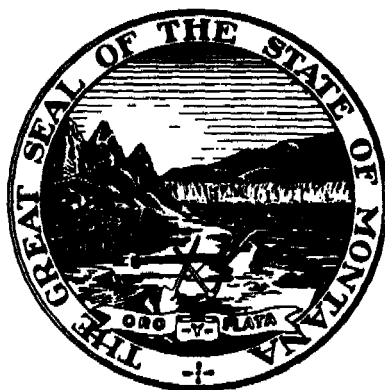


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# RESERVE

## MONTANA ADMINISTRATIVE REGISTER

1987 ISSUE NO. 19  
OCTOBER 15, 1987  
PAGES 1718-1847



## MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of a rule pertaining ) THE PROPOSED AMENDMENT OF  
to fees and the proposed ) 8.36.409 FEE SCHEDULE AND  
adoption of new rules pertain- ) THE PROPOSED ADOPTION OF NEW  
ing to therapeutic pharmaceu- ) RULES I THERAPEUTIC PHARMA-  
tical agents ) CEUTICAL AGENTS, II APPLI-  
 ) CANTS FOR LICENSURE, III  
 ) APPROVED COURSE AND EXAMINA-  
 ) TION, AND IV APPROVED  
 ) DRUGS

TO: All Interested Persons.

1. On Wednesday, November 4, 1987, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 9th Avenue, Helena, Montana, to consider the amendment and adoption of the above-stated rules.

2. The proposed amendment of 8.36.409 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1074, Administrative Rules of Montana)

"8.36.409 FEE SCHEDULE (1) through (6) will remain the same.

(7) TPA Certificate Application Fee \$50.00"  
Auth: 37-10-202, MCA Imp: 37-1-134, MCA

3. This amendment is being proposed to cover the cost of the administration of the TPA certification requirement.

4. The proposed new rules will read as follows:

"I THERAPEUTIC PHARMACEUTICAL AGENTS (1) After October 1, 1987, the only optometrists who may administer, prescribe or dispense topical ocular therapeutic agents are those who have been certified to do so by the board.

(a) A certificate of competency for use of therapeutic pharmaceutical agents will be issued by the board of optometrists to those doctors of optometry who have successfully taken a required course and passed a required examination. The fee will be determined by the board.

(b) Only the topical pharmaceutical agents described in new rule IV can be administered, dispensed or prescribed by Montana certified optometrists.

(c) All licensed and therapeutically certified optometrists must obtain and use a DEA number on all prescriptions."

Auth: 37-10-202, MCA Imp: 37-10-304, MCA

"II APPLICANTS FOR LICENSURE (1) Effective October 1, 1987, all applicants for licensure (new graduates and

reciprocity) must prove that they have met or exceeded the requirements of section 37-10-304(2), MCA, before they will be permitted to take the licensing examination or be granted a reciprocity license, as the case may be."

Auth: 37-10-202, MCA Imp: 37-10-304, MCA

"III APPROVED COURSE AND EXAMINATION (1) An approved course, as referred to in section 37-10-304(2)(a)(ii), shall be a therapeutic pharmaceutical agents course approved by the board which consists of at least 76 hours of didactic classroom instruction and 24 hours of clinical instruction.

(a) The test for competency will be given by the staff conducting the course, or the IAB exam on ocular therapeutics. A passing score will be an average of 75% or higher on all subjects tested."

Auth: 37-10-202, MCA Imp: 37-10-304, MCA

"IV APPROVED DRUGS

(1) Topical Drugs:

- (a) Anti-biotic Agents
- (b) Anti-viral Agents
- (c) Anti-fungal Agents
- (d) Anti-inflammatory Agents
- (e) Anti-histamines

(2) Oral Drugs:

(a) Oral Analgesics

- (i) Codeine
- (ii) Propoxyphene
- (iii) Hydrocodeine
- (iv) Dihydrocodeine

(b) The above may be administered alone or in combination with non-scheduled or non-regulated drugs.

(c) Over the counter."

Auth: 37-10-202, MCA Imp: 37-10-304, MCA

5. These rules are being adopted to conform to and implement legislative enactment of Ch. 588, Laws of 1987.

6. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Montana Board of Optometrists, 1424 9th Avenue, Helena, Montana 59620, no later than November 12, 1987.

7. Martin Jacobson of Helena, Montana, will preside over and conduct the hearing.

BOARD OF OPTOMETRISTS  
KEN ZUROFF, O.D., PRESIDENT

BY:

*Geoffrey L. Brazier*  
\_\_\_\_\_  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1987.

19-10/15/87

MAR Notice No. 8-36-13

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

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of a rule pertaining ) OF 8.58.411 FEE SCHEDULE  
to fees )  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 16, 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 (20) will remain the same.

(21) Late renewal fee \$100.00"  
Auth: 37-51-203, MCA Imp: 37-51-310, MCA

3. This amendment is being proposed to allow real estate licensees the opportunity to late renew by submitting an additional late renewal fee.

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 November 12, 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 November 12, 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 510 based on the 5100 licensees in Montana.

BOARD OF REALTY REGULATION  
JOHN DUDIS, CHAIRMAN

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

Certified to the Secretary of State, October 5, 1987.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS

In the matter of the proposed amendment of rules pertaining to licensure requirements; applications; hours, credits and carry over; noncompliance and fees ) NOTICE OF PROPOSED AMENDMENT  
) OF 8.61.402 LICENSURE RE-  
) QUIREMENTS, 8.61.402 APPLI-  
) CATIONS, 8.61.404 FEE  
) SCHEDULE, 8.61.601 HOURS,  
) CREDITS, AND CARRY OVER, 8.  
) 61.604 NONCOMPLIANCE, 8.61.  
) 1202 APPLICATION PROCEDURE,  
) 8.61.1601 HOURS, CREDITS,  
) AND CARRY OVER and 8.61.1604  
) NONCOMPLIANCE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 16, 1987, the Board of Social Workers and Professional Counselors proposes to amend the above-stated rules.

2. The proposed amendment of 8.61.402 and 8.61.403 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rules is located at page 8-1669, Administrative Rules of Montana)

"8.61.402 LICENSURE REQUIREMENTS FOR SOCIAL WORK (1)  
through (b) will remain the same."

Auth: 37-22-201, MCA Imp: 37-22-102, 37-22-201, MCA

"8.61.403 APPLICATION PROCEDURE FOR SOCIAL WORK (1)  
through (3) will remain the same."

Auth: 37-22-201, MCA Imp: 37-22-301, MCA

3. These amendments are being proposed because the Board wishes to distinguish the requirements for social workers and professional counselors by inserting "social work" and "professional counselors" where indicated, thereby eliminating any confusion that may be caused by the title of the Board.

4. The proposed amendment of 8.61.404 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1669 and 8-1670, Administrative Rules of Montana)

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

(4) Renewal Fee (~~based on biennial~~ renewal) (based on annual renewal) ~~\$150.00~~ \$120.00

(5) and (6) will remain the same.

(7) Retake Exam Fee 75.00"

Auth: 37-1-134, 37-22-201, AUTH Extension, Sec. 5, Ch. 78, L. 1987 Imp: 37-1-134, 37-22-302, MCA

19-10/15/87

MAR Notice No. 8-61-6

5. This amendment is being proposed to adjust the social work fee schedule to comply with the passage of HB334 (to annual renewal), and to reflect program area costs.

6. The proposed amendment of 8.61.601 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1671, Administrative Rules of Montana)

"8.61.601 HOURS, CREDITS, AND CARRY OVER (1) Each social work licensee of the board of social work examiners and professional counselors shall earn 20 clock hours of accredited continuing social work education for each year after 1985. Clock hours or contact hours shall be the actual number of hours during which instruction was given.

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

(5) Social work applicants licensed before July 1 of the renewal year will be required to fulfill the 20 hour requirement. Those licensed after July 1 are required to obtain one half of the 20 hour requirement; and those licensed after October 1, will not be required to obtain continuing education credits for renewal."

Auth: 37-22-201, 37-23-201, MCA Imp: 37-22-102, 37-23-201, MCA

7. This amendment is being proposed because the board wishes to distinguish the requirements for social workers and professional counselors by inserting "social work" and "professional counselors" where indicated, thereby eliminating any confusion that may be caused by the title of the board. Clarification is also needed regarding the treatment of applicants licensed in the middle of the renewal year pertaining to the continuing education requirement. The rule will be in harmony with statutory amendments.

8. The proposed amendment of 8.61.604 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1672, Administrative Rules of Montana)

"8.61.604 NONCOMPLIANCE (1) In the event that a licensed social worker shall fail to comply with these rules in any respect, the board shall promptly send a notice of noncompliance. The notice shall specify the nature of the noncompliance and state that unless the noncompliance is corrected or a request for a hearing before the board is made within 30 days, the statement of noncompliance shall be an instance--of--unprofessional--conduct considered grounds for suspension or revocation."

Auth: 37-23-201, MCA Imp: 37-23-211, MCA

9. This amendment is being proposed because it is necessary to make clear that noncompliance with board rules is grounds for license suspension or revocation.

10. The proposed amendment of 8.61.1202 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1674, Administrative Rules of Montana)

"8.61.1202 APPLICATION PROCEDURE (1) Any person seeking licensure as a professional counselor must apply on the board's official forms which may be obtained through the board office.

(2) and (3) will remain the same."

Auth: 37-22-201, MCA Imp: 37-22-102, MCA

11. This amendment is being proposed because the board wishes to distinguish the requirements for social workers and professional counselors by inserting "social work" and "professional counselors" where indicated, thereby eliminating any confusion that may be caused by the title of the board.

12. The proposed amendment of 8.61.1203 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1674, Administrative Rules of Montana)

"8.61.1203 FEE SCHEDULE (1) through (6) will remain the same.

(7) Retake Exam Fee \$75.00"

Auth: 37-1-134, 37-23-103 Imp: 37-1-134, 37-23-206, MCA

13. This amendment is being proposed because the board felt that the addition of the Retake Exam Fee in the fee schedule for Professional Counselors was necessary for clarification and to reflect program area costs.

14. The proposed amendment of 8.61.1601 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1677, Administrative Rules of Montana)

"8.61.1601 HOURS, CREDITS, AND CARRY OVER (1) through (3) will remain the same.

(4) Professional counselors licensed before July 1 of the renewal year will be required to fulfill the 20 hour requirement. Those licensed after July 1, are required to obtain one half of the 20 hour requirement; and those licensed after October 1, will not be required to obtain continuing education credits for renewal."

Auth: 37-1-131, 37-23-103, MCA Imp: 37-23-101, 37-23-103, 37-23-201, 37-23-205, MCA

15. This amendment is being proposed because the board felt that clarification is needed regarding the treatment of applicants licensed in the middle of the renewal year pertaining to the continuing education requirements and to be in harmony with statutory amendments.

16. The proposed amendment of 8.61.1604 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1678, Administrative Rules of Montana)

"8.61.1604 NONCOMPLIANCE (1) In the event that a licensed professional counselor shall fail to comply with these rules in any respect, the board shall promptly send a notice of noncompliance and state that unless the noncompliance is corrected or a request for a hearing before the board is made within 30 days, the statement of noncompliance shall be an instance of unprofessional conduct considered grounds for suspension or revocation."

Auth: 37-23-201, MCA Imp: 37-23-211, MCA

17. This amendment is being proposed because it is necessary to make clear that noncompliance with board rules is grounds for license suspension or revocation, and should be clarified.

18. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Social Work Examiners and Professional Counselors, 1424 9th Avenue, Helena, Montana 59620, no later than November 12, 1987.

19. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Social Work Examiners and Professional Counselors, 1424 9th Avenue, Helena, Montana 59620, no later than November 12, 1987.

20. If the Board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons being affected has been determined to be 25 based on the 250 licensees in the state.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
PATRICK J. KELLY, CHAIRMAN

BY:

  
\_\_\_\_\_  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BUILDING CODES BUREAU

In the matter of the proposed )	NOTICE OF PUBLIC HEARING ON
amendments of rules pertaining )	PROPOSED AMENDMENTS OF 8.70.
to incorporation by reference )	101, 8.70.105, 8.70.202, 8.
of codes; extent of local pro- )	70.303, 8.70.304, 8.70.401,
grams; plumbing fixtures; per- )	8.70.404, 8.70.407 and 8.70.
mits; standards; fees; and )	501 PERTAINING TO BUILDING
recreational vehicles )	CODES

TO: All Interested Persons:

1. On Monday, November 9, 1987, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 9th Avenue, Helena, Montana, to consider the amendments of the above-stated rules.

2. The proposed amendment of 8.70.101 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1991 through 8-1993, Administrative Rules of Montana)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (c) will remain the same.

(d) Subsection (b) of section 304 of the Uniform Building Code, 1985 Edition, is amended to read as follows:

Sec. 304.(b) Permit Fees. The fee for each permit shall be as set forth in Table No. 3-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. When the building official is the state of Montana, acting through the department of commerce, building codes bureau, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the International Conference of Building Officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. The building codes bureau may, for public buildings or projects that exceed \$25,000 in building value, use firm bids for establishing the building valuation as an alternative to using "Building Valuation Data" table when such bids include all construction work associated with the building as described earlier in this section and the bidding process is determined as having been open and competitive.

Valuation of projects may also be based on firm total project contract amounts if the entire project is contracted and such contracts cover all construction work associated with the building as described earlier in this section, provided this contracted valuation is less than 75% of the valuation as determined by use of "Building Valuation Data" table. Valuation of remodel and/or addition projects, where use of "Building Valuation Data" table is not appropriate, will be based on use of typical and reasonable construction costs. When only plan review fees are charged, the building valuation for determining fees will be based on the design professional's preliminary cost estimate, if such estimate is available or "Building Valuation Data" table, if such estimate is not available. As provided by in rule ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation.

(e) will remain the same.

(2) As specified in section 50-60-102, MCA, the building codes bureau may not enforce the state building codes on residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, or mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act. Local governments that have made the state building codes applicable to the aforementioned buildings, except for mines and buildings on mine property regulated under Title 82, chapter 4, may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) As specified in section 76-2-412(3), MCA, building codes which are not applicable to residential occupancies may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

(4) Subsection (d) of section 2305 of the Uniform Building Code, 1985 Edition, requires that snow loads be determined by the building official. In areas of the state outside of certified local government jurisdictions, the design snow load shall meet or exceed the snow load calculated in "Recommended Snow Loads for Montana Structures", March, 1978, authored by department of civil engineering/engineering mechanics, Montana State University. The minimum snow load shall be 30 psf.

(5) Subsection (a) of section 2907 of the Uniform Building Code, 1985 Edition, requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to the bottom of footings shall be 3.0 ft. for single story wood and metal frame buildings and 4.0 ft. for multi-story and masonry buildings. Buildings located on highly expansive or unstable

soils may need engineered footings and foundation walls that extend below the minimum depths indicated above.

-----~~(2)~~ ~~(6)~~ . . .  
~~(3)~~ ~~(7)~~ . . .  
~~(4)~~ ~~(8)~~ . . .  
~~(5)~~ ~~(9)~~ . . ."

Auth: 50-60-203, MCA Imp: 50-60-103, 50-60-108,  
50-60-109, 50-60-203, MCA

3. The bureau is proposing these amendments to the rule to provide reasonably uniform standards and requirements for construction, accurate calculation of building valuation for the purposes, and clarification of Uniform Building Code requirements affected by state law.

4. The proposed amendment of 8.70.105 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1995 through 8-1997, Administrative Rules of Montana)

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) and all subsections thereunder will remain the same.

(2) The building codes bureau may not enforce the uniform mechanical code on those buildings exempted from state building codes by section 50-60-102, MCA. Local governments that have made the state building codes applicable to the exempted buildings, except for mines and buildings on mine property regulated under Title 82, Chapter 4, may enforce within their jurisdictional areas the uniform mechanical code as adopted by the respective local government.

(3) As specified in section 76-2-412(3), MCA, mechanical codes which are not applicable to residential occupancies may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

-----~~(2)~~ ~~(4)~~ . . .  
~~(3)~~ ~~(5)~~ . . ."

Auth: 50-60-203(2), MCA Imp: 50-60-203(1), MCA

5. The bureau is proposing these amendments to the rule to provide clarification of Uniform Mechanical Code requirements affected by state law.

6. The proposed amendment of 8.70.202 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2011, Administrative Rules of Montana)

"8.70.202 EXTENT OF LOCAL PROGRAMS (1) will remain the same.

(2) Exceptions to permit requirements listed in sections 50-60-506(2) and 50-60-506(4), MCA, apply only to state plumbing permits, and certified local governments may issue

plumbing permits for such work in accordance with section 20.4 of the uniform plumbing code."

Auth: 50-60-203, MCA Imp: 50-60-202, 50-60-301(1), (2), 50-60-302, MCA

7. The bureau is proposing this amendment to the rule to provide clarification regarding application of a statutory permit exception to certified local government programs.

