provided at a cost less than payment, the hospital retains the difference. The prospective method rewards hospitals who can efficiently provide services and encourages them to contain costs by allowing them to retain the amount of the payment that exceeds the cost of providing the service.

For state fiscal year 1987, the prospective payment system is expected to be budget neutral, i.e., Medicaid will pay no more or no less in aggregate than would have been paid under a cost-based system. Future years cost growth is expected to be limited to a legislatively mandated inflation factor and/or Tax Equity and Fiscal Responsibility Act of 1983 (TEFRA) cost limits and increase in utilization.

Copies of this rule notice are available for review at local human services offices and county welfare offices.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 10, 1987.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1987.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rule 46.12.526	)	THE PROPOSED AMENDMENT OF
pertaining to outpatient	)	RULE 46.12.526 PERTAINING
physical therapy services	)	TO OUTPATIENT PHYSICAL
	)	THERAPY SERVICES

TO: All Interested Persons

1. On September 2, 1987, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rule 46.12.526 pertaining to outpatient physical therapy services.

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

46.12.526 OUTPATIENT PHYSICAL THERAPY SERVICES, REQUIREMENTS Subsections (1) through (6) remain the same.

(7) Outpatient physical therapy service is limited to a ~~maximum of 200 visits~~ per fiscal year, to 70 visits without prior authorization and an additional 30 visits with prior authorization by the department. A maximum of 100 visits per fiscal year is allowed.

Subsections (8) and (9) remain the same.

(10) Outpatient physical therapy services provided through a home health care agency shall be part of the department's ~~200~~ 100 visit limitation.

Subsection (11) remains the same.

AUTH: Sec. 53-6-113 MCA

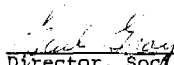
IMP: Sec. 53-6-101 and 53-6-141 MCA

3. The limitations on physical therapy services imposed by limits on visits have not reflected actual usage. The lower limits proposed here were derived with the cooperation of providers and would encompass almost all current usage. The establishment of these practical limitations will provide for future cost containment for the service while assuring the delivery of the service to the extent generally needed. The provision for the addition of 30 visits upon departmental authorization is to maintain certain identifiable clients in the community through a continuum of services including physical therapy rather than have them enter crisis necessitating institutional type placement.

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

of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 10, 1987.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1987.

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING ON
of Rules I through IV and) THE PROPOSED ADOPTION OF
amendment of Rules 46.12.204,) RULES I THROUGH IV AND
46.12.501 and 46.12.502 per-) AMENDMENT OF RULES
taining to Medicaid reim-) 46.12.204, 46.12.501 AND
bursement for the services of) 46.12.502 PERTAINING TO
nurse specialists) MEDICAID REIMBURSEMENT FOR
) THE SERVICES OF NURSE
) SPECIALISTS

TO: All Interested Persons

1. On September 4, 1987, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of Rules I through IV and amendment of Rules 46.12.204, 46.12.501 and 46.12.502 pertaining to Medicaid reimbursement for the services of nurse specialists.

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

RULE I NURSE SPECIALIST SERVICES, REQUIREMENTS

(1) This rule provides the requirements for medicaid coverage of nurse specialist services. The requirements in this rule are in addition to those contained in ARM 46.12.301 through 46.12.308.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension,
Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 MCA

RULE II NURSE SPECIALIST SERVICES, DEFINITIONS (1) For the purpose of this rule, the following definitions will apply:

(a) "Delivery services" means services necessary to protect the health and safety of the woman and fetus from the onset of labor through delivery.

(b) "Medical protocol" means an agreement(s) or standing order(s) between the physician and the nurse practitioner or midwife which defines the medical functions, hospital procedures, referrals, communications, consultations and backup arrangements for the nurse practitioner or midwife.

(c) "Nurse specialist" means the following professionals:

- (i) nurse practitioner;
- (ii) nurse anesthetist; and
- (iii) nurse midwife.

(d) "Nurse anesthetist" means a person who is licensed in accord with 37-8-405 through 37-8-407, MCA and ARM 8.32.303

through 8.32.306.

(e) "Nurse midwife" means a person who is licensed in accord with 37-8-405 through 37-8-407, MCA, 37-8-409, MCA and ARM 8.32.302, 8.32.304 through 8.32.306.

(f) "Nurse practitioner" means a person who is licensed in accord with 37-8-405 through 37-8-407, MCA and ARM 8.32.301, 8.32.304 through 8.32.306.

(g) "Nurse specialist services" means those services provided by nurse specialists in accord with the laws and rules defining and governing through licensing and certification the practices of nurse practitioners, nurse anesthetists and nurse midwives.

(h) "Post-partum services" means services rendered to a woman during the 60-day period following the delivery for any health conditions or complications that are pregnancy-related.

(i) "Pregnancy-related services" means services for the treatment of conditions or complications that exist or are exacerbated because of pregnancy.

(j) "Prenatal services" means services directed at protecting and insuring the health of the woman and the fetus during pregnancy.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension,
Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 MCA

RULE III NURSE SPECIALIST SERVICES, ADDITIONAL REQUIREMENTS (1) A nurse midwife must meet the following additional requirements in order to be reimbursed:

(a) A nurse midwife must be supervised by a physician as provided for in 37-3-103(1)(j), MCA.

(b) A nurse midwife in independent employment status must have a medical protocol signed by a physician currently licensed to practice in Montana.

(c) If a licensed health care facility requires a medical protocol between the nurse midwife and the facility, the protocol must be in writing and be signed by the medical director of the facility and the nurse midwife.

(d) Protocols must be updated on an annual basis.

(e) Protocols must be provided to the department for review upon request.

(f) Reimbursement is available for services provided during the maternity cycle inclusive of pregnancy-related, prenatal, delivery and post-partum services.

(2) A nurse anesthetist in independent employment status when providing an anesthesia service must be under the supervision of a physician or dentist currently licensed to practice in Montana.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension,
Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 MCA

15-8/13/87

MAR Notice No. 46-2-514

RULE IV NURSE SPECIALIST SERVICES, REIMBURSEMENT

(1) Medicaid reimbursement to nurse specialists is only available for those services listed in ARM 46.12.2004 through 46.12.2008.

(2) Nurse specialist services must be medically necessary as defined in ARM 46.12.102 and 46.12.306.

(3) Medicaid will reimburse directly nurse specialists who are considered to have an independent employment status.

(a) "Independent employment status" means that a separate federal tax identification number is obtained for the nurse specialist.

(4) The rate of reimbursement prior to the establishment of a final fee schedule by the department will be 65.2% of billed charges but not more than 80% of the reimbursement for physicians provided in ARM 46.12.2004 through 46.12.2008.

(5) The reimbursement rate, once the fee schedule is established by the department as provided for in (c)(i), shall be the lower of:

(a) billed charges;

(b) 80% of the reimbursement for physicians provided in ARM 46.12.2004 through 46.12.2008; or

(c) the fee schedule established by the department.

(i) The fee schedule established by the department will consist of the average medicaid amount paid by the department for each procedure derived from 50 billings for each procedure.

(6) Nurse specialists shall use the Health Care Financing Administration's common procedure coding system (HCPCS) found in ARM 46.12.2004 through 46.12.2008 for all billing purposes.

(7) The following nurse specialist services are not covered by medicaid:

(a) psychiatric nurse counseling;

(b) educational visits and educational materials (including group settings);

(c) mileage and travel expenses;

(d) no show or cancelled appointments;

(e) preparation of special medical or insurance reports;

(f) consultations with other nurse specialists;

(g) dietary counseling; and

(h) delivery services not provided in a licensed health care facility unless an emergency situation.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension, Sec. 4, Ch. 329, I. of 1987, Eff. 10/1/87

IMP: Sec. 53-6-101 MCA

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

46.12.204 RECIPIENT REQUIREMENTS, CO-PAYMENTS (1) Each recipient, unless eligible for an exemption, must pay to the provider the following co-payments not to exceed the cost of the service:

- Subsections (1)(a) through (1)(p) remain the same.
 - (q) physician's services, \$1.00 per service; and
 - (r) licensed clinical social workers' services, \$.50 per service; and
 - (s) nurse specialist services, \$1.00 per service.
- Subsections (2) through (4) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension,
Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 MCA

46.12.501 SERVICES PROVIDED (1) The following items of medical or remedial care and services shall be available to all persons who are certified eligible for medicaid benefits (including deceased persons, categorically related, who would have been eligible but whose fatal condition prevented them from applying), subject to the conditions and limitations contained in the rules on definitions, requirements and reimbursement for each type of service:

- Subsections (1)(a) through (1)(y) remain the same.
 - (z) inpatient psychiatric services; and
 - (aa) home and community services; and
 - (bb) nurse specialists services.
- Subsection (2) remains the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension,
Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 MCA

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM
Subsection (1) remains the same.

(2) The following medical and nonmedical services are explicitly excluded from the Montana medicaid program except for those services covered under the health care facility licensure rules of the Montana department of health and environmental sciences when provided as part of a prescribed regimen of care to an inpatient of a licensed health care facility, except as allowed under the early periodic screening, diagnosis and treatment rule at ARM 46.12.515, and except for those services specifically available, as listed in ARM 46.12.1404, to persons eligible for home and community-based services:

- (a) hearing aids;
- (b) eyeglasses and those services required for the dispensing of eyeglasses;
- (c) dentures and those services required for the provision of dentures;

(d) chiropractic services;
(e) acupuncture services;
(f) naturopathic services;
(g) dietician services;
~~(h) nurse-practitioner services;~~
~~(i) mid-wifery services;~~
(j) physical therapy aide services;
(k) physician assistant services;
(l) nonphysician surgical assistance services;
(m) nutritional services;
(n) masseur or masseuse services;
(o) dietary supplements;
(p) homemaker services; and
(q) telephone service in home, remodeling of home,
plumbing service, car repair and/or modification of automob-
ile; and
(p) delivery services not provided in a licensed health
care facility unless as an emergency service. Delivery
services means services necessary to protect the health and
safety of the woman and fetus from the onset of labor through
delivery. Emergency service is defined in ARM 46.12.102
(2)(e)(ii).