8. The proposed amendment of 8.70.304 and 8.70.303 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2029 and 8-2030, Administrative Rules of Montana)

"8.70.304 PLUMBING PERMITS (1) and (2) will remain the same.

(3) The exception to permit requirements listed in section 50-60-506(5), MCA for regularly employed maintenance personnel doing maintenance work on the business premises applies to personnel on the regular payroll rather than personnel under contract. Maintenance work includes the stopping of leaks in drains, soil, waste or vent pipe, clearing of stoppages, and repairing of leaks in pipes, valves, or fixtures, when such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

(4) In accordance with sections 1417(a) and (b) of the Safe Drinking Water Act amendments of 1986 (Public Law 99-339), effective immediately, the use of solders and flux containing more than 0.2 percent lead and pipes and fittings containing more than 8 percent lead is prohibited in the installation and repair of residential or nonresidential plumbing connected to a public water supply system.

----- (3) (5) . . .  
(4) (6) . . .  
(5) (7) . . ."

Auth: 50-60-203, 50-60-501, MCA Imp: 50-60-201, 50-60-504, MCA

"8.70.303 MINIMUM REQUIRED PLUMBING FIXTURES (See following two pages.)"



"B.70.303 MINIMUM REQUIRED PLUMBING FIXTURES

(1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:

MINIMUM REQUIRED PLUMBING FIXTURE 1,7						
Occupancy	Water Closets <sup>8</sup> Male Female	Urinals Male Fixtures/Persons	Lavatories <sup>3</sup> Fixtures/Persons	Drinking Fountains Fixtures/Floor or Building		
Groups A-1, A-2, A-2.1, A-3 A-4, B-1, B-2, B-2.1, B-4 and Shopping Centers and Office Stores, Service Stations, Public Buildings, Food Service Facilities, Assembly Buildings 2, 7, 7.1	1 1-150 2 151-200 3 201-400 4 401-600 Add 1 fixture for each additional 500 males and 1 for each 300 females	1 51-200 <sup>5</sup> 2 201-400 3 401-600 Over 600: add 1 for each additional 300 males	Use Section 605 of the Uniform Building Code	Use Section 605 of the Uniform Building Code		
Groups E-1, E-2 & E-3 Schools Colleges & Universities Day Care	1:100 1:20 May combine male and female unless fixture requirement exceeds 2	1:100 Over 20: may sub- stitute for 1/2 number of toilets required	1:200 1:60	1/8 floor or Building 1/4 floor or Building plus 1:100 <sup>6</sup>		
Groups I-1, I-2 & I-3 Jails, Prisons, Detention Units Hospitals and Nursing Homes Nurseries	One water closet and one lavatory for each cell. One additional water closet and lavatory for every eight in multiple occupancy cells. One shower for every fifteen. See Title 16, Chapter 32, Administrative Rules of Montana. See Section 1295 of the Uniform Building Code.				1/8 floor or Building 1/4 floor or Building	
Groups H-1, H-2, H-3, H-4, H-5 <del>H-1, H-2, H-3 &amp; H-4</del> <del>Offices, Shopping Centers</del> <del>Stations, Public Buildings</del> <del>Food Service Facilities</del>	Use Section 905 and 795 of the Uniform Building Code for employees.					
Toilet facilities for the public are to be provided as noted for Groups A and B and shopping centers, and in addition, where alcoholic beverages are sold for on-site consumption, add to the fixture requirements 1 extra urinal for males from 1-100, 2 from 101-300, 3 from 301-600, 1 per 300 over 600 and 1 extra water closet for females from 51-150, 2 extra from 151-400 and 1 per 150 over 400. Handwashing sinks are required in all food preparation areas. <sup>4</sup>						

Group R-1 Hotels, Apartments, Motels, Convents and Monasteries	Use Section 1205 of the Uniform Building Code	
Group R-3 Dwelling and Lodging Houses	Use Section 1205 of the Uniform Building Code.	

- 1 Required plumbing fixtures may be provided as separated employee and public toilets or as public toilets with employee access to the building.
- 2 Access to the building under employee control of the type available at service stations are permitted.
- 3 Hot and Cold Water required.
- 4 Contact the Department of Health and Environmental Sciences for additional requirements for food service establishments.
- 5 Food service establishments require one urinal for occupancy loads of 1 to 50.
- 6 Unless alternate provisions of Department of Health and Environmental Sciences are used.
- 7 When calculating number of male and female occupants, the occupant load of the building shall be considered half male and half female, and the occupant load shall be calculated in accordance with Sec. 3101(d) of the Uniform Building Code.
- 8 Where alcoholic beverages are sold for on-site consumption, add to the fixture requirements 1 extra urinal for males from 1-100; 2 from 101-300; 3 from 301-600; 1 per 300 over 600 and 1 extra water closet for females from 51-150; 2 extra from 151-400 and 1 per 150 over 400. Handwashing sinks are required in all food preparation areas. For B occupancies use Section 785 of the Uniform Building Code for employees.
- 9 At the discretion of the building official, for small (less than 1,200 sq.ft. in floor area) convenience stores, typically gasoline sales plus convenience items and beverages located to serve primarily neighborhood areas instead of major highways, only one public toilet is needed, provided it is designated for both male and female use and it is suitable for use by handicapped persons.

Auth: 50-60-203, MCA Imp: 50-60-203, MCA

9. The bureau is proposing these amendments to the rules to provide reasonably uniform standards and requirements for plumbing, clarification of definition of plumbing, maintenance work and prohibition of high lead solders and pipe as required by federal law.

10. The proposed amendment of 8.70.401, 8.70.404 and 8.70.407 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rules is located at pages 8-2041 through 8-2045, Administrative Rules of Montana)

"8.70.401 NATIONAL ELECTRICAL CODE (1) The department of commerce, building codes bureau, hereby adopts and incorporates herein by reference the standards adopted by the national fire protection association for electrical installations on May 19 21, ~~1983~~ 1986, appearing in Pamphlet NFPA 70 ~~(1984)~~ (1987), under the title of National Electrical Code ~~1984~~ 1987. The National Electrical Code ~~1984~~ 1987 is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code ~~1984~~ 1987 may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing to the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269."

Auth: 50-60-203(1), (2), 50-60-603(2), MCA Imp: 50-60-203, 50-60-601, 50-60-603, MCA

"8.70.404 ELECTRICAL PERMIT (1) through (3) will remain the same.

(4) Electrical permits on which the fees, as provided in ARM 8.70.407, are under ~~the~~ \$250 are valid for a period of one year from the date of issuance. Extensions of up to one year may be granted on a case by case basis by the bureau for good cause provided such extension is requested prior to expiration of the permit and payment is made of the renewal fee.

(5) will remain the same.

(6) Only installation, alteration, or repair of electrical signal or communications equipment owned or operated by either a public utility or a city is exempt from permitting by section 50-60-602, MCA. "City" as referenced in section 50-60-602, MCA, shall be interpreted to include state and local governments. Lighting projects, except those owned and installed by a public utility, are not exempt from the requirement to obtain an electrical permit.

(7) The exception to permit requirements listed in section 50-60-602(2), MCA, for regularly employed maintenance personnel doing maintenance work on the business premises applies to personnel on the regular payroll rather than personnel under contract. Maintenance work includes ordinary and customary in-plant or on-site installations, modification, additions, or repairs which shall be limited to: relamping

fixtures, replacing ballasts, trouble shooting motor controls replacing motors, breakers, magnetic starters, in a kind-for-kind manner. Also included are connection of specific items or specialized equipment that can be directly connected to an existing branch circuit panel by means of factory installed leads. However, if a new circuit is required to operate the equipment, or if the size of the supply conductors need to be increased, this will be considered new work."

Auth: 50-60-203, 50-60-603, MCA Imp: 50-60-603, 50-60-604, MCA

"8.70.407 ELECTRICAL INSPECTION FEES (1) The following is the schedule of electrical inspection fees:

<u>Type of Installation</u>	<u>Permit Fee</u>
--temporary construction service	no separate charge
--single-family dwellings or cabins (includes garage wired at the same time as house or cabin)	
100 to 300 amp service	130*
301 or more amp service	200*
<u>*Fee includes maximum of three inspections. Additional in- spections charged at requested electrical inspection rates.</u>	
--private property accessory buildings (garages, barns, sheds, etc.)	
up to 200 amp panel	40
201 to 300 amp panel	100
301 or more amp panel	130
--multi-family dwellings (duplex through 12 units) <del>per dwelling unit</del>	40* 100 per bldg*
<u>*Plus \$40 per unit, up to and includ- ing 12 units. For buildings contain- ing more than 12 units, use the commercial schedule that follows.</u>	
--multi-family dwellings (duplex through 12 units) <u>rewire or remodel only - per dwelling unit</u>	40
--interior rewire only or new addition to a home	40
--change of service	25
--mobile home installations (in a court)	25*
--mobile home installations (outside a court)	40*
<u>*Fee includes only one inspection. Reinspections require new permit.</u>	
--modular homes	
no basement	40
with a basement and/or garage	65
--mobile home courts and/or recreational vehicle parks (new, rewire, or addition)	
first 3 spaces <del>(per space)</del> (1-3 spaces)	15 45
additional spaces over 3 spaces <u>installed at the same time</u> (per space)	5

--new service only (livestock well,  
irrigation well, etc.) 40  
--irrigation pumps or machines per unit  
(one pump and/or one pivot) 35  
--permit renewal fee 40  
--all other installations (commercial,  
industrial, institutional, or for  
public use):

Cost of Electrical  
Installation

Fee

\$ 0 - \$ 500	\$30
\$ 501 - \$ 1,000	<u>\$60 30 for 1st \$500 plus</u> <u>6.0% of balance of con-</u> <u>struction cost</u>
\$ 1,001 - \$10,000	\$60 for 1st \$1,000 plus 2.0% of balance of con- struction cost
\$10,001 - \$50,000	\$240 for 1st \$10,000 plus .5% of balance of con- struction cost
\$50,001 or more	\$440 for 1st \$50,000 plus .3% of balance of con- struction cost

--temporary construction service (for  
commercial, industrial, institutional,  
or public use jobs only) 25  
NOTE: This additional \$25 fee is  
required in addition to the above  
inspection fees if a temporary service  
will be used, and is to be paid at the  
same time as the regular permit fee  
before construction begins.

(2) and (3) will remain the same."

Auth: 50-60-604, MCA Imp: 50-60-604, 50-60-607, MCA

11. The bureau is proposing these amendments to the rules to keep the state standard current with modern technology by adopting the latest available edition of the National Electrical Code and also to provide clarification of requirements for permitting, permit expiration, definition of electrical maintenance work and adoption of revisions to the electrical inspection fee schedule.

12. The proposed amendment of 8.70.501 will read as follows: (new matter underlined, deleted matter interlined)  
(full text of the rule is located at page 8-2055,  
Administrative Rules of Montana)

"8.70.501 INCORPORATION BY REFERENCE OF NFPA 501C/ANSI A119.2 STANDARD FOR RECREATIONAL VEHICLES (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the NFPA 501C/ANSI A119.2, Standards for Recreational Vehicles, 1982 1987 Edition. The NFPA 501C/ANSI A119.2, Standard for Recreational Vehicles, 1982 1987 Edition, is a nationally recognized model code for the construction of travel trailers, camping trailers, truck campers, and motor homes. A copy of the NFPA 501C/ANSI A119.2, Standard for Recreational Vehicles 1982 1987 Edition may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing to the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) will remain the same."

Auth: 50-60-401, MCA Imp: 50-60-401, MCA

13. The bureau is proposing this amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the Standards for Recreational Vehicles.

14. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than November 12, 1987.

15. Raymond Brault of Helena, Montana, will preside over and conduct the hearing.

BUILDING CODES BUREAU  
JAMES F. BROWN, BUREAU CHIEF

BY:

  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BUILDING CODES BUREAU

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of a rule pertaining ) OF 8.70.1401 APPLICATION FOR  
to applications ) FIREWORKS WHOLESALER PERMIT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 16, 1987, the Building Codes Bureau proposes to amend the above-stated rule.

2. The proposed amendment of 8.70.1401 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2185, Administrative Rules of Montana)

"8.70.1401 APPLICATION FOR FIREWORKS WHOLESALER PERMIT

(1) Applicants for fireworks wholesaler permits must submit an application form, prescribed by the department, along with a ~~\$110.00~~ \$55.00 application fee.

(2) will remain the same."

Auth: 50-37-104, MCA Imp: 50-37-104, MCA

3. This amendment is being proposed because the fee was originally set at \$110.00 anticipating a specific number of licensees. In reality the number of licensees has doubled the number anticipated. Therefore cost of administration is spread over more licensees and the fee per licensee is being reduced.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Building Codes Bureau, Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620, no later than November 12, 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 Building Codes Bureau, Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620, no later than November 12, 1987.

6. If the Bureau 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

-1736-

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

BUILDING CODES BUREAU  
W. JAMES KEMBEL, ADMINISTRATOR

BY: Geoffrey L. Brazier  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1987.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MILK CONTROL

In the Matter of Proposals	)	NOTICE OF PUBLIC HEARING ON
for a Statewide Pooling	)	A PROPOSED STATEWIDE POOLING
Arrangement With a Quota Plan	)	ARRANGEMENT: POOLING RULES
as a Method of payment of	)	
Milk Producer Prices	)	DOCKET #80-87

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING) AND TO ALL INTERESTED PERSONS:

1. On Friday, November 6, 1987 at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held in the Social Rehabilitation Services Auditorium at 111 Sanders, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to separate petitions to promulgate new rules (Petitions) and supporting proposals submitted by Larry Kaufman, president of Montana Dairymen's Association and Edward P. Waldner, producer for Vita Rich Dairy.

The petition submitted by Larry Kaufman was submitted on behalf of the Montana Dairy Association Board, Knute Kulbeck, owner of Vita Rich Dairy, and Jim Fleming of Equity Supply Co. The petition submitted by Edward P. Waldner was submitted on behalf of himself, producers Larry E. VanDyke and Peter Alberda, and distributors Edward P. McHugh and Knute Kulbeck.

3. The said petitions and attachments are too voluminous to reproduce or describe in detail in this notice. Copies of the documents mentioned in paragraph two (2) are available for inspection during regular business hours, at the offices of the Department of Commerce, Milk Control Bureau, (Bureau), 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0512. Copies will be provided upon request and payment of copying charges. Requests for copies should be made to the Department by visiting or writing the address given in this paragraph or by telephoning (406)444-2875.

4. The petition submitted by M.D.A. asks the Board to adopt new rules calling for the pooling of the returns from all grade 'A' milk marketed by milk producers in Montana to, or through, distributors regulated under the authority of the State of Montana, under terms described in material submitted with and attached to said petition.

The said petition also proposes that the distributors of pool monies to milk producers be made based on a quota arrangement which procedures are described in material submitted with and attached to the petition.

19-10/15/87

MAR Notice No. 8-86-21

That petition also contemplates that additional housekeeping and administrative rules will need to be adopted or implemented by the Bureau. Such additional housekeeping rules and administrative rules, if any will be the subject of separate proceedings which will be separately noticed.

The petition submitted by Edward P. Waldner provides for a provision to handle non-pool milk and the pooling of the revenue which would be generated from existing hauling rates from farm-to-plant to determine a uniform hauling charge to levy against each producer.

5. The petitions were submitted pursuant to section 81-23-302 and 2-4-315, MCA. The proceedings are contemplated in subsections 81-23-302 (14), MCA, in particular.

6. The rationale given for the proposal submitted by Larry Kaufman is to ensure an adequate supply of milk and dairy products for all consumers. It is asserted that a statewide pool and quota plan would stabilize the marketing of milk in Montana by spreading the cost of surplus among all producers, rather than a few, thus ensuring the survival of more producers.

The rationale for the proposal submitted by Edward P. Waldner is to put all handlers and others who deal in fluid milk and milk by-products on the same competitive footing. The intent of said petition is to increase producers take home pay slightly and to protect the supply of milk to individual or isolated pool milk processing plants by eliminating any advantage a dairy farmer might have by virtue of switching from his present plant or market to one that might have a lower hauling rate.

7. Specific factors which the Board will take into consideration in these proceedings will include, but not be limited to, the following:

A. Production and marketing practices which have historically prevailed statewide. (This is an express requirement of subsection 81-23-302 (14), MCA.)

B. Possible impact of the proposal upon individual producers supplying individual distributor plants.

C. Possible impact of the proposal upon the adequacy of the supply of milk within the state.

D. Possible impact upon the quality of milk available to consumers.

E. Possible impact upon wholesale and retail prices of milk.

F. Possible impact upon the ability of Montana producers to supply Montana's market requirements.

G. Whether the proposal will invite supplies of milk from neighboring states.

H. Possible impacts upon the supplies of milk in individual plant pools.

8. In its consideration on the merits of the Petition, the Board takes official notice as facts within its own knowledge of the following:

TABLE I

Producer prices in adjacent and surrounding areas - July 1987.