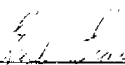
Subsections (3) through (3)(d) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension,
Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 MCA

4. The 1987 legislature passed Senate Bill 176 which directed this department to implement a reimbursement system for nurse specialist services. The three types of nurse specialists identified in the Nurse Practice Act (nurse midwives, nurse anesthetists and nurse practitioners) may bill Medicaid for their services. This rule will establish the requirements for participation, define the services eligible for coverage and implement the methodology for reimbursement. The rule further provides that Medicaid reimbursement is not available for delivery of children outside of licensed health care facilities unless due to emergency.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 10, 1987.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ments of ARM 2.21.6706,	)	ARM 2.21.6706, 2.21.6707,
2.21.6707, 2.21.6713, and	)	2.21.6713, and 2.21.6718
2.21.6718 relating to the	)	RELATING TO THE EMPLOYEE
employee incentive award	)	INCENTIVE AWARD PROGRAM.
program)	

TO: All Interested Persons.


1. On May 14, 1987, the department of administration published notice of the proposed amendment of ARM 2.21.6706, 2.21.6707, 2.21.6713, and 2.21.6718 relating to the employee incentive award program at page 505 of the 1987 Montana Administrative Register, issue number 9.

2. The proposed amendments have been adopted.

3. A public hearing was conducted on June 4, 1987, to receive comments on the proposed rule amendments. The following comment was received during the comment period:

COMMENT: A rule should be implemented to clarify the decision-making process and responsibilities listed in statute of agencies and the Department.

RESPONSE: The Department agrees that the statute could be clearer, but feels that the following rules provide adequate direction for the decision-making process: ARM 2.21.6704, Creation of the State Incentive Awards Advisory Council describes the role of the council in relation to the department; ARM 2.21.6706 (b), (c), & (d), Cooperation Requested of Agencies, describes the suggested responsibilities of agencies; and ARM 2.21.6708 Program Administration, outlines the responsibilities of the department.

By: 
Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State August 3, 1987.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION AND
new rules relating to salary and	)	AMENDMENT OF RULES TO
service credits for retirement	)	IMPLEMENT RECENTLY
systems, qualifying out-of-state	)	ENACTED PUBLIC RETIRE-
service in PERS, and purchasing	)	MENT SYSTEM LEGISLA-
military service in the Sheriffs'	)	TION
Retirement System; and amending)	
ARM 2.43.320 and 2.43.406 for the)	
purposes of granting full service)	
credit for temporary service)	
reductions.)	

TO: All Interested Persons.

1. On May 28, 1987, the Public Employees' Retirement Board published notice of the proposed adoption of rules and the amendment of ARM 2.43.320 and 2.43.406 concerning the awarding of service and salary credits, qualifying out-of-state service in PERS, and purchasing military service in the Sheriffs' Retirement System at page 617 of the 1987 Montana Administrative Register, issue number 10.

2. The agency has adopted Rules I (ARM 2.43.429) and III (ARM 2.43.431) and amended ARM 2.43.320 and 2.43.406 as proposed.

3. The agency has adopted Rule II with the following changes:

2.43.430 PREVIOUSLY REFUNDED OUT-OF-STATE OR FEDERAL PUBLIC SERVICE

Subsection 1 (a) & (b) remain the same.

(2) The division will calculate the actuarial cost of qualifying such service based upon the member's salary during his sixth year of PERS service. If the member terminates covered employment prior to completing six years of PERS service, his sixth year salary will be projected based upon the member's actual salary paid for service beyond five years and the payroll rules then in effect.

(3) The actuarial cost rate will be the current normal cost rate of the system plus 1.3% to compensate for adverse selection, plus simple interest beginning one month from the date of initial eligibility for qualifying such service or the date on which he completed six years of PERS service, whichever is later. In setting the actuarial cost for a given period, the board may round down to a simple whole or half percent for purposes of ease in administering this provision.

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Subsection (3) & (4) remain the same, but are renumbered to (4) & (5).

4. No adverse comments or testimony were received by the agency. A tangential question was received by phone and passed along to the board. Since it did not apply to the proposed rules or amendments, no action was taken.

In addition, public employees' retirement division staff questions and comments resulted in the above-indicated amendments to Rule II in order to clarify procedures to be used when an eligible PERS member elects to qualify eligible service when that member had more than 5 but less than 6 years PERS service and was planning to terminate PERS-covered employment prior to having completed their sixth year of service. Since the cost of qualifying eligible out-of-state or federal service is based upon the member's sixth year of PERS salary, a mechanism was identified so that the sixth year salary could be projected.

Similarly, the retirement division staff recommended, and the board concurred, that interest not be charged to members until such time as they would actually have had an opportunity, as well as initial eligibility, to make a lump-sum payment to qualify this service. Since PERS members who do not terminate employment prior to six years of service will not have the option of making a lump-sum payment to purchase this service until the end of their sixth year of service, they should not be charged interest on this amount back to a date one month after their fifth year of PERS service.

5. The authority for Rule I (ARM 2.43.429) is 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA and the rule implements 19-3-308, 19-6-204, 19-7-203, 19-8-204, 19-9-204 and 19-13-205 MCA. The authority for Rule II (ARM 2.43.430) is 19-3-304 MCA and the rule implements 19-3-512 MCA. The authority for Rule III (ARM 2.43.431) is 19-7-201 MCA and the rule implements 19-7-310 MCA. The authority for ARM 2.43.320 and ARM 2.43.406 is 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA and those rules implements 19-3-308, 19-6-204, 19-7-203, 19-8-204, 19-9-204 and 19-13-205 MCA.



John Prebil, President
Public Employees' Retirement Board

Certified to the Secretary of State July 29, 1987

Montana Administrative Register

15-8/13/87

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of	)	PERTAINING TO RULE 4.12.1806
4.12.1806 generally	)	REVISING FEES FOR
revising the fees for	)	PRODUCE INSPECTIONS
produce inspections)	

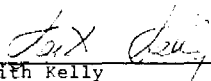
TO: All Interested Persons.

1. On June 25, 1987, the Department of Agriculture published notice to amend rule 4.12.1806 which raises the fees for produce inspections at page 805 of the Administrative Register, Issue No. 12.

2. The Department has amended the rule as proposed.

3. No public hearing was held nor was one requested. The Department received no written or oral comments concerning this amendment.

4. The authority of the department to make the proposed amendment on section 80-3-110, MCA and the rule implements section 80-7-111, MCA.



Keith Kelly
Director
Department of Agriculture

Certified to the Secretary of State August 3, 1987.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption,)	NOTICE OF THE ADOPTION OF
amendment and repeal of rules)	ARM 4.12.2619 AND 4.12.2620;
relating to produce whole-)	AMENDMENT OF ARM 4.12.2604
salers and itinerant merchants)	AND ARM 4.12.2613; AND REPEAL
and establishing bond equiva-)	OF ARM 4.12.2605 AND ARM
lents.)	4.12.2612.

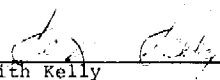
TO: All Interested Persons.

1. On May 28, 1987 the Department of Agriculture published notice of proposed new rules implementing requirements for bond equivalents to surety bonds and amendments to the existing rules relating to produce wholesalers and itinerant merchants, and the repeal of ARM 4.12.2605 and ARM 4.12.2612, at page 622 of the 1987 Montana Administrative Register, Issue No. 10.

2. The department has adopted, amended and repealed the rules as proposed.

3. The department received no comments or testimony.

4. The authority of the department to make the proposed changes is based on sections 80-3-603, 80-3-610, 80-3-705, 80-3-709 MCA and the rules implement sections 80-3-603, 80-3-608, 80-3-705, 80-3-708 MCA.



Keith Kelly
Director
Department of Agriculture

Certified to the Secretary of State August 3, 1987.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of adoption)	NOTICE OF ADOPTION OF
of new rule relating)	ARM 4.15.101 PERTAINING
to the assessment of fees)	TO FINANCIAL CONSULTING
for financial consulting)	AND DEBT MEDIATION
and debt mediation)	SERVICES FEES

TO: All Interested Persons.



1. On June 25, 1987 the Montana Department of Agriculture published notice of hearing on the above stated new rule at page 803 of the Montana Administrative Register, issue number 12.

2. On July 27, 1987, at 1:30 p.m. in Room 225, Agriculture/Livestock Building, Helena, Montana, a public hearing was held to consider the adoption of a new rule relating to assessing fees for financial consulting and voluntary agricultural debt mediation services.

3. The rule was adopted as proposed.

4. One comment from Valincia Lane was received by the Department concerning the rule making authority of the department. No other oral or written comments were received.

5. The authority of the department to make the proposed rule is based on section 80-13-104, MCA and the rules implement 80-13-111, MCA.

By:  
Keith Kelly, Director
Department of Agriculture

Certified to the Secretary of State August 3, 1987

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the amendment	)	NOTICE OF AMENDMENT OF 8.
of 8.12.606 concerning	)	12.606 RENEWALS - CONTINU-
renewals and the adoption of	)	ING EDUCATION REQUIREMENTS,
a new rule concerning inactive	)	AND THE ADOPTION OF NEW
status	)	RULE 1 (8.12.611) INACTIVE
	)	STATUS

TO: All Interested Persons:

1. On June 25, 1987, the Board of Chiropractors published a notice of proposed amendment and adoption of the above-stated rules at page 808, 1987 Montana Administrative Register, issue number 12.
2. The board has adopted the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF CHIROPRACTORS
ROGER COMBS, D.C., PRESIDENT

BY:


GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 3, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE AERONAUTICS DIVISION

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of 8.106.602 concerning lia-) 106.602 LIABILITY INSURANCE
bility insurance) REQUIREMENTS

TO: All Interested Persons:


1. On June 25, 1987, the Aeronautics Division published a notice of proposed amendment of the above-stated rule at page 812, 1987 Montana Administrative Register, issue number 12.