	CLASS I PRICE	CLASS II PRICE	CLASS III PRICE	BLEND PRICE
Oregon-Washington	\$12.95	\$11.29	\$11.17	\$11.86
Puget Sound-Inland	12.85	11.29	11.17	11.79
S.W. Idaho-E. Oregon	12.50	11.17	11.17	11.40
Western Colorado	13.00	11.17	11.17	12.46
Great Basin	12.90	11.17	11.17	12.04
Eastern Colorado	13.73	11.17	11.17	12.65
Lake Mead	12.60	11.19	11.17	12.01
Rapid City	13.05	11.17	---	12.23
North Dakota	12.55	11.17	10.72	11.24
Montana	13.78	11.25	9.57	12.14

TABLE II

Supplies of milk which are available in surrounding areas - July 1987.

	CLASS I UTILIZATION	CLASS II UTILIZATION	CLASS III UTILIZATION
Oregon-Washington	73,887,217	21,690,941	99,076,249
Puget Sound-Inland	83,764,096	22,274,343	135,248,843
S.W. Idaho-E. Oregon	10,937,294	6,411,845	45,964,033
Western Colorado	6,748,000	627,000	222,000
Great Basin	53,330,000	5,278,000	73,640,000
Eastern Colorado	53,104,000	16,924,000	27,496,000
Western North Dakota	7,875,666	579,539	3,224,117

\* indicates that Class II and III are combined

TABLE III

Blend prices that would have been paid producers under petitioners' proposal for August 1987.

	AT 3.50% ACTUAL BLEND PRICE RC'D:	AT 3.50% ACTUAL BLEND POOLING PRICE RC'D:	NET INCREASE OR DECREASE:
Black Hills Milk Prod.	12.26	12.36	.10
Clover Leaf Dairy	13.23	12.36	-.87
Country Classic Dairies	12.15	12.36	.21
Equity Supply Co.	12.39	12.36	-.03
Meadow Gold Dairy	12.37	12.36	-.01
Safeway Stores, Inc.	12.58	12.36	-.22
Vita Rich Dairy	13.05	12.36	-.69
Average of Plants	12.36	12.36	.00

19-10/15/87

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TABLE IV

Disparity of blend prices paid individual producers and differences in transportation rates for August 1987 include the following examples:

	BLEND PRICE PAID PER CWT <u>BEFORE FREIGHT</u>	FARM-TO-PLANT HAUL CHARGED <u>PER CWT</u>	NET BLEND PRICE PAID PER CWT AFTER <u>FREIGHT</u>
Black Hills Milk Prod.	12.30	.86	11.44
Clover Leaf Dairy	13.16	.79	12.37
Country Classic Dairies	12.02	.74	11.28
Equity Supply Co.	12.10	.38	11.72
Meadow Gold Dairy	12.20	.83	11.37
Safeway Stores, Inc.	12.38	.65	11.73
Vita Rich Dairy	12.71	1.37	11.34
Average of Plants	12.20	.80	11.40

TABLE V

Costs of transporting milk in ARM Rule 8.86.301 (9):

<u>DISTANCE IN MILES</u>	<u>MAXIMUM FREIGHT ALLOWANCE</u>
25 to 50	\$ .25
51 to 75	.40
76 to 100	.50
101 to 150	.64
151 to 200	.85
201 to 250	1.06
251 to 300	1.28
301 to 350	1.49

The Board takes notice that more than 78% of the milk produced in the United States is paid for under one form of pooling arrangement or another.

9. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau no later than November 16, 1987.

10. Geoffrey Brazier, Esq., 1424 Ninth Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full Board will sit in convened session at the hearing.

11. Authority for the Board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302(1)(14), MCA.

MONTANA BOARD OF MILK CONTROL  
Curtis C. Cook, Chairman

BY: William E. Ross  
William E. Ross, Bureau Chief

Certified to the Secretary of State October 5, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

In the matter of the repeal of	)	NOTICE OF PROPOSED REPEAL OF
rules concerning the minimum	)	8.94.101; 8.94.201; 8.94.601
contents of local subdivision	)	through 8.94.605; 8.94.1001
regulations adopted under the	)	through 8.94.1008; 8.94.
Montana Subdivision and	)	1401; 8.94.1801 through 8.
Platting Act	)	1803; 8.94.2201; and 8.94.
	)	2601 BY LEGISLATIVE ACTION

TO: All Interested Persons:

1. On November 16, 1987, the Local Government Assistance Division will repeal the above-stated rules concerning the minimum contents of local subdivision regulations adopted under the Montana Subdivision and Platting Act.

2. The rules to be repealed are located at pages 8-3251 through 8-3382 of the Administrative Rules of Montana.

3. The Local Government Assistance Division is repealing these rules as directed by the 1981 legislature in Section 1, Chapter 236, Laws of 1981, the text of which sets forth the reasons for repealing the rules.

LOCAL GOVERNMENT ASSISTANCE  
DIVISION

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

Certified to the Secretary of State, October 5, 1987.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the repeal )	NOTICE OF PROPOSED
of rules for the operation )	REPEAL OF RULES
of postsecondary vocational- )	FOR THE OPERATION
technical centers )	OF POSTSECONDARY
)	VOCATIONAL-TECHNICAL
)	CENTERS

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On December 1, 1987, the Superintendent of Public Instruction proposes to repeal rules concerning the operation of postsecondary vocational-technical centers. The Superintendent will repeal Chapter 43 of Title 10, Postsecondary Vocational Education.

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

10.43.101 DEFINITIONS  
10.43.201 STUDENT FEES  
10.43.202 TUITION FOR POSTSECONDARY VOCATIONAL-TECHNICAL  
EDUCATION CENTERS  
10.43.203 REFUNDING OF TUITION  
10.43.204 REVIEW OF FEES, TUITION, AND CHARGES  
10.43.301 UNIFORM GOVERNANCE AND ADMINISTRATIVE SYSTEM  
FOR POSTSECONDARY CENTERS  
10.43.302 LOCAL ADMINISTRATION  
10.43.401 INSTRUCTOR AND DIRECTOR QUALIFICATIONS

AUTH: 20-7-301, MCA      IMP: 20-16-101, MCA

3. The 1987 Montana Legislature transferred authority for the operation of the vocational-technical centers from the Superintendent of Public Instruction to the Board of Regents. Therefore, the Superintendent's rules are being repealed.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Gene Christiaansen, Assistant Superintendent for Vocational Education Services, Office of Public Instruction, State Capitol Room 106, Helena, Montana 59620, no later than November 15, 1987.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Gene Christiaansen,

Assistant Superintendent, Office of Public Instruction,  
State Capitol Room 106, Helena, Montana 59620 no later than  
November 15, 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 the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the number of administrators, teachers, and students in the postsecondary vocational-technical centers in Montana.

BY



Ed Argenbright  
State Superintendent

Certified to the Secretary of State, October 5, 1987.



BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PROPOSED
of rules for the establishment	)	ADOPTION OF RULES
of Clearing Accounts in School	)	FOR ESTABLISHMENT OF
Districts	)	CLEARING ACCOUNTS
	)	FOR USE IN SCHOOL
	)	DISTRICTS

No Public Hearing  
Contemplated

TO: All Interested Persons

1. On December 1, 1987, the Superintendent of Public Instruction proposes to adopt rules to establish "clearing" accounts, where expenditures are accumulated from various affected funds and a single warrant is drawn payable to the employee or vendor. These rules will be placed in Chapter 10 of Title 10, and the chapter will be re-named "Special Accounting Practices."

2. The proposed rules provide as follows:

RULE I ESTABLISHMENT A single payroll or claims clearing account may be established for elementary and high school districts.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE II EXPENDITURES The monthly expenditures recorded in each fund must equal the amount to be transferred to the clearing accounts. The county treasurer must be notified by letter of the monthly transfers to be made along with a list of warrants written or a duplicate of each warrant.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE III REPORTS Reports must be prepared that support the amounts transferred from each fund to the clearing account. The report(s) must provide a trail that identifies the fund(s), appropriation item(s) charged and the claim(s) or invoice(s) being paid for each warrant issued from the clearing account. Such reports will meet the requirements of 20-9-221(1), MCA.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE IV WARRANTS Warrants issued from the clearing account must equal the total of the amounts transferred to the clearing accounts. The warrants should be issued immediately following the notification to the county treasurer of the amounts to be transferred from each fund.

19-10/15/87

MAR Notice No. 10-2-57

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE V RECONCILIATION The clearing accounts shall be reconciled each month. The total of the warrants outstanding shall equal the cash remaining in each clearing account. An exception may be necessary for quarterly payroll obligations not yet paid.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE VI INSUFFICIENT CASH AVAILABLE If the sum of the cash available in all budgeted funds of the district is insufficient to finance the transfers to the clearing accounts, a warrant must be issued from the depleted budgeted fund(s) for transfer to the clearing accounts. This transfer warrant must be registered by the county treasurer as outlined in 20-9-212(8), MCA. As an alternative, the district may issue revenue anticipation notes through the Economic Development Board of the Department of Commerce. In addition, Section 7-6-2701, MCA allows counties to invest in the registered warrants of school districts.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE VII TRANSFERS Transfers cannot be made from non-budgeted funds in excess of the cash available.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE VIII VOIDED WARRANTS If a warrant is subsequently voided, the warrant must be deleted from the payroll or claims accounts' outstanding warrant list and the cash returned to the fund(s) which had originally transferred the money. The appropriate expenditure account should be credited in these funds.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

RULE IX INTEREST EARNED As warrants are written at the same time the monies are transferred, there will be very little, if any, money in the clearing accounts. However, interest earned on the investment of money in the payroll and claims clearing accounts cannot be deposited to the accounts. Agency accounts such as these cannot earn revenue. The interest earned is distributed back to the funds from which the money is drawn.

Auth: 20-9-220(2), MCA IMP: 20-9-220, MCA

3. Local government expenditures are often financed through several funds. In order to avoid the issuance of numerous warrants to a single claimant, state law and governmental accounting standards allow the establishment of

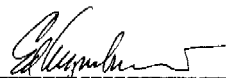
clearing accounts, where expenditures are accumulated from various affected funds and a single warrant is drawn payable to the employee or vendor. The 1987 Montana Legislature gave to the Superintendent of Public Instruction the authority to adopt rules for the implementation of clearing account procedures in conjunction with Section 22-7-304, MCA, which authorizes the Department of Commerce to prescribe the accounting methods for school districts.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Gene Christiaansen, Assistant Superintendent for Administrative Services, Office of Public Instruction, State Capitol Room 106, Helena, Montana 59620, no later than November 15, 1987.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Gene Christiaansen, Assistant Superintendent, Office of Public Instruction, State Capitol Room 106, Helena, Montana 59620, no later than November 15, 1987.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10 percent 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 the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the number of school districts in the state of Montana.

BY



Ed Argenbright  
State Superintendent

Certified to the Secretary of State, October 5, 1987.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the Repeal )	NOTICE OF PROPOSED REPEAL
of Rules 23.3.301, 23.3.302, )	OF OUTDATED AND UNNECESSARY
23.3.303, 23.3.304, 23.3.305, )	RULES CONCERNING THE
23.3.306, 23.3.307, 23.3.311, )	HIGHWAY PATROL
23.3.412, 23.3.413, 23.3.414, )	
and 23.3.415, Highway Patrol )	NO PUBLIC HEARING
Qualifications and Procedures.)	CONTEMPLATED

TO: All Interested Persons.

1. On December 10, 1987, the department of justice proposes to repeal rules 23.3.301, 23.3.302, 23.3.303, 23.3.304, 23.3.305, 23.3.306, 23.3.307, and 23.3.311, concerning qualifications for highway patrol officers, and 23.3.412, 23.3.413, 23.3.414, and 23.3.415, concerning highway patrol procedures regarding abandoned vehicles, aircraft landings on highways, confidentiality of chemical tests, and blocking highways.

2. The rules proposed to be repealed are on pages 23-151 to 23-156 and 23-178 to 23-179 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules. The repeal is necessary because the rules are unnecessary, outdated, and do not conform to current law.

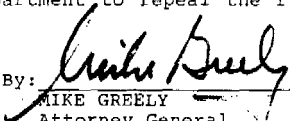
4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Kathy Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, no later than December 1, 1987.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Kathy Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, no later than December 1, 1987.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be over 25 persons based on the thousands of persons who drive on the highways of this state and the thousands of persons eligible to apply for positions as highway patrol officers.

7. The authority of the department to repeal the rules is based on section 44-1-103, MCA.

By:

  
MIKE GREELY  
Attorney General

Certified to the Secretary of State, October 5, 1987.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rule I relating to Small )	the PROPOSED ADOPTION of Rule
Business Liability Funds. )	I relating to Small Business
)	Liability Funds.

TO: All Interested Persons:

1. On November 24, 1987, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rule I, relating to Small Business Liability Funds.

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

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

RULE I. SMALL BUSINESS LIABILITY FUNDS (1) Tax deductible administrative costs as provided by 15-30-127(2) and 15-31-117(2), MCA are limited to those that are allowable under the Internal Revenue Code and are ordinary and necessary costs directly connected with or pertaining to the management or maintenance of the principal of the fund.

(2) Administrative costs are tax deductible by:

(a) a cash basis taxpayer in the year they are paid; or  
(b) an accrual basis taxpayer in the tax year in which the accrual is made.

(3) Contributions to and administrative costs of an independent liability fund shall be reductions of income in arriving at Montana adjusted gross income.

(4) Upon termination of the independent liability fund the trustee shall file with the department information returns (federal form 1099 or Montana form 1-A). The returns must provide the amount of any distribution, to whom the distribution was made and the calendar year of the distribution for any distribution made from the principal or income of the fund. AUTH, 15-30-305 MCA; Auth Extension Sec. 20. Ch. 564, L. 1987, Eff. 4/20/87; IMP, 15-30-107, 15-30-127, 15-31-117 and 15-31-118 MCA.

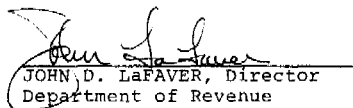
4. The Department is proposing rule I to clarify what costs qualify as tax deductible administrative costs. It explains how these costs and contributions to the fund are to be deducted on a tax return. This clarification is needed to insure uniform treatment of the cost and contributions when they are deducted. Clarification is also provided concerning the duties and responsibilities of a trustee upon termination of a fund to insure that taxable disbursements from a fund are properly reported to the Department.

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:

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than November 27, 1987.

6. R. Bruce McGinnis, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 10/5/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF EXTENSION OF TIME
MENT of ARM 42.15.311 and	)	FOR COMMENT PERIOD to ARM
42.17.103 relating to With-	)	42.15.311 and 42.17.103
holding from Retirement Plan	)	relating to Withholding
Benefits.	)	Retirement Plan Benefits.

TO: All Interested Persons:

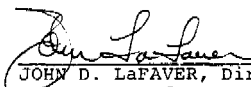
1. On September 24, 1987, at 9:30 a.m., a public hearing was held in Room 212 of the Department of Justice Building, Corner of Sanders and Sixth Avenue, at Helena, Montana, to consider the amendments of ARM 42.15.311 and 42.17.103 relating to withholding from retirement plan benefits.

2. The American Council of Life Insurance, through its attorneys, Phillip E. Stano and Thomas K. Hopgood, requested the comment period be extended beyond September 28, 1987. The reason for this request was to allow the ACLI task force to address the notice aspect and prepare a response to the proposed rules. This task force will be meeting in Washington D.C. on October 8 and 9, 1987.

3. Good cause appearing, the department will extend the period to receive written comments, data or arguments pertaining to these rules to October 23, 1987.

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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620  
no later than October 23, 1987.

  
\_\_\_\_\_  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 10/5/87.



BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PROPOSED AMEND-
of rules pertaining to the )	MENTS TO RULES NUMBERED
conduct of certain specific )	44.9.202, 44.9.203, 44.9.
elections by mail ballot )	309, 44.9.312 RELATING TO
	PROCEDURES FOR CONDUCTING
	ELECTIONS BY MAIL BALLOT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 14, 1987, the Secretary of State proposes to amend rules numbered 44.9.202, 44.9.203, 44.9.309 and 44.9.312 to add specific requirements for school districts using the mail ballot option for their elections.

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

44.9.202 WRITTEN PLAN SPECIFICATIONS

(1)(a) through (1)(e) remain the same.

(f) if the election is for school district purposes designate who will conduct the election--school district clerk (election administrator) or county election administrator;

(1)(f) through (1)(n) remain the same but shall be renumbered (1)(g) through (1)(o).

(e)(p) a brief narrative of the procedures to be followed from the time the ballots are received from the electors until they are tabulated; if the election is for school district purposes the narrative must include arrangements made for transfer of ballots from/to the school district clerk (election administrator) and the county election administrator for verification of signatures.

(1)(p) through (1)(r) remain the same but shall be renumbered (1)(q) through (1)(s).