2. The Aeronautics Division adopted the rule exactly as proposed.

3. No comments or testimony were received.

AERONAUTICS DIVISION

BY:


GEOFFREY K. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 3, 1987.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Amendment of Rules)	NOTICE OF AMENDMENT OF
Regarding the Filing by Motor)	RULES REGARDING THE
Carriers of Proof of Insurance.)	FILING BY MOTOR
)	CARRIERS OF PROOF OF
)	INSURANCE-ARM 38.3.704
)	AND 38.3.705

TO: All Interested Persons

1. On June 25, 1987, the Department of Public Service Regulation published notice of the proposed amendment of rules regarding the filing by motor carriers of proof of insurance at pages 874-875 of the 1987 Montana Administrative Register Issue Number 12.

2. The Commission has adopted the proposed amendments.

3. Comments: Comments were received from Intermountain Transportation Company, Anaconda, Montana, Inland Marine Underwriters Association, New York, New York and the National Indemnity Company, Omaha, Nebraska. Generally these comments enthusiastically supported the proposed amendment of rules, and adoption of forms.


CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 3, 1987.

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

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

TO: All Interested Persons

1. On June 25, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards at page 878 of the 1987 Montana Administrative Register, issue number 12.

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

~~46.12.3803 MEDICALLY NEEDY INCOME STANDARDS (1) Notwithstanding the provisions found in subchapter 27 the following table contains the amount of net income protected for maintenance by family size. The table applies to SSI and AFDC-related individuals and families.~~ TO BE ELIGIBLE FOR MEDICALLY NEEDY ASSISTANCE, SSI AND AFDC-RELATED PERSONS AND FAMILIES MUST NOT HAVE ADJUSTED INCOME IN EXCESS OF THE AMOUNTS PROVIDED IN SUBSECTION (3) OF THIS RULE BASED UPON FAMILY SIZE. THOSE AMOUNTS ARE THE ADJUSTED INCOME FOR THE MAINTENANCE OF THE PERSON OR FAMILY. THE AMOUNTS STATED ARE INCLUSIVE OF A SHELTER OBLIGATION.

(2) SSI AND AFDC-RELATED PERSONS AND FAMILIES MUST PAY CO-PAYMENTS AS PROVIDED FOR IN 46.12.204.

(3) MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

<u>Family Size</u>	<u>Monthly Income Level</u>	<u>Quarterly Income Level</u>
1	\$340.00	\$1,020.00
2	383.00	1,149.00
3	404.00	1,212.00
	408.00	1,224.00
4	426.00	1,278.00
	433.00	1,299.00
5	501.00	1,503.00
	507.00	1,521.00
6	570.00	1,710.00
	580.00	1,740.00
7	642.00	1,926.00
	654.00	1,962.00
8	713.00	2,139.00
	727.00	2,181.00

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9	785.00	27355.00
	762.00	2,286.00
10	857.00	27571.00
	795.00	2,385.00
11	929.00	27787.00
	826.00	2,478.00
12	17001.00	37003.00
	854.00	2,562.00
13	17073.00	37219.00
	882.00	2,646.00
14	17145.00	37435.00
	907.00	2,721.00
15	17217.00	37651.00
	930.00	2,790.00
16	17289.00	37867.00
	951.00	2,853.00

~~(a)--All-families-are-assumed-to-have-a-shelter-obliga-~~
~~tion,-and-no-urban-or-rural-differentials-are-recognized-in~~
~~establishing--those-amounts-of-net-income-protected--for-main-~~
~~tenance.~~

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-131, and 53-6-141 MCA

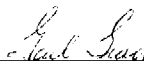
3. The Department has thoroughly considered all commentary received:

COMMENT: The language in subsection (1) which describes the table as containing "the amount of net income protected for maintenance by family size" is unclear.

RESPONSE: The department agrees and clarifying language has been inserted.

COMMENT: Subsection (1)(a) is gramatically incorrect.

RESPONSE: The department agrees. The subsection has been revised accordingly.


 Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1987.

VOLUME NO. 42

OPINION NO. 19

ELECTIONS - Determination of the percentage of voter turnout at a school bond election;
SCHOOL BOARDS - Determination of the percentage of voter turnout at a school bond election;
MONTANA CODE ANNOTATED - Sections 7-2-2205, 13-1-111, 13-2-401 to 13-2-404, 20-9-428;
OPINIONS OF THE ATTORNEY GENERAL - 24 Op. Att'y Gen. No. 86 (1952);
REVISED CODES OF MONTANA, 1947 - Section 23-518.

HELD: The provisions of section 20-9-428, MCA, do not permit school trustees to revise the number of voters on the certified list of registered electors when determining the percentage of voter turnout at a school bond election.

18 June 1987

Jim R. Morey
Lawrence A. (Larry) Dolezal
Board of County Commissioners
512 California Avenue
Libby MT 59923

Gentlemen:

You have requested my opinion on the following questions:

1. Do the provisions of section 20-9-428, MCA, allow the trustees of a school district, at a bond election canvass, to remove names from the certified list of electors, supplied by the county election administrator, as being unqualified under the provisions of sections 13-1-111 and 20-20-301, MCA?
2. If they are allowed to remove names from the list of electors, must they apply the provisions of section 20-20-301, MCA, to voters and nonvoters equally? What

criteria must be used to establish an unqualified elector?

3. What are the implications of sections 13-2-403, 13-2-404, 13-35-205, and 45-7-208, MCA?

Your questions have arisen in the context of a recent school bond election in Libby School District No. 4. The certified list of electors provided by the county registrar (election administrator) contained 5,479 names. The total number of votes cast on the bond issue was 1,623, with 1,048 in favor and 575 opposed.

Section 20-9-428(1), MCA, sets forth the procedure for determining the approval or rejection of a proposition at a school bond election.

Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

- (a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;
- (b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;
- (c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and
- (d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such

proposition, otherwise it shall be deemed to have been rejected; or

(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected.

If voter turnout is determined by using the total number of registered voters provided by the election administrator, the Libby school bond proposition failed, since it was not voted upon by more than 30 percent of the qualified electors. § 20-9-428(1)(f), MCA.

However, the trustees in School District No. 4, acting upon legal advice, determined that nearly 300 of the individuals whose names appeared on the registration list were not qualified to vote, apparently because of changes in residency. This revised number of qualified electors resulted in a voter turnout of over 30 percent and approval of the bond proposition. Your first question concerns whether the school trustees have authority under section 20-9-428(1), MCA, to revise the number of voters whose names appear on the list furnished by the election administrator. I conclude that such authority does not exist under current law.

Early Montana case law held that the presence of a name on a list of registered voters did not necessarily establish the qualifications of an elector and that those who determined the number of qualified electors were not bound by the names which appeared on the registration list. State ex rel. Lang v. Furnish, 48 Mont. 28, 134 P. 297 (1913); State ex rel. Bogy v. Board of County Commissioners, 43 Mont. 533, 117 P. 1062 (1911). Those cases involved the canvassing of names on petitions to create new counties. The law then required that the petitions contain at least 50 percent of the names of qualified electors. The Court suggested that the voter registration books were not yet reliable and

that the law did not contemplate registration as an electoral qualification. Lang, 134 P. at 299. See also State ex rel. Fadness v. Eie, 53 Mont. 138, 145, 162 P. 164, 166 (1916) (statute failed to point out source of information to be consulted in determining number of qualified electors).

Montana law has changed since these early cases were decided, not only with respect to the issue in Lang and Bogy, supra, i.e., the correct method of determining the number of signatures needed on a petition to create a new county, but with respect to the procedure for revising registration lists in general. The statutory changes convince me that the early case law is no longer of binding force.

As has been noted, the status of voter registration lists at the time of the decisions in Lang and Bogy, supra, were not reliable and registration was not even contemplated as a voter qualification. By contrast, current law specifically requires registration as a qualification for voting. § 13-1-111(1)(a), MCA. In addition, the use of voter registration lists has been clarified. Section 7-2-2205, MCA, the successor statute to those relied upon in Lang and Bogy, supra, provides in subsection (3):

For the purpose of determining the number of signatures needed on a petition to meet the percentage requirements of this section, the number of registered electors in a territory proposed to be included in a new county is the number of people registered to vote in that territory in the most recent general election.

Similarly, the statute governing the counting of votes on a school bond proposition expressly provides for the use of the voter registration list. Section 20-9-428(1)(a), MCA, requires that the school trustees determine the qualified voters "from the list of electors supplied by the county registrar."

Additional support for my conclusion is found in the statutes that address the procedure for revising registration lists. Sections 13-2-401 to 404, MCA, set forth detailed procedures for the purging of unqualified voters by the county election administrator from the registration list. The names of registered electors who

do not vote in a general election are regularly removed from the list according to a specific schedule. § 13-2-401(1), MCA. The only additional grounds for cancelling the registration of an elector include receipt of a written death certificate or report, a court decision that the elector is of unsound mind, the filing of a court order directing cancellation, a successful challenge brought by another elector (which must follow the specific steps set forth in section 13-2-403 or 13-2-404, MCA), and receipt of a notice from another county or state that the elector has registered in that county or state. § 13-2-402, MCA.

It is noteworthy that the statutes on the procedure for revising registration lists were changed in 1969 so that cancellation may no longer be based upon the election administrator's personal knowledge of the death or change of residency of an elector. It is also significant that the statutes provide that electors whose names are to be removed from the registration list are put on actual or constructive notice of the impending cancellation, and thus have an opportunity to rebut the grounds therefor. See § 23-518, R.C.M. 1947. By contrast, the recent revision of the voter registration list in Libby School District No. 4 was apparently based on the personal knowledge of the school trustees, with no notice given to electors who may have wished to appeal the decision to drop their names from the total number of voters in the district.

Although in the case of School District No. 4 the trustees did not physically remove names from the certified list of registered voters, nearly 300 names were cancelled from the total count for purposes of determining the percentage of voter turnout. I fail to see the distinction between actual removal of a name from the certified registration list so that a previously registered elector becomes disqualified from voting, and refusing to count a name on the registration list for purposes of determining whether there is sufficient voter interest in a bond proposal. My reasoning is consistent with an earlier opinion, 24 Op. Att'y Gen. No. 86 (1952), and an informal opinion I issued in 1980 concerning a high school bond election in Augusta, Montana.