AUTH: 13-19-105, MCA IMP: 13-19-205, MCA

44.9.203 WRITTEN TIMETABLE SPECIFICATIONS

(1) The election administrator shall prepare a written timetable for the conduct of the mail ballot election. The timetable shall be in check-off form. It may contain additional activities and may be arranged in a different chronological order but otherwise shall be in substantially the following form:

# DAYS PRECEDING ELECTION	CALENDAR DATE	ACTIVITY
		Initial conversations with parties involved including postal officials, your staff, and officials of the jurisdiction.
		Written plan prepared.
		Copy of written plan to governing body.
		Last day for governing body to opt out.
		Submission of written plan to secretary of state's office.
		Approval by secretary of state.
		Ordering of ballot envelopes.
		Layout ballot.
		Materials to printer (including instructions to voters).
		Publish notice specifying close of registration as provided by 13-2-301(b).
		Close of registration as provided by 13-2-301(a).
		Notification of news media.
		<del>Publish notice of election as provided by 13-4-404(3).</del>
		Complete arrangements for addressing envelopes.
		Labels of eligible electors' names and addresses prepared and proofed.
		Work space organized with individual process areas labeled and all supplies such as mail trays in place.
		Poll books prepared.
		All logs and necessary forms prepared.
		Receipt of ballot and other printed material from printer.
		Notify post office of projected mailing date.
		Preparation of mail ballot packets for mailing.
		Ballots mailed.
		Extra personnel hired, if any.
		Extra personnel trained, if any.
		Begin initial verification of signatures.
		Last day for a notification of electors by mail.
		Election day.

AUTH: Sec. 13-19-105, MCA IMP: 13-19-205, MCA

44.9.309 PROCEDURES FOR TRANSPORTING BALLOTS (1) Whenever the mail ballot option is used, ballots may need to be transported from places of deposit ~~of~~, to and from the post office, or in the instance of school district elections, conducted by the school district clerk (election administrator), to and from the county election administrator.

(2) and (3) remain the same.

AUTH: Sec. 13-19-105, MCA IMP: 13-19-205, MCA

44.9.312 SIGNATURE VERIFICATION PROCEDURE (1) For the purpose of school district elections conducted by the school district clerk (election administrator) signature verification shall be conducted by the county election administrator. This is accomplished as follows:

(a) arrangements shall be made by the school district clerk (election administrator) for the transport of ballots to and from the county election administrator for signature verification in compliance with ARM 44.9.309 and 44.9.310;

(b) unopened return/verification envelopes shall be counted by the school district clerk (election administrator) placed in transport boxes and the number of return/verification envelopes recorded on the ballot transport logs which are to be sealed inside the transport boxes;

(c) the county election administrator shall break the seal on the transport boxes and verify signatures on the return verification envelopes;

(d) the county election administrator shall record on the transport box logs the number of signatures verified as valid and the number of those not validated. Such numbers must balance with the school district count recorded on the transport logs;

(e) the unvalidated return/verification envelopes shall be banded together, marked "to be voided and not counted" and placed in the transport boxes with the valid return/verification envelopes. The transport boxes shall be resealed and returned to the school district clerk (election administrator) for counting or disposition as provided by law;

(f) those ballots not validated shall be recorded by the school district clerk (election administrator) as provided in ARM 44.9.313;

(g) cost of verifying signatures shall be charged to the school district at a rate to be agreed upon by the school district clerk (election administrator) and the county election administrator.

(1) through (5) remain the same but shall be renumbered (2) through (6).

AUTH: Sec. 13-19-105, MCA IMP: 13-19-205, MCA

3. The Secretary of State proposes to amend rules numbered 44.9.202, 44.9.203, 44.9.309 and 44.9.312 because Chapter 10, Laws of 1987 added school districts to the list of jurisdictions having the authority to use the mail ballot option.

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

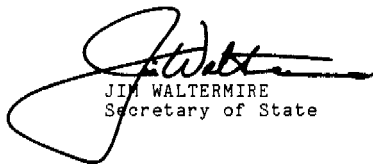
Marian Campbell, Elections Deputy  
Secretary of State  
Room 225, State Capitol  
Helena, MT 59620

no later than November 12, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Marian Campbell at the above address no later than November 12, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 60.

Dated this 1st day of October, 1987



JIM WALTERMIRE  
Secretary of State

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 46.13.301 and	)	THE PROPOSED AMENDMENT OF
46.13.502 and adoption of	)	RULES 46.13.301 AND
Rule I pertaining to estab-	)	46.13.502 AND ADOPTION OF
lishment of a Percentage of	)	RULE I PERTAINING TO ESTAB-
Income Plan (PIP) in Ravalli	)	LISHMENT OF A PERCENTAGE OF
County	)	INCOME PLAN (PIP) IN
	)	RAVALLI COUNTY

TO: All Interested Persons

1. On November 12, 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 46.13.301 and 46.13.502 and adoption of Rule I pertaining to establishment of a Percentage of Income Plan (PIP) in Ravalli County.

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

46.13.301 DEFINITIONS OF HOUSEHOLD

(1) ~~Financial--eligibility--standards---are--implemented throughout the--state--and--are--applied to--applicants on the basis of--households.~~

(2) A "household" consists of all individuals who share a single primary heating source and who live in a single shelter or rental unit.

(3a) An unborn child may not be counted as a member of the household.

(2) "PIP household" means a household in Ravalli county which utilizes the Montana Power Company for primary home energy needs and which does not have these costs included in its rent.

(3) "Co-payment" means the percentage of the PIP household's income that the household is required to pay each month toward the household's heating bill for the purpose of obtaining LIEAP benefits.

(4) "Arrearage" means the outstanding balance of the PIP household's energy bill at the start (October 1) of each program year.

(5) "Default" means the non-payment of a PIP co-payment.

(6) "Cure" means a PIP household's retroactive co-payment for the preceeding month.

(7) "Weather normalized" means a consideration of the difference of yearly temperature experienced within a given area.

AUTH: Sec. 53-2-201 MCA  
IMP: Sec. 53-2-201 MCA

46.13.502 SUPPLEMENTAL ASSISTANCE Subsections (1) through (1)(b) remain the same.

(2) A limited fund will be available from which supplemental grants can be made to PIP households. Applications for emergency funds will be required.

(a) Recipients of PIP supplemental grants are ineligible to receive other LIEAP supplemental assistance.

(b) PIP supplemental grants are made directly to the utility and are considered to be a household payment.

(c) PIP supplemental grants will be made to households experiencing loss of employment or verifiable medical expenses which lead to an inability to meet the required monthly co-payment.

(d) In case of shortage of funds, priorities and restrictions may include, but are not limited to, households with:

(i) young children;

(ii) elderly; or

(iii) household member(s) experiencing a medical emergency.

(e) The amount of any single PIP supplemental grant will not exceed the amount of one single PIP co-payment.

AUTH: Sec. 53-2-201 MCA  
IMP: Sec. 53-2-201 MCA

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

RULE I PERCENTAGE OF INCOME PLAN (PIP) (1) The 50th Montana legislature directed that the department implement a pilot percentage of income plan (PIP) for LIEAP.

(2) Under the PIP demonstration project, PIP households in Ravalli county will be required to make equal, regular monthly payments toward their home energy bills, based upon a percentage of their income. In exchange for those percentage of income payments, the PIP household will be provided LIEAP benefits. Households defined as PIP households must participate in PIP.

(a) For purposes of the PIP, these equal, regular monthly payments will be called "co-payments".

(b) PIP co-payments will be spread out over 12 months so that PIP households will make regular monthly payments which will be lower than actual bills during the high use winter months.

(3) The co-payment matrix for the PIP project is as follows:

MONTANA POWER COMPANY (NPC) - TOTAL ENERGY SUPPLIER

Number in Household	-- Income --				
	<u>\$0-\$2500</u>	<u>\$2501-\$4800</u>	<u>\$4801-\$7600</u>	<u>\$7601-\$9200</u>	<u>\$9201+</u>
1	8.7%	6.8%	6.1%	5.7%	N/A
2	8.7%	6.7%	6.0%	5.5%	4.7%
3	8.6%	6.6%	6.0%	5.5%	4.7%
4	8.6%	6.6%	5.9%	5.3%	4.6%
5	8.5%	6.5%	5.9%	5.3%	4.6%
6+	8.4%	6.5%	5.8%	5.3%	4.6%

SECONDARY HEAT SOURCE OTHER THAN MPC

Number in Household	-- Income --				
	<u>\$0-\$2500</u>	<u>\$2501-\$4800</u>	<u>\$4801-\$7600</u>	<u>\$7601-\$9200</u>	<u>\$9201+</u>
1	4.3%	4.7%	4.1%	3.8%	N/A
2	4.3%	4.6%	4.1%	3.8%	3.5%
3	4.3%	4.6%	4.1%	3.8%	3.5%
4	4.3%	4.6%	4.1%	3.7%	3.5%
5	4.3%	4.5%	4.1%	3.7%	3.5%
6+	4.3%	4.5%	4.1%	3.7%	3.5%

(4) The payment for the monthly difference between the co-payment amount and the actual bill will be made to the utility by the department after the PIP household pays its co-payment.

(5) Income eligibility will be established in accordance with the regular rules for LIEAP except that a PIP household experiencing a significant decrease in income may have their co-payment redetermined one time during each program year.

(a) A PIP household's accumulated "pre-PIP" arrearages will be amortized and forgiven with one-half of the household's accumulated arrearages forgiven each program year.

(i) PIP households failing to maintain their obligations under the PIP will not obtain arrearage forgiveness for the period in which the default occurred unless the default is cured.

(b) PIP households whose yearly co-payment amounts exceed their annual energy bills will not receive LIEAP payments.

(i) These households may receive emergency benefits and arrearage forgiveness if they have paid their co-payments.

(c) Households applying after the start of the program year must pay co-payments for all of the prior months in the program year before receiving PIP benefits.

(d) A PIP household removed from LIEAP for uncured defaults in a prior program year will once again be eligible for LIEAP only if they pay the higher of the co-payment or

their actual utility bill for all months the household retained utility service and a co-payment was not made.

(6) A conservation incentive cap on PIP benefits will be administered as follows:

(a) PIP reimbursement for consumption will be limited to a level equal to consumption at the service address in the immediately preceding LIEAP program year plus 15 percent. Usage will be weather-normalized in determining whether the cap has been exceeded.

(b) A PIP household may be exempt from the consumption cap under the following circumstances:

(i) the household size increases;

(ii) the household's wage earner(s) experience a serious illness which results in a decrease in income;

(iii) the consumption is beyond the household's ability to control; or

(iv) the household's housing has been condemned or has housing code violations that adversely affect energy consumption.

(c) The department will determine at the year's end whether the cap on usage was exceeded. The billing for any excess will be the responsibility of the household to pay and must be paid by the end of the next program year.

(7) A default on a co-payment will result in no LIEAP payment to the utility for the affected month.

(a) A PIP household has one month to cure a co-payment default.

(i) Cure of a co-payment default places the household in the same condition as though no default had occurred.

(ii) Households which fail to cure two co-payment defaults will be removed from PIP for the remainder of the program year.

(iii) Each missed co-payment is considered to be a separate co-payment default subject to possible future cure.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

3. The department was directed by the 1987 legislature to implement a pilot percentage of income plan (PIP) for LIEAP within the next biennium and to report to the next legislature the feasibility of adopting such a system statewide. Therefore, the department has determined that a pilot PIP program will be tested on a demonstration basis in Ravalli County.

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 November 12, 1987.



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

for Benjamin F. John  
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 5, 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 46.12.504	)	THE PROPOSED AMENDMENT OF
pertaining to inpatient	)	RULE 46.12.504 PERTAINING
hospital services, require-	)	TO INPATIENT HOSPITAL
ments	)	SERVICES, REQUIREMENTS

TO: All Interested Persons

1. On November 4, 1987, at 11:00 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 Rule 46.12.504 pertaining to inpatient hospital services, requirements.

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

46.12.504 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

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

(i) For persons eligible for or who have applied for medicaid benefits prior to hospitalization, the provider must obtain authorization for each admission ~~and--length--of--stay~~ from the department or its designee ~~for--each--admission~~ prior to or during the hospitalization;

(ii) Hospitals or hospital units not reimbursed under the prospective payment system by medicaid must also obtain authorization for the entire length of stay for each admission if the stay exceeds the initial authorization. This authorization must be obtained during the hospitalization.

Subsections (3)(a)(ii) through (4)(b) remain the same. Subsections (3)(a)(iii) and (iii) will be recategorized as (3)(a)(iii) and (iv), respectively.

AUTH: Sec. 53-6-113 MCA

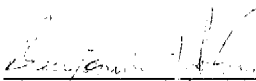
IMP: Sec. 53-6-141 MCA

3. The Department recently amended the reimbursement method for certain inpatient hospital services from a retrospective cost-based system to a prospective payment system. The prospective payment system is designed to reimburse a fixed amount per discharge with little consideration to the actual length of stay. Therefore, the Department has determined that the requirement for continued length of stay authorization for hospitals reimbursed prospectively is unnecessary. It is the Department's intent to review long lengths of stay for these affected hospitals retroactively.

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 November 12, 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 C. G. H. J., 1987.

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

In the matter of the amend-	)	NOTICE OF THE PUBLIC HEAR-
ment of Rule 46.12.3803	)	ING ON THE PROPOSED AMEND-
pertaining to medically	)	MENT OF RULE 46.12.3803
needy income standards	)	PERTAINING TO MEDICALLY
	)	NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On November 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 amendment of Rule 46.12.3803 pertaining to medically needy income standards.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS (1) 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. These amounts are the adjusted income for the maintenance of the person or family. The amounts stated are inclusive of a shelter obligation;~~ meet:

(a) non-financial criteria of ARM 46.12.3802;

(b) resource criteria of ARM 46.12.3805; and

(c) income criteria of ARM 46.12.3804.

(2) SSI and AFDC-related persons and families must pay co-payments as provided for in 46.12.204.

(3) The following table lists the amounts of adjusted income, based on family size, which may be retained for the maintenance of SSI and AFDC-related families. Since families are assumed to have a shelter obligation, an amount for shelter obligation is included in each level.

MEDICALLY NEEDY INCOME LEVELS  
FOR SSI and AFDC-RELATED INDIVIDUALS  
AND FAMILIES

[Table remains the same.]

AUTH: Sec. 53-6-113 MCA

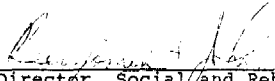
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. This proposed change will clarify existing eligibility requirements. The change will be applied retroactively to August 1, 1987, to comply with federal requirements.

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 November 12, 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 Carol A. V., 1987.

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

In the matter of the )  
adoption of rules pertaining ) NOTICE OF ADOPTION  
to group coordination of ) OF RULES  
benefits )

TO: ALL INTERESTED PERSONS

1. On July 16, 1987, the State Auditor and Commissioner of Insurance (commissioner) published notice of public hearing on the proposed adoption of Rules I through IV (subchapter 24, 6.6.2401 through 6.6.2405) pertaining to group coordination of benefits at page 940, 1987 Montana Administrative Register, issue no. 13. The commissioner published an amended notice of public hearing at page 1371, 1987 Montana Administrative Register, issue no. 16.

2. The commissioner has adopted the rules with the following changes:

~~RULE I~~/I/6.6.2401 PURPOSE AND SCOPE same as proposed rules.

~~6.6.2402~~ APPLICABILITY (1) These rules apply to each group contract, providing health care benefits, issued or delivered in Montana after the effective date of these rules.

(2) A group contract, providing health care benefits, issued or delivered in Montana before the effective date of these rules must be brought into compliance with these rules by the later of:

(a) the next anniversary date or renewal date of the group contract; or

(b) the expiration of any applicable collectively bargained contract pursuant to which it was written.

~~RULE II~~/II/6.6.2403 DEFINITIONS (1)(a)-(1)(e)(iii) same as proposed rules.

(1)(e)(iv) group-type contracts. Group-type contracts are contracts that are not available to the general public and may be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts may be included in the definition of plan, at the option of the insurer, ~~or~~ the health service corporation, or the service provider, and its contract-client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, "franchise" or "blanket"). The use of payroll deductions by the employee, subscriber, or member to pay for the coverage does not, of itself, make an individual contract part of a group-type plan. This description of group-type contracts is not intended to include individually underwritten and issued, guaranteed renewable policies that may be purchased through payroll deduction at a premium savings to the insured.

(1)(f)-(7) same as proposed rules.

~~RULE III~~/III/6.6.2404 CONTRACT PROVISION (1)-(4)(c)(ii)(C) same as proposed rules.

Montana Administrative Register

19-10/15/87

(4)(c)(ii)(D) The benefits of a plan that covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan that covers a person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this subsection does not apply.

(4)(c)(ii)(E)-(4)(d)(i) same as proposed rules.