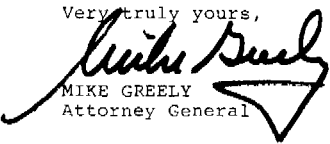
I conclude that current Montana law does not permit the exercise of discretion by anyone other than the election administrator under sections 13-2-401 to 404, MCA, to revise the number of names on a voter registration list. Section 20-9-428, MCA, merely authorizes school trustees to use the registration list as the source of information for counting the total of registered voters in the appropriate school district. Trustees may not drop names from the total without pursuing the regular statutory procedure provided for challenging registration.

This response makes it unnecessary to answer your second question. With respect to your inquiry concerning the statutes on tampering with election records, the question of whether violations of law have occurred must be considered by local law enforcement officials in light of all of the surrounding facts. It would be inappropriate for me to discuss the effect of criminal statutes under these circumstances.

THEREFORE, IT IS MY OPINION:

The provisions of section 20-9-428, MCA, do not permit school trustees to revise the number of voters on the certified list of registered electors when determining the percentage of voter turnout at a school bond election.

Very truly yours,


MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 20

COUNTIES - Authority to construct housing for low-income elderly citizens;
COUNTY GOVERNMENT - Whether apartment complex for low-income elderly citizens constitutes a "public building";
PUBLIC BUILDINGS - Whether an apartment complex for low-income elderly citizens constitutes a "public building";
MONTANA CODE ANNOTATED - Title 7, chapter 15, part 21; sections 3-5-404, 7-3-401 to 7-3-442, 7-8-2102, 7-15-2101, 7-15-2102, 7-15-2105, 7-15-2107, 7-15-2111 to 7-15-2113, 7-15-4403, 7-15-4406, 7-15-4456, 7-16-2105, 7-16-2202, 7-16-2321, 7-32-2201, 7-34-2201, 7-34-2301;
MONTANA CONSTITUTION - Article XI, sections 4(1)(b), 4(2);
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 17 (1983), 40 Op. Att'y Gen. No. 51 (1984).

HELD: Counties with general government powers do not have the authority to construct or maintain an apartment complex for elderly, low-income citizens which does not otherwise constitute a boarding or nursing home under section 7-34-2301, MCA, and such a structure would not constitute a "public building" under section 7-8-2102, MCA. Such housing, however, may be provided by a county or municipal housing authority.

21 July 1987

Marvin Quinlan, Jr.
Rosebud County Attorney
Rosebud County Courthouse
Forsyth MT 59327

Dear Mr. Quinlan:

You have requested my opinion concerning several questions which I have consolidated into the following:

Does a county with general government powers have the authority to purchase and remodel a building under section 7-8-2102, MCA, for the

purpose of providing housing to low-income elderly persons?

I conclude that a general powers county does not have the authority to engage in such activity but that, instead, a county or municipal housing authority should be created under Title 7, chapter 15, part 21, MCA, to provide the involved housing.

Rosebud County, which has a commission form of government under sections 7-3-401 to 442, MCA, is considering the purchase and remodeling of a motel to provide retirement housing to low-income elderly citizens. As presently contemplated, the project's cost will be borne directly by the county which would thereafter lease the apartments within the facility and be responsible for its maintenance. The facility would be located in Forsyth, Montana.

Section 7-8-2102, MCA, generally authorizes counties to erect, furnish, and maintain "a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof and such other public buildings as may be necessary." The term "public buildings" is not defined but presumably refers to those structures which a county utilizes for the discharge of activities committed to its governmental powers. See § 3-5-404(1), MCA (requiring sheriff to provide district court facilities when county commissioners fail to do so); § 7-16-2105, MCA (authority to acquire lands for public recreational purposes such as civic centers, youth centers, museums, and recreational centers); § 7-16-2202, MCA (authority to establish museums); § 7-16-2321(1), MCA (authority of county park board to acquire park-related facilities); § 7-32-2201, MCA (mandating provision of county jail); § 7-34-2201, MCA (authority to construct county hospital). Section 7-8-2102, MCA, is, conversely, not an independent grant of authority to purchase whatever structures a board of county commissioners wishes but, instead, simply allows the construction or acquisition of buildings required for the discharge of expressly conferred powers or of those necessarily incidental to the exercise of clearly mandated county-governance responsibilities. See Mont. Const. art. XI, § 4(1)(b). Although such express or implied powers are to be construed liberally (Mont. Const. art. XI, § 4(2)), there must be some constitutional or statutory basis for

their existence since "[r]ecognition of 'inherent' powers of general power county governments would effectively obliterate the distinction between general powers and self-government powers, a result which is obviously inconsistent with article XI of the Montana Constitution." 40 Op. Att'y Gen. No. 17 at 63, 66 (1983). See 40 Op. Att'y Gen. No. 51 at 206, 210-11 (1984) (principal purpose of Mont. Const. art. XI, § 4(1)(b) was to allow extension of legislative, or ordinance-making, powers to counties).

General powers counties are neither expressly nor impliedly granted authority to undertake the activity at issue here. As you observe in your letter, the facility will not constitute a county boarding or nursing home under section 7-34-2301, MCA, since it will be operated similarly to an ordinary apartment complex with no medical services or care included. Despite the project's obviously salutary objective, I cannot infer the requisite authority to the county without substantially ignoring article XI, section 4(1)(b) of the Montana Constitution.

That the county does not have the express or implied power to provide the proposed housing, however, does not end my analysis since the Legislature has specifically anticipated the need for public sponsorship of such facilities. Section 7-15-2101(3) and (4), MCA, recognizes that in rural areas there may be "a lack of safe or sanitary dwelling accommodations available to all inhabitants thereof" and that such conditions may "constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values[.]" To address this problem, residents may petition for creation of a county housing authority (§ 7-15-2102, MCA), and, if the board of county commissioners determines that a lack of safe or sanitary dwelling accommodations exists, it may appoint a five-member housing authority board for the purpose of incorporating the authority (§§ 7-15-2105, 7-15-2107, MCA). Once incorporated, the housing authority is a nonprofit public corporation which must "manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations[.]" § 7-15-2113(1), MCA. Before its area of operation can include a city, however, the

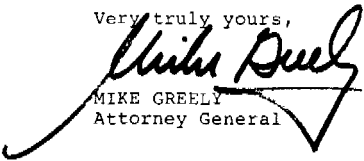
involved municipal government must adopt a resolution "declaring that there is a need for the county authority to exercise its powers within that city[,]" and the resolution must be approved by the municipality's electors. § 7-15-2111(1), MCA. Municipal housing authorities, whose geographical jurisdiction is limited to the involved city and an area within ten miles of the city boundaries, may also be established through an analogous procedure initiated by petition and city council action. §§ 7-15-4403(1), 7-15-4406, MCA.

Both county and municipal authorities, moreover, are expressly given authority to provide the housing at issue here. Section 7-15-4456(1), MCA, which applies to municipal housing authorities, states that, "[f]or the purpose of increasing the supply of low-rent housing for elderly families, an authority may develop, construct, and operate new housing or acquire, remodel, and operate existing housing in order to provide accommodations designed specifically for such elderly families." This power is extended to county housing authorities by section 7-15-2112(2), MCA. In view of the explicit commitment of this function to county and municipal housing authorities and the absence of its grant to counties, I can only conclude that the Legislature intended those authorities rather than counties to have the responsibility for constructing or acquiring the facilities contemplated instantly.

THEREFORE, IT IS MY OPINION:

Counties with general government powers do not have the authority to construct or maintain an apartment complex for elderly, low-income citizens which does not otherwise constitute a boarding or nursing home under section 7-34-2301, MCA, and such a structure would not constitute a "public building" under section 7-8-2102, MCA. Such housing, however, may be provided by a county or municipal housing authority.

Very truly yours,



MIKE GREELY
Attorney General

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Application)
of Fred's Towing & Crane, a towing)
& recovery company, for a declara-) DECLARATORY RULING
tory ruling on the applicability)
of Section 69-12-102(1)(f), (1)(g),)
MRC, to the towing industry.)

On February 17, 1987 Fred Burgess, dba Fred's Towing & Crane, petitioned the Montana Public Service Commission for a declaratory ruling on §§ 69-12-102(1)(f) and (g), MCA, which exempt tow trucks and motor vehicles used exclusively in carrying junk vehicles from PSC regulation. Sections 69-12-102 (f) and (g) state:

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

Mr. Burgess asked this Commission to answer the following question: Whether a hydraulic trailer with built-in winches and axles that permit the truck bed to rest on the ground for a low loading point or a low back truck is considered a tow truck for the purposes of §§ 69-12-102(1)(f) and (g), MCA.

The Commission determined that it would issue a declaratory ruling on this matter and notified interested parties on May 5, 1987. In that notice the Commission stated that it would accept comments on this matter but would not hold a public hearing on this petition unless requested. No comments or requests for hearing were received. The Commission considered this matter at a publicly scheduled worksession on July 31, 1987 and issues this ruling.

In his petition Mr. Burgess states that this equipment is primarily used to haul disabled units. It can also be used to haul motor homes, etc. It is this Commission opinion that to the extent that the equipment is used as a towing unit for disabled motor vehicles it is exempt. The Commission emphasizes that this equipment can also be used to haul heavy machinery, etc. This type of movement is not "towing abandoned, wrecked, or disabled vehicles" (69-12-102, MCA) and is not exempt.

Movement using this equipment is exempt from PSC regulation when it involves towing a motor vehicle as defined in 69-12-101, MCA, that is disabled. This means that the exemp-

tion only applies to the towing of self-propelled vehicles that are used for transportation over public highways.

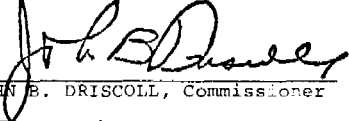
APPROVED BY THE COMMISSION JULY 31, 1987.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


CLYDE JARVIS, Chairman


HOWARD L. ELLIS, Commissioner


DANNY OBERG, Commissioner


JOHN E. DRISCOLL, Commissioner


TOM MONAHAN, Commissioner

ATTEST:


Ann Purcell
Acting Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

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, 1987. This table includes those rules adopted during the period June 30, 1987 through September 30, 1987 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, 1987, 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 1987 Montana Administrative Register.

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