(4)(d)(ii) The benefits of this plan are reduced when the allowable expenses in a claim determination period ~~exceeds~~ are less than or equal to the sum of:

(4)(d)(ii)(A)-(4)(g) same as proposed rules.

XXX/IV/6.6.2405 RULES FOR COORDINATION OF BENEFITS same as proposed rules.

3. The commissioner received written and oral comments regarding the proposed rules. The comments and the commissioner's responses are as follows:

(a) Robert J. Steil, Health Insurance Association of America (HIAA), asked that the NAIC Model Coordination of Benefits Regulation (NAIC Model) be adopted in its entirety. William N. Jensen, Blue Cross/Blue Shield (BC/BS), agreed.

The commissioner declined to adopt the NAIC Model in its entirety for reasons following each specific comment about an omission.

(b) HIAA and BC/BS suggested that the rules should contain an effective date.

The commissioner noted that, unless a different effective date is specified, administrative rules are effective the day following publication in the Montana Administrative Register. ARM 1.3.208(3). To accommodate compliance with the rules, however, the commissioner adopted 6.6.2402.

(c) HIAA suggested amending Rule II(1)(e)(iv) to make it consistent with the NAIC Model by replacing "health service corporation" with "service provider".

The commissioner added "service provider" to Rule II(1)(e)(iv).

(d) HIAA and BC/BS suggested amending Rule II(1)(f) to conform with the NAIC Model and provide: "Plan" may mean the medical benefits coverage in group, and group-type, and individual automobile 'no-fault' and traditional fault-type contracts."

The commissioner did not amend Rule II(1)(f) because the purpose of these rules is to address coordination of benefits among group or group-type policies. While it is logical to permit coordination of benefits between group insurance policies, it is not logical to permit coordination of benefits between a group insurance policy and the medical benefits coverage of an individual automobile insurance policy. If "individual automobile" were included in "plan", the individual automobile policy would always be the primary plan because an individual automobile policy does not include a coordination of benefits provision. See Rule III(4)(c). The Montana Supreme Court has recognized that an individual who specifically pays for medical benefits coverage of an

individual automobile policy has a right to collect under that coverage despite coverage under another group insurance contract.

(e) HIAA suggested amending Rule II(1)(i) because excluding blanket accident-type coverage from "plan" deviates from the NAIC Model.

The commissioner declined to delete "blanket accident type only coverage" from Rule II(1)(i) because deviation from the NAIC Model is not compelling enough to warrant amendment.

(f) BC/BS noted that Rule III(4) differs from the NAIC Model. HIAA noted that the first sentence of Rule III(4) is not contained in the NAIC Model and suggested that "risk resident or to be performed in this state" is ordinarily found in property and casualty, not health, insurance.

Rule III(4) differs from the NAIC Model to clarify to which plans the rules apply. In Montana, "risk resident or to be performed in this state" applies to all kinds of insurance. See 33-1-102, MCA.

(g) HIAA noted that the following language contained in the NAIC Model is omitted from the end of Rule III(4)(c): "If the other plan does not have the rule described in subsection (4)(c)(ii)(B)(I) of Rule III, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule of the other plan will determine the order of benefits." He suggested that it be added because only 21 states have adopted the birthday rule, the gender provision serves as a tie breaker when coordinating benefits between birthday rule and non-birthday rule insurance policies.

The commissioner declined to amend Rule III(4)(c) as suggested because gender may not be considered in determining insurance benefits in Montana. See 49-2-309, MCA. Also, as of July, 1987, 32 states have adopted the birthday rule. The NAIC Model Rule Coordinator has indicated that the gender provision was included in the NAIC Model for transition purposes because most insurers were not familiar with the birthday rule when it was first made a part of the NAIC Model. Most insurers are familiar enough with the birthday rule now to justify omitting the gender provision from coordination of benefit rules.

(h) BC/BS and HIAA noted that the following language contained in the NAIC Model was omitted from the end of Rule III(4)(c)(ii)(D): "If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this subsection does not apply." HIAA argued that including that sentence in the rules would provide a tie breaker when coordinating benefits between a plan covering an employee who is not laid off or retired and one covering a laid-off or retired employee. BC/BS stated that omitting the sentence makes it difficult to determine primacy between a plan for active employees and one with retirees.

The commissioner amended Rule II(4)(c)(ii)(D).


(i) HIAA stated that Rule III(4)(d)(ii) is inconsistent with the NAIC Model Act by providing that COB applies when expenses exceed benefits, rather than when benefits exceed expenses.



The commissioner agreed that the intent of the NAIC Model was inadvertently reversed and amended Rule III(4)(d)(ii).

(j) BC/BS noted that Rule IV(2) contains only one of three coordination of benefits methods. HIAA argued that making the three methods available would place insurers on equal footing with self-insured employers.

The commissioner declined to make the two omitted alternative levels of payment by secondary carriers available because making them available would be detrimental to Montana insurance consumers. The commissioner notes that, as of July, 1987, only seven states make the two omitted alternatives available.

  
Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

Certified to the Secretary of State this 5th day of October, 1987.

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

In the matter of the	)	
adoption of rules pertaining	)	NOTICE OF ADOPTION
to health maintenance	)	OF RULES
organizations	)	

TO: ALL INTERESTED PERSONS

1. On August 13, 1987, the State Auditor and Commissioner of Insurance (commissioner) published notice of public hearing in the proposed adoption of Rules I through X (subchapter 25, 6.6.2501 through 6.6.2510) pertaining to health maintenance organizations at page 1238 of the 1987 Montana Administrative Register, issue no. 15.

2. The commissioner has adopted the rules with the following changes:

~~RULE I/6.6.2501~~ PURPOSE same as proposed rules.

~~RULE II/6.6.2502~~ APPLICABILITY AND SCOPE (1) same as proposed in Rule II--combined Rule III with Rule II.

~~RULE III/6.6.2503~~ DELIVERY (2) A new contract or evidence of coverage may not be delivered or issued for delivery in this state ~~60~~ 60 days after the effective date of these rules unless it complies with these rules.

~~RULE IV/6.6.2504~~ RENEWAL (3) A contract or evidence of coverage may not be reissued, renewed, amended, or extended in this state ~~60~~ 60 days 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.

~~RULE V/6.6.2505~~ 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

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

(3) "Copayment" means the amount a subscriber must pay ~~at the time of service~~ to receive a specific service that is fully prepaid.

(a) a spouse of the subscriber:

(c) an unmarried dependent child of the subscriber over the age of 18 , or over a greater age agreed to between the health maintenance organization and the contract holder, ~~or~~ ~~or~~ 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

(5) deleted in its entirety.

(10) deleted in its entirety.

(11) "Hospital" means a facility which is licensed by the State of Maryland to provide medical care to patients, and which is not a nursing home, as defined in 50-5-101, MCA.

(13) deleted in its entirety.

(15) "Physician" means /a/.

medvoina/ov/davshpatny/practicing/allkh/kh/slobo/ov/sidw/a  
Xicngg physician as defined in 50-2-101, MCA.

(19) deleted in its entirety.

(20)-(21) same as proposed rules.

6.6.2505 MULTIDISCIPLINARY ADVISORY BOARDS The membership of a health maintenance organization advisory board must include multidisciplinary representatives.

XXXX/YY/6.6.2506 REQUIREMENTS FOR CONTRACTS AND EVIDENCE  
OF COVERAGE introductory paragraph and (1)(a)-(1)(e) same as proposed rules.

1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2020, 2021-2022, 2023-2024, 2025-2026, 2027-2028, 2029-2030, 2031-2032, 2033-2034, 2035-2036, 2037-2038, 2039-2040, 2041-2042, 2043-2044, 2045-2046, 2047-2048, 2049-2050, 2051-2052, 2053-2054, 2055-2056, 2057-2058, 2059-2060, 2061-2062, 2063-2064, 2065-2066, 2067-2068, 2069-2070, 2071-2072, 2073-2074, 2075-2076, 2077-2078, 2079-2080, 2081-2082, 2083-2084, 2085-2086, 2087-2088, 2089-2090, 2091-2092, 2093-2094, 2095-2096, 2097-2098, 2099-2100, 2101-2102, 2103-2104, 2105-2106, 2107-2108, 2109-2110, 2111-2112, 2113-2114, 2115-2116, 2117-2118, 2119-2120, 2121-2122, 2123-2124, 2125-2126, 2127-2128, 2129-2130, 2131-2132, 2133-2134, 2135-2136, 2137-2138, 2139-2140, 2141-2142, 2143-2144, 2145-2146, 2147-2148, 2149-2150, 2151-2152, 2153-2154, 2155-2156, 2157-2158, 2159-2160, 2161-2162, 2163-2164, 2165-2166, 2167-2168, 2169-2170, 2171-2172, 2173-2174, 2175-2176, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2185-2186, 2187-2188, 2189-2190, 2191-2192, 2193-2194, 2195-2196, 2197-2198, 2199-2200, 2201-2202, 2203-2204, 2205-2206, 2207-2208, 2209-2210, 2211-2212, 2213-2214, 2215-2216, 2217-2218, 2219-2220, 2221-2222, 2223-2224, 2225-2226, 2227-2228, 2229-2230, 2231-2232, 2233-2234, 2235-2236, 2237-2238, 2239-2240, 2241-2242, 2243-2244, 2245-2246, 2247-2248, 2249-2250, 2251-2252, 2253-2254, 2255-2256, 2257-2258, 2259-2260, 2261-2262, 2263-2264, 2265-2266, 2267-2268, 2269-2270, 2271-2272, 2273-2274, 2275-2276, 2277-2278, 2279-2280, 2281-2282, 2283-2284, 2285-2286, 2287-2288, 2289-2290, 2291-2292, 2293-2294, 2295-2296, 2297-2298, 2299-2300, 2301-2302, 2303-2304, 2305-2306, 2307-2308, 2309-2310, 2311-2312, 2313-2314, 2315-2316, 2317-2318, 2319-2320, 2321-2322, 2323-2324, 2325-2326, 2327-2328, 2329-2330, 2331-2332, 2333-2334, 2335-2336, 2337-2338, 2339-2340, 2341-2342, 2343-2344, 2345-2346, 2347-2348, 2349-2350, 2351-2352, 2353-2354, 2355-2356, 2357-2358, 2359-2360, 2361-2362, 2363-2364, 2365-2366, 2367-2368, 2369-2370, 2371-2372, 2373-2374, 2375-2376, 2377-2378, 2379-2380, 2381-2382, 2383-2384, 2385-2386, 2387-2388, 2389-2390, 2391-2392, 2393-2394, 2395-2396, 2397-2398, 2399-2400, 2401-2402, 2403-2404, 2405-2406, 2407-2408, 2409-2410, 2411-2412, 2413-2414, 2415-2416, 2417-2418, 2419-2420, 2421-2422, 2423-2424, 2425-2426, 2427-2428, 2429-2430, 2431-2432, 2433-2434, 2435-2436, 2437-2438, 2439-2440, 2441-2442, 2443-2444, 2445-2446, 2447-2448, 2449-2450, 2451-2452, 2453-2454, 2455-2456, 2457-2458, 2459-2460, 2461-2462, 2463-2464, 2465-2466, 2467-2468, 2469-2470, 2471-2472, 2473-2474, 2475-2476, 2477-2478, 2479-2480, 2481-2482, 2483-2484, 2485-2486, 2487-2488, 2489-2490, 2491-2492, 2493-2494, 2495-2496, 2497-2498, 2499-2500, 2501-2502, 2503-2504, 2505-2506, 2507-2508, 2509-2510, 2511-2512, 2513-2514, 2515-2516, 2517-2518, 2519-2520, 2521-2522, 2523-2524, 2525-2526, 2527-2528, 2529-2530, 2531-2532, 2533-2534, 2535-2536, 2537-2538, 2539-2540, 2541-2542, 2543-2544, 2545-2546, 2547-2548, 2549-2550, 2551-2552, 2553-2554, 2555-2556, 2557-2558, 2559-2560, 2561-2562, 2563-2564, 2565-2566, 2567-2568, 2569-2570, 2571-2572, 2573-2574, 2575-2576, 2577-2578, 2579-2580, 2581-2582, 2583-2584, 2585-2586, 2587-2588, 2589-2590, 2591-2592, 2593-2594, 2595-2596, 2597-2598, 2599-2600, 2601-2602, 2603-2604, 2605-2606, 2607-2608, 2609-2610, 2611-2612, 2613-2614, 2615-2616, 2617-2618, 2619-2620, 2621-2622, 2623-2624, 2625-2626, 2627-2628, 2629-2630, 2631-2632, 2633-2634, 2635-2636, 2637-2638, 2639-2640, 2641-2642, 2643-2644, 2645-2646, 2647-2648, 2649-2650, 2651-2652, 2653-2654, 2655-2656, 2657-2658, 2659-2660, 2661-2662, 2663-2664, 2665-2666, 2667-2668, 2669-2670, 2671-2672, 2673-2674, 2675-2676, 2677-2678, 2679-2680, 2681-2682, 2683-2684, 2685-2686, 2687-2688, 2689-2690, 2691-2692, 2693-2694, 2695-2696, 2697-2698, 2699-2700, 2701-2702, 2703-2704, 2705-2706, 2707-2708, 2709-2710, 2711-2712, 2713-2714, 2715-2716, 2717-2718, 2719-2720, 2721-2722, 2723-2724, 2725-2726, 2727-2728, 2729-2730, 2731-2732, 2733-2734, 2735-2736, 2737-2738, 2739-2740, 27

Emergency care services 24 hours a day, seven days a week,  
including disclosure of any restrictions on emergency care  
services. /X/p00v7d0v/and/PhlDn0A/bf/00v9cagH/may/d0v/1z1yY  
xH/q0v0v0g/v0f/AmEchEnCh/0v0v/BerViceS/MALN/A/N/yH/BerVice  
dEd/X0/aFFI11Z1eB0/p0v1BereP0N1yY

- (g)-(i) same as proposed rules.  
(j) grace period changed from 30 to 10 days.  
(k)-(l) same as proposed rules.  
(m) if it is a group contract and group e

(m) if it is a group contract and group evidence of coverage ~~is a provision that does not cover~~ 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, a provision clearly disclosing that limitation of benefits. ~~The enrollee may be charged the applicable premium for coverage that was in effect prior to cancellation of the group contract.~~

- (n)-(o) deleted in their entirety.

(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.

- (2)-(4) same as proposed rules.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: ~~33-31-310~~  
33-31-301(3)(c), and 33-31-312(3), MCA (SB 353, 1987)

WV/6/6.5.2507 PROHIBITED PRACTICES (1)(a) A health maintenance organization may include in its ~~policy~~ contract and evidence of coverage a provision setting forth reasonable exclusions or limitations of services for preexisting conditions at the time of enrollment. ~~WV/6/6.5.2507 (b) A health maintenance organization may include in its policy contract and evidence of coverage a provision setting forth reasonable exclusions or limitations of services for preexisting conditions at the time of enrollment.~~

(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, unless it clearly discloses that exclusion or limitation in the evidence of coverage.

- (c)-(d) deleted in their entirety.

(2)(a) same as proposed rules.

(b) deleted in its entirety.

(3)(a) same as proposed rules.

(b) ~~X/udqVtV/ hqzhthqthqth/ Ktqthh/ztqth/ mdy/ udy/ dizehloxi/~~  
~~canxi/ /bt/ /dtdvqd/ yb/ ktf-httdAA/ /ady/ enioliie/ hok/ /dtdvqd/ yb~~  
~~dxvdy/ /ytdv/ vdydy/ mmdhdx/~~ Representing as a group contract a  
contract that refuses, within the eligibility period, to enroll  
an individual member of a group on the basis of the health  
status or health care needs of the individual enrollee or  
member is deceptive and misleading and violative of 33-18-203,  
MCA.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP: ~~22/XB/206/~~  
33-18-203, 33-31-301(3)(c), and 33-31-312, MCA (SB 353, 1987)

RWE/VIXI/6.6.2508 SERVICES (1)-(2)(a) same as proposed rules.

(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; psychotherapy; administration of whole blood and blood plasma; and short-term rehabilitation services;

(c) same as proposed rules.

(d) outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, provider'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, psychotherapy, 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) same as proposed rules.

(b)-(c) deleted in their entirety.

(4) same as proposed rules.

RWE/IX/6.6.2509 OTHER REQUIREMENTS (1)-(2) same as proposed rule.

(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 ~~/ hsk/ /d/ /sggdvtyvd/ /hsk/ /d/ /dtdv/~~. Copayments and deductibles are the only ~~xiyadbi~~ charges ~~/ /hsk/ / /ytdv/~~  
~~dxvdy/ /dtdv/ /dtdv/~~ that a health maintenance organization may

assess to subscribers for basic and supplemental health care services.

(4) same as proposed rules.

AUTH: 33-31-103, MCA (SB 353, 1987); IMP:  
33-31-202(3)(c), 33-31-301(3)(a), 33-31-301(3)(c),  
33-31-301(5)(a), and 33-31-303, MCA (SB 353, 1987)

XYZ/X/6.6.2510 PENALTIES same as proposed rules.

3. The commissioner received written and oral comments at the hearing regarding the proposed rules. The comments and the commissioner's responses are as follows:

(a) John Alke, Blue Cross/Blue Shield (BC/BS), argued that the rules (other than those mandating coverage for newborns, mental illness, alcoholism, drug addiction, and conversion) will be invalid because they mandate:

the use of certain standard terms and conditions in the contract between an HMO and its enrollees which were not contemplated by the Act as mandatory provisions within that contract.

" \* \* \*

"In Montana, . . . agency mandates are strictly construed. An . . . agency . . . has only those limited powers clearly conferred upon it by the [L]egislature, Anaconda Company v. Department of Revenue, 178 Mont. 254, 257, 583 P.2d 421 (1978); Gwynn v. Town of Eureka, 178 Mont. 191, 193-[5], 82 P.2d 1262 (1970); City of Polson v. Public Service Commission, 155 Mont. 464, 469, 473 P.2d 508 (1970). If there is any doubt as to whether a particular power is vested in the Auditor's office, the doubt will be resolved against the existence of the power, Montana Power Company v. Public Service Commission, Mont. \_\_\_, 671 P.2d 604, 611 (1983); State ex rel. Thatcher v. Boyle, 62 Mont. 97, 102, 204 P. 338 (1921).

The controlling principle of strict construction of agency mandates thus severely limits any implication of agency powers not specified in the agency's enabling legislation. Power will be implied only to the extent necessary to implement statutorily specified powers, State ex rel. Dragstedt v. State Board of Equalization, 103 Mont. 336, 338, 62 P.2d 330 (1936). . . [A] rule, even though not inconsistent with the agency's statutory mandate, is invalid if it engrafts additional substantive requirements not specified or contemplated in the enabling legislation. McPhail v. Montana Board of Psychologists, 196 Mont. 514, 517, 640 P.2d 906 (1982); Bell v. Department of Licensing, 182 Mont. 21, 23, 594 P.2d 331 (1979).

The following cases that BC/BS cites do not support its argument that the commissioner lacks statutory authority to enact some of the rules because they do not interpret a rulemaking authority statute: Anaconda Company, 178 Mont. 254, 583 P.2d 421; Gwynn, 178 Mont. 254, 583 P.2d 421; City of

Polson, 155 Mont. 464, 473 P.2d 508; Montana Power Company, \_\_\_ Mont. \_\_\_, 671 P.2d 604; and Thatcher, 62 Mont. 97, 204 P. 338. On the basis of the other cases, the commissioner agrees that requiring definitions of terms not used in the act engrafts "additional, noncontradictory requirements on the statute which were not envisioned by the legislature." Bell, 182 Mont 21, 594 P.2d 331; see also McPhail, 196 Mont 514, 640 P.2d 906. The commissioner contends, however, that defining terms used in the act does not engraft additional, noncontradictory requirements, making those definitions valid. Garsjo v. Department of Labor & Industry, 172 Mont. 182, 562 P.2d 473 (1977) (rule defining term used in statute upheld as reasonable).

(b) Sharon Hanton (National Association of Social Workers (NASW)), William P. Bredehoft (Montana Psychological Association, Inc.), and Clifford H. Murphy (Mental Health Association of Montana) requested a rule governing mental illness services and one specifying the functions and composition of HMO advisory boards as being multidisciplinary.

The commissioner disagreed that a rule governing mental health services should be adopted. The Montana Health Maintenance Organization Act (act) adequately addresses coverage of mental illness. The commissioner adopted 6.6.2505 relating to HMO advisory boards.

(c) BC/BS suggested that Rule III should be rewritten to provide reasonable transition for HMO Montana. Rules relating to the application process should be effective immediately upon approval and rules relating to the form of the contract between the HMO and an enrollee should be effective on October 1, 1988. BC/BS stated that HMO Montana is currently operating under contracts approved by the commissioner.

The commissioner made the rules effective 60 days after the day after publication in the Montana Administrative Register and noted that BC/BS contracts have not been approved.

(d) BC/BS argued that the act does not contemplate that the definitions contained in Rule IV be mandated in the contract between an HMO and an enrollee. BC/BS also stated that the rules "prohibit the utilization of other terms."

The commissioner disagreed. Rule IV simply requires that an HMO evidence of coverage use definitions contained in the act or Rule IV only if it defines words defined in the act or Rule IV. The rules do not prohibit the use of other terms. "The commissioner may, after notice and hearing, make reasonable rules necessary to effectuate [the act]." 33-31-103, MCA. If a term used in the act is not defined in the act, the commissioner effectuates the act by defining that term in rules. Garsjo, 172 Mont. 182, 562 P.2d 473.

(e) BC/BS stated that the definition for "copayment" in Rule IV(3) is unduly restrictive because HMO Montana enrollees will make copayments on an "as billed" basis and because the definition prohibits HMO Montana's 80/20 coinsurance option.

The commissioner amended the rule to permit copayments on an "as billed" basis. The commissioner notes that the act refers to deductibles and copayments but not to coinsurance (see, 33-31-202(3)(c), 33-31-301(3)(a)(ii),

33-31-301(3)(c)(iv), and 33-31-310(5)(a), MCA) and that the term "amount" encompasses not only a fee but a percentage. Because "copayment" is used in the act, the commissioner may define it in rule. Garsjo, 172 Mont. 182, 562 P.2d 473.

(f) BC/BS stated that the definition for "eligible dependent" in Rule IV(4) should be extended to dependents who have reached a fixed age such as 23 or 25.

The commissioner agreed that an HMO and the contract holder should be able to consider a person older than 18 to be a dependent and amended the rule to clarify that a person who is not less than 18 may be a dependent. Because "dependent" is used in the act (33-31-301(3)(h) and 33-31-301(5)(a), MCA), the commissioner may define it in rule. Garsjo, 172 Mont. 182, 562 P.2d 473.

(g) BC/BS stated that the definition for "emergency care services" in Rule IV(5) is unwarranted since emergency care is usually subdivided into emergency and life threatening.

The commissioner deleted Rule IV(5) but noted that the proposed definition does not preclude an HMO from distinguishing between emergency and life threatening.

(h) BC/BS stated that the definition for "health professional" in Rule IV(10), "hospital" in Rule IV(11), "physician" in Rule IV(15), and "skilled nursing home" in Rule IV(19) are inappropriate because (1) they conflict with the definitions for those terms used by BC/BS and the department of health and environmental sciences; and (2) the commissioner lacks authority to determine those providers with whom an HMO will contract.

The commissioner noted that (1) the definitions used by BC/BS are irrelevant since BC/BS is not an HMO; and (2) the proposed definitions do not determine which providers an HMO must contract.

The commissioner amended the definitions of "hospital" and "physician" to correspond with the department of health's definitions. Because "hospital" (33-31-102(11)(f), 33-31-102(13), 33-31-221(1)(a), and 33-31-221(1)(b), MCA) and "physician" (33-31-102(11)(f) and 33-31-102(13), MCA) are used in the act, the commissioner may define them in rule. Garsjo, 172 Mont. 182, 562 P.2d 473. The commissioner deleted the definitions of "health professional" and "skilled nursing home".

(i) BC/BS stated that the definition of "medically necessary" in Rule IV(13) should permit the HMO, not the provider, to determine what is "medically necessary".

The commissioner deleted Rule IV(13).

(j) BC/BS suggested that Rule VI(1)(f) should be amended because the act does not specifically authorize the commissioner to prohibit an HMO from limiting coverage of emergency care services within the service area to affiliated providers only.

The commissioner removed the requirement that emergency care services within the service area may not be limited to affiliated providers only.

(k) Bill McDonald, Group Health of Western Montana (GHWG), suggested that the 30-day grace period requirement of Montana Administrative Register

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Rule VI(1)(j) be changed to 10 days. BC/BS noted that "[t]he primary care physician is generally paid on a per capita basis by the 10th day of each month [and given] a list of names of patients he is required to treat, without additional charge. [Imposing] a 30[-]day grace period would effectively mandate one month of free services."

The commissioner changed the grace period to 10 days because of the comments. The commissioner noted that the act permits an HMO to "disenroll, cancel, or refuse to renew an enrollee . . . if the enrollee . . . has failed to pay required premiums by the end of the grace period. . . ." 33-31-312(3)(a), MCA (emphasis added). The act does not, however, define "grace period". Rule VI(1)(j), by defining "grace period", implements the act. Because "grace period" is used in the act, the commissioner may define it in rule. Garsjo, 172 Mont. 182, 562 P.2d 473.

(1) BC/BS argued that mandatory coverage of an enrollee who is an inpatient in a hospital or a skilled nursing facility when a group contract is cancelled (Rule VI(1)(m)) has no statutory basis.

The commissioner amended Rule VI(1)(m) to require clear disclosure, as required by 33-31-301(3)(c), MCA, if coverage is not provided in accordance with the terms of the group contract until discharge for an enrollee, who is an inpatient in a hospital of a skilled nursing facility on the date of cancellation of the group contract.

(m) BC/BS suggested that Rule VI(1)(n) is contrary to 33-31-301(3)(h), MCA. GHWM requested that 31-day premium payment period be changed to 30 days and that the following sentences be added to the end of Rule VI(1)(n)(i): "If the contract holder fails to pay the premium, the HMO may terminate the contract retroactive to the end of the paid period. The HMO has the right to collect for the cost of any services from the subscriber."

The commissioner deleted Rule VI(1)(n) because it duplicates the act.

(n) BC/BS stated that, after a group contract is discontinued, mandatory continuation of coverage of enrollees who become totally disabled while enrolled under the contract (Rule VI(1)(o)) lacks statutory basis.

The commissioner deleted Rule VI(1)(o) because it duplicates the act.

(o) BC/BS argued that there is no statutory basis to allow an enrollee to receive benefits for 10 days without requiring the enrollee to pay for them (Rule VI(1)(p)). GHWM suggested adding the following clause to the end of Rule VI(1)(p): "but is responsible for the costs of the services provided."

The commissioner deleted the last sentence of Rule VI(1)(p).

(p) GHWM stated that a preexisting waiting period restriction cannot be more restrictive for an HMO than it is for an insurer and that an HMO should be allowed to collect a copayment for the preexisting waiting period (Rule VII(1)(a)). BC/BS said that there is no basis in the act for Rule VII(1).

Jim Smid (Health Dynamics, Incorporated) commented that federally qualified HMOs do not have preexisting waiting periods in their contracts and that experience-rated groups in HMOs are rare. Randy Cline (HMO Montana) and BC/BS disagreed.

The commissioner noted that an HMO shall clearly disclose limitations on access to services. 33-31-301(3)(c), MCA. A preexisting waiting period limits access to services. Under the act, therefore, an HMO shall clearly disclose a preexisting waiting period. Rule VII(1)(a) as adopted consequently requires an HMO contract to set "forth reasonable exclusions or limitations of services for preexisting conditions at the time of enrollment." The commissioner deleted the last sentence of Rule VII(1)(a) and subsections (b), (c), and (d) of Rule VII(1).

(q) BC/BS stated that there is no statutory basis for Rule VII(2)(b).

The commissioner deleted Rule VII(2)(b) because it duplicates the amended definition of "dependent".

(r) BC/BS stated that there is no statutory basis for Rule VII(3)(b).

The commissioner amended Rule VII(3)(b) to clarify that it is deceptive and misleading to represent a policy as being a group policy if it refuses, within the eligibility period, to enroll an individual member of a group on the basis of the health status or health care needs of the individual. Disenrolling or cancelling an individual member of a group on the basis of health status or health care needs is already prohibited by 33-31-312(4), MCA.

(s) NASW suggested that "psychotherapy" be added to Rule VIII(2)(b). The commissioner agreed.

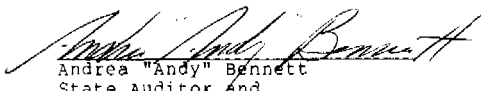
(t) NASW suggested that "provider's office" be added to the first sentence and "psychotherapy" be added to the second sentence of Rule VIII(2)(d). The commissioner agreed.

(u) BC/BS stated that there is no statutory basis to require an HMO to pay for an enrollee's transportation home after receiving out-of-area services (Rule VIII(3)(b)).

The commissioner deleted Rule VIII(3)(b) and (c).

(v) BC/BS stated that Rule IX(3) should allow an HMO to offer prepaid health benefits on a coinsurance basis.

The commissioner amended Rule IX(3) to permit an HMO to base a copayment on either a specified dollar amount or a percentage. The commissioner noted that the act refers only to copayments and deductibles and not to coinsurance. 33-31-202(3)(c), 33-31-301(3)(a)(ii), 33-31-301(3)(c)(iv), and 33-31-301(5)(a), MCA.

  
Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

Certified to the Secretary of State this 5th day of October, 1987.

Montana Administrative Register

19-10/15/87

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

In the matter of the amendment of 8.50.423 concerning definitions, 8.50.424 concerning temporary employment, 8.50.425 concerning resident manager and qualifying agents, 8.50.430 concerning identification cards, 8.50.431 concerning insurance requirements, 8.50.436 concerning termination of business, 8.50.437 concerning fees, and the repeal of 8.50.439 concerning assessments	)	NOTICE OF AMENDMENT OF 8.50.423 DEFINITIONS, 8.50.424 TEMPORARY EMPLOYMENT WITHOUT IDENTIFICATION CARD, 8.50.425 RESIDENT MANAGER AND QUALIFYING AGENTS, 8.50.430 IDENTIFICATION POCKET CARD, 8.50.431 INSURANCE REQUIREMENTS, 8.50.436 TERMINATION OF BUSINESS, 8.50.437 FEE SCHEDULE, AND THE REPEAL OF 8.50.439 ASSESSMENT
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TO: All Interested Persons:

1. On May 28, 1987, the Board of Private Security Patrolmen and Investigators published notice of a public hearing on the proposed amendment and repeal of the above-stated rules at page 629, 1987 Montana Administrative Register, issue number 10.

2. The hearing was held on June 19, 1987, at 10:00 a.m., in the downstairs conference room of the Department of Commerce building, 1424 9th Avenue, Helena, Montana.

3. The Board has adopted the rules exactly as proposed.

4. The following comment was taken under consideration by the Board.

COMMENT: Connie Lacy submitted an oral comment opposing the amendment of 8.50.424, stating that 30 days was not enough time to evaluate a person's work.

RESPONSE: The Board noted that the amendment was being made to conform the rule to recent legislative amendments to Section 37-60-308, MCA.

5. No other comments or testimony were received.

BOARD OF PRIVATE SECURITY  
PATROLMEN AND INVESTIGATORS  
CLAYTON BAIN, CHAIRMAN

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

Certified to the Secretary of State, October 5, 1987.

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

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of 8.58.415A concerning con- ) 58.415A CONTINUING EDUCA-  
tinuing education ) TION

TO: All Interested Persons:

1. On May 28, 1987, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 634, 1987 Montana Administrative Register, issue number 10.

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

3. No comments or testimony were received.

BOARD OF REALTY REGULATION  
JOHN DUDIS, CHAIRMAN

BY:

  
\_\_\_\_\_  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1987.

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

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of 8.104.203A concerning ) 104.203A DEFINITIONS  
definitions )

TO: All Interested Persons:

1. On July 30, 1987, the Hard-Rock Mining Impact Board published a notice of proposed amendment of the above-stated rule at page 1161, 1987 Montana Administrative Register, issue number 14.

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

3. No comments or testimony were received.

4. The above-stated rule implements section 90-6-307, MCA, rather than 90-6-305, MCA, as stated in the July 30, 1987, notice.

HARD-ROCK MINING IMPACT BOARD  
LEONARD MCKINNEY, CHAIRMAN

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

Certified to the Secretary of State, October 5, 1987.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF RULES
adoption of rules pertaining	)	PERTAINING TO PROCEDURES
to the procedures for rule	)	FOR RULE MAKING, DECLARA-
making, declaratory rulings	)	TORY RULINGS AND CONTESTED
and contested case hearings.	)	CASE HEARINGS

TO: All Interested Persons

1. On August 27, 1987, the Department of Family Services published notice of the proposed adoption of rules pertaining to the procedures for rule making, declaratory rulings and contested case hearings at page 1374 of the 1987 Montana Administrative Register, issue number 16.

2. The Department has adopted the following rules as proposed.

RULE III 11.2.201 DEFINITIONS  
RULE IV 11.2.203 OPPORTUNITY FOR HEARING  
RULE V 11.2.205 NOTICE UPON ADVERSE ACTION  
RULE VI 11.2.207 DENIAL OR DISMISSAL OF HEARING  
RULE VII 11.2.209 HEARING OFFICER, POWERS AND DUTIES  
RULE VIII 11.2.210 ADMINISTRATIVE REVIEW  
RULE IX 11.2.211 HEARING PROCEDURE  
RULE X 11.2.212 PROPOSAL FOR DECISION BY HEARING  
OFFICER  
RULE XII 11.2.215 JUDICIAL REVIEW  
RULE XIII 11.2.220 AVAILABILITY OF HEARING RECORDS

AUTH: Sec. 2-4-201(2), MCA; Sec. 53-1-103(17), MCA  
IMP: Sec. 2-4-201(2), MCA; Sec. 53-1-103(17), MCA

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

RULE I 11.1.101 PROCEDURES FOR ADOPTING, AMENDING, AND  
REPEALING RULES (1) The department of family services hereby adopts and incorporates by reference attorney general's model procedural rules 1 through 7 found in ARM 1.3.102 through ARM ~~1-3-211~~ 1.3.210 which set forth the rule-making procedures for the department. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Building, Helena, Montana 59601. Phone 444-2026.

AUTH: Sec. 2-4-201(2), MCA  
IMP: Sec. 2-4-201(2), MCA

RULE II 11.1.102 PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS (1) The department of family services hereby adopts and incorporates by reference attorney general's model procedural rules 22 through 24 and 28 found in ARM 1.3.227 through ARM ~~1-3-230~~ 1.3.229 and ARM 1.2.233 which set forth the procedures for the issuance of declaratory rulings. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Building, Helena, Montana 59601. Phone 444-2026.

AUTH: Sec. 2-4-201(2), MCA  
IMP: Sec. 2-4-201(2), MCA and 2-4-501, MCA

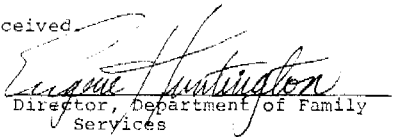
RULE XI 11.2.214 NOTICE OF PROPOSAL FOR DECISION, FILING AND SERVICE OF BRIEFS, AND DIRECTOR REVIEW OF PROPOSAL FOR DECISION

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

(5) THE DIRECTOR'S DECISION IS THE FINAL AGENCY DECISION.

AUTH: Sec. 2-4-201(2), MCA; Sec. 53-1-103(17), MCA  
IMP: Sec. 2-4-201(2), MCA; Sec. 53-1-103(17), MCA

4. No comments were received.

  
Director, Department of Family  
Services

Certified to the Secretary of State October 5, 1987.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of rules pertaining	)	RULES PERTAINING TO THE
to the designation of local	)	DESIGNATION OF LOCAL
service areas and local	)	SERVICES AREAS AND LOCAL
youth services advisory	)	YOUTH SERVICES ADVISORY
councils	)	COUNCILS

TO: All Interested Persons

1. On August 27, 1987, the Department of Family Services published notice of the proposed adoption of rules pertaining to the designation of local service areas and local youth services advisory councils at page 1382 of the 1987 Montana Administrative Register, issue number 16.

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

RULE I 11.2.401 DESIGNATION OF LOCAL SERVICE AREAS

(1) For youth services planning purposes, there shall be ten local service areas in the state.

(2) The following are the designated local services areas:

(i) ~~Malta~~, PHILLIPS, Valley, Daniesl, Sheridan and Roosevelt Counties.

(ii) ~~Garfield~~, McCone, Prairie, Dawson, Richland, and Wibaux Counties.

(iii) GARFIELD, Treasure, Rosebud, Custer, Fallon, Powder River and Carter Counties.

(iv) Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Carbon and Big Horn Counties.

(v) Glacier, Toole, Liberty, Hill, Pondera, ~~Cheteau~~ CHOUTEAU, BLAINE, Teton and Cascade Counties.

(vi) Meagher, Gallatin and Park Counties.

(vii) Lewis and Clark, Jefferson and Broadwater Counties.

(viii) Granite, Powell, Deer Lodge, Silver Bow, Beaverhead and Madison Counties.

(ix) Mineral, Missoula and Ravalli Counties.

(x) Sanders, Lake, Lincoln and Flathead Counties.

AUTH: Section 53-1-117(17)

IMP: Section 52-1-201, MCA

Rule II is omitted in its entirety.

RULE III 11.4.403 ~~COUNCIL-MEETINGS~~ LOCAL YOUTH SERVICES

ADVISORY COUNCILS (1) The local youth services advisory councils shall meet at least four times per year.



(2) At the first annual meeting, the council shall select a member to act as chairman of the council. The chairman shall be responsible for conducting the meeting of the committee.

(3) THE MEMBERS SHALL SERVE A TERM OF TWO YEARS. ANY MEMBER MAY BE REAPPOINTED TO ADDITIONAL TERMS.

AUTH: Section 53-1-117(17), MCA

IMP: Section 52-1-203, MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: Two commenters noted that under Rule I(2)(i), there was a reference to Malta rather than Phillips County.

RESPONSE: This error has been corrected.

COMMENT: The Department's Regional Administrator for the Eastern Region commented that Garfield County should have been included with Treasure, Rosebud, Custer, Fallon, Powder River and Carter Counties. This was the original recommendation after consultation with various service providers and others.

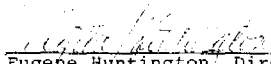
RESPONSE: The local service area boundaries were designated based upon the recommendation of the Regional Administrators after consultation with local service providers, officials, etc. The Regional Administrator recommended that Garfield County be included in the local service area set forth in Rule II(iii). However, Garfield County was inadvertently included in the local service area set forth in Rule II(ii). This was an error in drafting the rule and, therefore, the Department has corrected this error.

COMMENT: The Montana Association of Counties commented that Chouteau County had been misspelled and that Blaine County had been omitted.

RESPONSE: The Department agrees and has made the necessary changes.

COMMENT: The Administrative Code Committee commented that Rule II(1) and (2) unnecessarily restates the language of the statute.

RESPONSE: Department agrees. Rule II(1) and (2) have been deleted and Rule II(3) has been combined with Rule III.

  
\_\_\_\_\_  
Eugene Huntington, Director  
Department of Family Services

Certified to the Secretary of State October 5, 1987.

19-10/15/87

Montana Administrative Register

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

In the matter of NEW RULE ( ) NOTICE OF ADOPTION  
concerning hospital protocols ) OF A NEW RULE  
for organ procurement )  
(Licensing & Certification  
of Hospitals)

TO: All Interested Persons

1. On August 27, 1987, at page 1384, issue number 16 of the 1987 Montana Administrative Register, the department published notice of a proposed new rule requiring licensed hospitals to make organ donation requests in cases where a hospital patient is a suitable donor.

2. The department conducted a public hearing on September 22, 1987, on the proposed rule.

2. The department has adopted the rule with the following changes (new matter is underlined; matter to be stricken is interlined):

NEW RULE 1 (to be codified as 16.32.331) MINIMUM STANDARDS FOR A HOSPITAL -- ORGAN DONATION REQUESTS AND PROTOCOLS

(1) This rule is adopted to implement Chapter 219, Laws of 1987, which amended both the Uniform Anatomical Gift Act, Title 72, Chapter 17, MCA, and the Montana Health Care Facility Licensing Act, Title 50, Chapter 5, Part 2, MCA. Sections (2)-(5) of this rule paraphrase section 72-17-211 of the Uniform Anatomical Gift Act and are included here to clarify the requirements for hospitals in cases of patients who are suitable organ donors. For a full text of the Uniform Anatomical Gift Act, reference should be made to Title 72, Chapter 17, MCA.

(1)(2) When, according to generally accepted medical standards, a patient is a suitable candidate for organ-or-tissue donation of body parts as defined in section 72-17-102(8), MCA, the hospital administrator or his/her designated representative shall communicate to the next-of-kin (as defined in this rule section (3) below) the option of donating all or any part of the patient's body as defined in section 72-17-102(8), MCA, and of their the next-of-kin's option to decline. A request to consent to the gift of all or any part of the decedent's body as an anatomical gift must also be made of the next-of-kin unless the hospital administrator or his/her designated representative. In addition to communicating such options, the hospital administrator or his/her designee must also request the next-of-kin to consent to an anatomical gift. The foregoing obligations of the administrator must be carried out unless the administrator or his/her designee:

(a) has actual notice of opposition to the gift by the decedent or a person in the class authorized to make an anatomical gift under section 72-17-201, MCA the next-of-kin as defined in section (3) below; or

(b) has reason to believe that an anatomical gift is contrary to the decedent's religious beliefs; or

(c) is aware of medical or emotional conditions under

which the request would contribute to severe emotional distress.

~~62(3)~~ "Next-of-kin" as provided in section 72-17-201(2), MCA, means one of the following persons in order of priority listed:

- (a) the spouse;
- (b) an adult son or daughter;
- (c) either parent;
- (d) an adult brother or sister; and
- (e) a guardian of the person of the decedent at the time of death.

~~63(4)~~ The medical record of each patient who dies in a hospital and who is determined (under the hospital's protocol established under section (6) below) to be a suitable candidate for donation of body parts must contain an entry setting forth the following:

- (a) the name and affiliation of the individual who communicated the option to donate to the next-of-kin and who made the request for anatomical gift under section (1) above;
- (b) the name, relationship to the patient, and response of the individual to whom the option to donate was communicated and of whom the request for anatomical gift was made; and
- (c) if no communication of an option or if no request for anatomical gift was made, the reason why no such request was made.

~~64(5)~~ An anatomical gift by a next-of-kin or ~~authorized person~~ may be made in writing or by telegraphic, recorded telephonic, or other recorded message.

~~65(6)~~ By November 1, 1987, every hospital shall establish and have on file a written protocol that:

- (a) assures identification of potential organ and tissue donors;

~~(b) assures that--families of--potential organ donors--are made aware of the--option of--organ or--tissue donation--and of their option--to decline;~~ assures that next-of-kin of patients who are suitable candidates for donation of body parts are made aware of their option to make an anatomical gift and are requested to consent to an anatomical gift of all or any part of the patient's body, unless one of the exceptions in subsection (2)(a), (2)(b), or (2)(c) applies;

- (c) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

~~(d) requires that a~~ provides for notification of an appropriate federally approved organ procurement organization be ~~notified of when~~ potential organ donors are identified in the hospital.

~~66(7)~~ Upon request, every hospital must make its adopted written protocol available to department personnel for their review.

~~67(8)~~ The protocol must, at a minimum, in addition to the items in section (6) above, address and provide for the following aspects of an organ donation notification/request/referral program:

- (a) method(s) by which the public is notified that the

hospital has an organ procurement program:

(b) determination of medical suitability of potential organ-and-tissue donors of body parts, including consideration of factors such as donor age, previous disease history, and presence of infection; and documentation of non-suitability of patients initially identified as potential donors;

(c) a training and educational program conducted on a yearly basis in conjunction with a procurement organization (or the equivalent) to instruct appropriate hospital staff or others to convey organ donation information to families next-of-kin and to make requests from families next-of-kin, which program consists of formal training, seminars, in-service workshops, or other training (or a combination thereof) leading to a knowledge of and familiarity with the following:

(i) general historical, medical, legal and social concepts involved in organ donation and transplantation;

(ii) psychological and emotional considerations when dealing with bereaved families; and

(iii) religious, cultural, and ethical considerations associated with organ donation; and

(iv) procedures for approaching donors and/or donors' next-of-kin, including physician notification, timing and location of contact, content(s) of communication concerning donor cards, consent forms, donation costs (if any), and actual requests for donation;

(d) education-and-training orientation and instruction on a yearly basis in conjunction with a procurement organization (or the equivalent) in the respective disciplines of hospital staff and/or other personnel who will or may be participating in the hospital's organ procurement program, such as chief of staff, attending physicians, nursing staff, social workers, clergy, or a team combining any of such persons; and

~~(e) procedures for notification of a federally-approved organ-procurement-organization-of-potential-donors-including-a designation-of-at-least-one-specific-organization-to-be-contacted-and~~

~~(f)(e)~~ the following forms to be used by the hospital to document that donors--and/or next-of-kin of medically suitable patients have been notified of the option of ~~organ-or-tissue-donation~~ to consent to an anatomical gift and have been requested to authorize such donation(s) as required in section ~~47(2)~~ above (and, if any such request contact has not been made, the reason(s) why not):

(i) patient authorization;

(ii) consent of next-of-kin; and

~~(iii) notification of organ procurement agency(ies) or organization(s), and~~

~~(iv)--follow-up-report-of-disposition-of-organs-~~

~~48(9)~~ The hospital administrator shall designate a person or persons to represent him/her for the purpose of communicating to the next-of-kin the option of an anatomical gift and to make requests for anatomical gifts, in cases where the administrator is unable or will not be making such requests personally. Such persons shall receive the training specified in section ~~47(8)~~ above, and a list of such person(s) must be

made available upon request to department personnel--and--to--the public--in--general.

(9) A person who acts in good faith in accordance with the terms of section ~~43~~(2) of this rule is not liable for damages in any civil proceeding or subject to prosecution in any criminal proceeding that might result from this action.

AUTH: 50-5-103, 50-5-404, MCA; Ch. 219, Sec. 3-5, Laws of 1987  
IMP: 50-5-103, 50-5-204, 50-5-404, MCA

4. Several format and language changes were made in the rule to clarify the relationship of the rule to the Uniform Anatomical Gift Act in Title 72, Chapter 17. In addition, several comments were received; the comments and the department's responses are set forth as follows:

Comment: Must the medical record of every patient admitted to the hospital have some documentation that the patient was evaluated for organ donation suitability?

Response: No, this is not intended. Section (4) has been revised to make this clear.

Comment: If, in a given case, severe distress could be produced by requesting a donation from a family, then talking to the family about the option to give is probably also going to cause the same distress. In these few cases, it is the mere fact that the family is approached about organ donation that causes the distress. The exceptions should apply to both communicating the option and making the request.

Response: Given the express language of Senate Bill 6 regarding "discretion and sensitivity with respect to the circumstances, views, and beliefs of families," the change suggested in the comment appears consistent with legislative intent, and section (2) of the rule has been amended accordingly.

Comment: Regarding training and education, a hospital should be allowed to use the equivalent of the training provided by an organ procurement agency if one is or becomes available.

Response: The department agrees, and subsections (7)(c) and (d) have been so amended.

Comment: The benefits of having the list of the administrator's designees available to the public is outweighed by consideration of confidentiality of hospital personnel.

Response: The department has deleted the public-availability element of section (9) of the rule.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 5, 1987.

19-10/15/87

Montana Administrative Register

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

In the matter of the amendment ) NOTICE OF THE AMENDMENT  
of ARM 16.35.102, application ) OF RULES  
procedures; 16.35.103, benefit )  
periods; 16.35.105, non-financial )  
eligibility requirements; )  
16.35.108, eligible services and )  
supplies; 16.35.109, non-eligible )  
services; 16.35.110, DOCUMENTA- )  
TION OF CLAIMS; and 16.35.111, )  
conditions on paying claims ) (End-stage Renal Disease)

1. On August 27, 1987, the department published notice of proposed amendments of the above-captioned rules (with the exception of ARM 16.35.110, which was not included in the notice of proposed rule-making but which is amended here in response to comments), concerning participation in the end-stage renal disease funding program, at page 1387 of the 1987 Montana Administrative Register, issue number 16.

2. The department has amended the rules with the following changes (text of rule appears as contained in the notice of proposed amendment; additional material to be stricken is interlined, and new matter is capitalized and underlined):

16.35.102 APPLICATION PROCEDURES Same as proposed.

16.35.103 TIME PERIOD FOR BENEFITS Same as proposed.

16.35.105 NON-FINANCIAL ELIGIBILITY REQUIREMENTS

(1) In order to participate in ESRD, the claimant applying for benefits must:

(1)-(3) Same as proposed, but renumbered (2)-(4).

~~44(5) be-eligible-for~~ PARTICIPATE IN Medicare Part A and Part B or have written documentation from the social security administration that s/he is not eligible for social security benefits.

16.35.108 ELIGIBLE SERVICES AND SUPPLIES (1) ESRD

will pay for the cost exceeding--\$20 of each of the following services and supplies which remains after all available third-party benefits have been utilized to pay for them:

(1)-(2) Same as proposed, but renumbered (a)-(b).

~~44(3)~~ (c) For a renal transplant patient:

(a)-(b) Same as proposed, but renumbered (i)-(ii).

~~44(3)(ii)~~ physician and hospital care related to transplant surgery ~~during the--36-months--after--the--surgery--was--per-~~  
~~formed;~~

~~44(3)(iv)~~ the following medications--if--they--were--pre-  
scribed--during--the--36-months--after--the--date--the--transplant--sur-  
gery--was--performed NOT EXCEEDING A 30-DAY SUPPLY:

~~44(4)(A)~~ immunosuppressants;

~~44(4)(B)~~ steroids;

~~44(4)(C)~~ hypertensives;

~~(v)~~(D) diuretics.

~~(v)~~ medical follow-up services which are directly related to maintenance or monitoring of the transplanted kidney and which were provided during the 36 months following the transplant surgery.

16.35.109 NON-ELIGIBLE SERVICES (1) The cost of the following services and supplies is not eligible for payment from ESRD:

(1)-(8) Same as proposed, but renumbered (a)-(h).

~~(9)~~(i) ACCESS SITE SURGERY PRIOR TO INITIATION OF DIALYSIS TREATMENTS.

16.35.110 DOCUMENTATION OF CLAIMS (1) A claim for ESRD reimbursement, in order to be reimbursable, must contain, or be accompanied by, the following documentation required by the following sections of this rule.

(1)-(4) Same as existing rule, but renumbered (2)-(5).

~~(5)~~(6) A ~~claim for drug~~ DRUG/PHARMACY CLAIM must be submitted with ~~either itemized drug charge or a Medicare drug claim form~~ ON THE MEDICAID MA-5 FORM OR, IN THE CASE OF A HOSPITAL PHARMACY, THE MA-5 FORM OR THE APPROPRIATE MEDICARE FORM.

~~(6)~~(7) Same as existing rule.

AUTH: Sec. 53-6-202, MCA

IMP: Sec. 53-6-202, MCA

16.35.111 CONDITIONS OF CLAIM PAYMENT (1) Payment of a claim will be made only WHEN THE BALANCE DUE EXCEEDS \$20 AND:

(a)-(c) Same as proposed.

(d) in the case of a charge for a drug, to the extent it does not exceed the ~~that~~ AVERAGE WHOLESAL price specified in the Drug Topics Redbook for that drug PLUS, IN THE CASE OF ALL ESRD-ELIGIBLE DRUGS OTHER THAN IMMUNOSUPPRESSANTS, A \$4 DISPENSING FEE.

(2) The department hereby adopts and incorporates by reference the Annual Pharmacists' Reference, 1987 EDITION AND ITS UPDATES, referred to as the Drug Topics Redbook, which contains the ~~that~~ AVERAGE WHOLESAL prices for most commercially available drugs. THE DRUG TOPICS REDBOOK IS UPDATED QUARTERLY, AND THE MOST RECENT UPDATE WILL BE UTILIZED BY THE ESRD PROGRAM. A copy of the Drug Topics Redbook may be obtained from Drug Topics Redbook Publications, Medical Economics Co., Inc., Oradell, New York 07649, AND THE AVERAGE WHOLESAL PRICES CURRENTLY SET BY THE REDBOOK FOR DRUGS MAY BE OBTAINED FROM THE ESRD PROGRAM, DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, COGSWELL BUILDING, CAPITOL STATION, HELENA, MONTANA 59620; TELEPHONE (406) 444-4740.

4. The following comments were made by physicians and other health care professionals, pharmacists, and social workers who have contact with ESRD patients:

(a) Comment: There should not be a \$20 deductible for each claim.

Response: Since the department intended only to pre-

vent the administrative cost of handling small claims (i.e. \$20 or under), rather than to create a deductible for all claims, rules 16.35.108 and 16.35.111 were amended accordingly.

(b) Comment: Payment by the ESRD program for the cost of medication for renal transplant patients should be limited to one 30-day supply at a time, just as it is for patients receiving home or center dialysis, in order to prevent hoarding and to distribute program benefits more evenly among patients.

Response: The department agreed and made the change.

(c) Comment: Access-site surgery should be paid for only after diagnosis of ESRD is confirmed.

Response: The department agreed and added the restriction.

(d) Comment: The best and most consistent documentation of a drug claim is that submitted on a Medicaid MA-5 form or, in the case of hospital pharmacies, the appropriate Medicare form as an alternative; the additional alternative of submitting itemized drug charge slips, currently allowed by rule 16.35.110(5), should be disallowed.

Response: The department agreed and amended 16.35.110 accordingly.

(e) Comment: Payment of a \$4 dispensing fee for non-immunosuppressants, plus payment of average wholesale price for each drug, in place of payment of the Red Book list price for each drug, would be fairer to pharmacists and less expensive to the ESRD program.

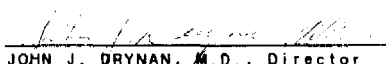
Response: The change was accepted.

(f) Comment: Transplant patients felt the 3-year post-operative limit on medication, medical care, and follow-up could be devastating to them, particularly in the case of immunosuppressants, which are needed indefinitely.

Response: The department agreed and the 3-year limit was eliminated.

The amendatory language of rule 16.35.105 was corrected and clarified to state that clients must have done whatever is necessary to participate in both Parts A and B of Medicare, or be certified as ineligible.

At the request of Legislative Council staff and to clarify that the most up-to-date version of the Drug Topics Redbook will be used, the edition date, reference to the updates, and availability of prices from the ESRD program were added to rule 16.35.111.

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

Certified to the Secretary of State October 5, 1987.

Montana Administrative Register

19-10/15/87



BEFORE THE DIVISION OF CRIME CONTROL

OF THE STATE OF MONTANA

In the Matter of the Adoption	)	NOTICE OF ADOPTION OF
of Rules for Implementation of	)	RULES FOR IMPLEMENTATION
the Crime Victims Compensation	)	OF THE VICTIMS
Act by the Crime Victims Unit	)	COMPENSATION ACT BY THE
and Division of Crime Control.	)	CRIME VICTIMS UNIT AND
	)	DIVISION OF CRIME CONTROL

TO: All Interested Persons.

1. On August 27, 1987, the Division of Crime Control published notice of the proposed adoption of rules concerning the Crime Victims Compensation Act, at pages 1391 to 1398 of the 1987 Montana Administrative Register, issue number 16.

2. The Division has adopted the following rules as proposed: Rule (I) 23.15.101, FUNCTION OF THE DIVISION; Rule (II) 23.15.102, GENERAL DEFINITIONS; Rule (III) 23.15.103, GOOD CAUSE; Rule (IV) 23.15.104, INTERESTS OF JUSTICE; Rule (V) 23.15.201, CLAIM AND INITIAL DETERMINATION; Rule (VI) 23.15.202, REQUEST FOR HEARING; Rule (VIII) 23.15.204, NOTIFICATION OF DISPOSITION; Rule (IX) 23.15.301, ATTORNEY FEES; Rule (X) 23.15.302, PAYMENT OF CLAIMS; Rule (VII) 23.15.303, EMPLOYMENT INFORMATION; Rule (XIII) 23.15.304, MEDICAL INFORMATION; Rule (XIV) 23.15.305, CHIROPRACTIC SERVICES; Rule (XV) 23.15.306, MENTAL HEALTH COUNSELORS; Rule (XVII) 23.15.308, CONTRIBUTION; Rule (XVIII) 23.15.309, SICK LEAVE; Rule (XIX) 23.15.310, SUBROGATION AND ATTORNEY FEES.

3. The agency has adopted Rule (VII) 23.15.203 as proposed with the following changes:

23.15.203 HEARING (1) to (4) remain as proposed.

(5) Within 20 days of issuance of the proposed order, either party may file written exceptions to the order and request a review by the division administrator if the division administrator did not act as hearing examiner, or a reconsideration by the division administrator if the division administrator acted as hearing examiner.

(6) The division will issue a final order which is a final determination by the division as set forth in 53-9-131. This order is final for purposes of judicial review only if a review under subsection (45) has been held.

AUTH: 53-9-104(1)(a), MCA  
53-9-131, MCA

IMP: 53-9-122, 53-9-130,

4. The agency has adopted Rule (XVI) 23.15.307 as proposed with the following changes:

23.15.307 COMPENSATION BENEFITS (1) and (2) remain as proposed.

(3) Payment to a claimant of a service provided by a collateral source made after payment for that item has been made by the crime victims fund creates an immediate debt to the crime victims fund, regardless of the length of time between

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Montana Administrative Register

the payments. The claimant is responsible for repayment of the debt. The source of the benefit may pay directly to the fund rather than to the claimant or service provider.

AUTH: 53-9-104(1)(a), MCA IMP: 53-9-125(5), 53-9-128,  
53-9-103(2), MCA

5. Proposed Rule XI will not be adopted.

6. The rules have been adopted pursuant to 53-9-104, MCA, which requires the division of crime control to adopt rules to implement the Crime Victims Compensation Act of Montana. The rules are necessary to clarify and explain the procedure for filing a claim for benefits, and to explain restrictions on claims and benefits. The rules are also necessary to provide an informal hearing procedure that complies with due process requirements.

7. Rule (VII) 23.15.203, and Rule (XVI) 23.15.307 have been changed, and proposed Rule XI deleted as a result of comments by the legislative council. The changes are for clarification, and the deleted rule was an inaccurate repetition of a statute. No other comments were received.

8. These rules will be effective October 16, 1987.

By: Michael A. Lavin

MICHAEL A. LAVIN, Administrator  
Crime Control Division

Certified to the Secretary of State 10/2/87, 1987.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of ARM 42.11.201 through )	ARM 42.11.201 through 42.11.252
42.11.252 relating to Montana )	relating to Montana Liquor
Vendors and Representatives. )	Vendors & Representatives.

TO: All Interested Persons:

1. On August 27, 1987, the Department published notice of the proposed amendment of ARM 42.11.201 through 42.11.252 relating to Montana Vendors and Representatives at page 1441 of the 1987 Montana Administrative Register, issue no. 16.

2. The Department has adopted the rules with minor changes.

42.11.201 DEFINITIONS (1) As used in this sub-chapter, the following definitions apply:

(a) "Broker" means a person, partnership, association, or corporation employed by UNDER CONTRACT TO a vendor to arrange for the employment and registration of the vendor's representatives as provided by these rules and/or to supervise those representatives.

42.11.211 REGISTRATION OF REPRESENTATIVES (1) through (4) remain the same.

(5) An application to register a representative must be signed by the vendor or an official of the vendor OR A VENDOR'S BROKER.

(6) and (7) remain the same.

42.11.217 CANCELLATION OF REGISTRATION (1) The department shall cancel the registration of a vendor's representative if requested in writing by the vendor OR A VENDOR'S BROKER.

3. A public hearing was held on September 21, 1987, to consider the proposed amendment of the rules. No testimony was presented at the hearing. A written comment was received from Harry A. Haines, Worden, Thane & Haines, P.C., Missoula, Montana representing a Montana corporation. Mr. Haines comments are summarized as follows:

COMMENT: The proposed regulations eliminate a corporate, partnership, or association entity from performing as a representative. In the past, a corporation, partnership, or association was able to register as a broker which allowed itself to register its employees as representatives with the department. Under the proposed amendments representatives must be registered directly by the liquor vendors. This will cause a broker to lose control over its employees. House Bill No. 574 only requires that a representative be a resident of this state, not that the representative be a natural person.

RESPONSE: The amendments do not affect the opportunity for a broker to be a corporation, partnership, or association entity. The amendments deregulate brokers, do not require their registration with the department, and do not restrict their opportunity to do business with vendors or to act as agents on behalf of vendors. The definition of broker is being revised to avoid the ambiguity that may arise from the use of the word "employ" in that definition. The definition of broker is revised by replacing the words "employed by" with "under contract to", in order to avoid confusion with the word "employ", which is defined in the rules to be limited to the working relationship between an entity and a natural person.


The amendments do restrict representatives to being natural persons. The law specifies the number of representatives per vendor to be at least one and no more than two in order for a vendor to promote its products in Montana. To define representatives to be anything other than a natural person would allow an entity to file any number of people to promote a vendor's product in the state which would make the limitation of two in the law meaningless. Furthermore, the law uses the term "resident" which is normally applied to natural persons.

The amendments do not prohibit a vendor's representatives from being a broker's employees. Although representatives promote products on behalf of a vendor, they can still function in that capacity as employees of a broker who is under contract to the vendor to arrange for the employment, registration and supervision of its representatives. Since the concern is expressed that a broker will lose control over its employees if the employees must be directly registered by the liquor vendor, the amendments are being further modified to make clear that a broker can act as the vendor's agent in registering a representative for the vendor. ARM 42.11.211(5) is being modified by adding "or a vendor's broker" to the end of the sentence. ARM 42.11.217(1) is being modified by adding "or a vendor's broker" to the end of the sentence.

COMMENT: The residency requirement of House Bill No. 574 is unconstitutional under the privilege and immunity clause of the United States Constitution (Article 4, Section 2) as being discriminatory against nonresidents, or the commerce clause (Article 1, Section 8, Clause 3) as being discriminatory against interstate commerce, or the equal protection provisions of the fourteenth amendment as placing an undue burden on interstate commerce.

RESPONSE: The amendments are implementing a law that was properly passed by the legislature. The department is obliged to carry out a law that the legislature passes. If there is a constitutional issue, it is with the law and not the rule. If the law is found to be unconstitutional, then the rule will be amended at that time to conform.

-1797-

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 10/5/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of Rule I through IV (ARM )	Rule I through IV (ARM
42.11.301 through 42.11.304 )	42.11.301 through 42.11.304)
relating to Operating Liquor )	relating to Operating Liquor
Stores. )	Stores.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I through IV (ARM 42.11.301 through 42.11.304) relating to Operating Liquor Stores at page 1183 of the 1987 Montana Administrative Register, issue no. 14.

2. The Department has adopted the rules with this minor change to Rule II (42.11.302).

RULE II (42.11.302) CONVERSION TO AGENCY STORE (1) through (2) (a) remains the same.

(b) A store's indirect expenses is determined by multiplying the ratio of a store's gross sales to total gross sales times all expenses chargeable to the liquor division less direct expenses for all stores, and less the cost of the liquor division licensing bureau, the office of legal affairs, and the investigation and enforcement division (other than inspection costs directly attributable to a store). EXPENSES ASSOCIATED WITH NON-LIQUOR STORE SERVICES PERFORMED FOR THE LICENSING BUREAU, OFFICE OF LEGAL AFFAIRS, AND THE INVESTIGATION AND ENFORCEMENT DIVISION WILL BE EXCLUDED FROM THE DETERMINATION OF INDIRECT EXPENSE ALLOCATED TO STORES WHETHER THOSE SERVICES OR THE PERSONNEL ASSOCIATED WITH THEM ARE FORMALLY PART OF THOSE UNITS OR NOT.

(c) Remains the same.

3. A public hearing was held on August 31, 1987, to consider the proposed adoption of the rules. Testimony presented at the hearing and response from the department is as follows:

COMMENT: Senator Richard E. Manning, District 18 stated the law seems pretty clear and no rules should be necessary.

RESPONSE: Although the intent of the law is clear, there are important terms and requirements that could be interpreted many ways. The rules are intended to define the way the department interprets them. For instance, the law states that a store can't be converted to an agency unless the store's profit is less than 10%. The law doesn't define the term profit, how the percentage will be calculated, or the time period for which profit will be measured. The rule provides the definitions and methods lacking in the law but necessary to carry out the law.

COMMENT: Manning J. Alvers U.F.C.W. testified that the rule should allow for relocation of a store rather than closing it since a poor location may be the cause of low profits.

RESPONSE: Because of contractual obligations with a landlord, the relocation of a store while the lease is still in effect is not an option. Once a store has fallen below the 10% profit and the lease has expired, the rule calls for the conversion of the store to an agency as the first option. The closure of a store is the last option and would only occur if the store couldn't achieve a 10% profit under any mode of operation, including relocation of the site.

COMMENT: Senator Manning stated a store that is converted to an agency in a multi-store community shouldn't be allowed to locate too close to the other stores in order to avoid loss of profit.

RESPONSE: These rules are limited to the issue of when a store may be converted to an agency or closed and to the agent selection process that will be used. The limitations on the location of a store are established in the bid requirements used in the selection process. The bid requirements the department uses do not allow stores to be located too close to other stores.

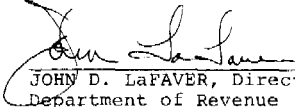
COMMENT: Representative Dan Harrington, Butte, Montana said the rules do not address the requirement to maintain sufficient inventory to avoid outages which may affect a store's profit.

RESPONSE: The law is explicit in stating that the department must maintain warehouse inventory to meet a monthly service level of at least 97%. The rules on conversion and closure do not need to restate what is already clear in the law. The department is maintaining inventory above this level and intends to continue doing so.

COMMENT: Phil Strobe, Attorney at Law, representing Montana Tavern Association testified that the MTA felt the rules go beyond the law by allowing indirect expenses to be charged to stores and also by allowing the department to assign staff to indirect expenses who should be excluded.

RESPONSE: The law does allow indirect expenses to be allocated. However, it does specifically state that certain expenses should not be allocated, e.g. licensing bureau. The rule defines the method of identifying indirect costs and specifically excludes the expenses that are not allowed. We are amending the rule, however, to make sure that the expenses associated with services performed for the licensing bureau, the office of legal affairs and the investigations and enforcement division will be excluded even if they are not formally part of those units.

-1800-

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 10/5/87.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

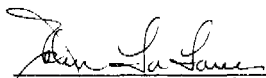
IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of ARM 42.15.118 relating )	ARM 42.15.118 relating to the
to the Exempt Retirement Limi-) Exempt Retirement Limitation	
tation for Income Tax. )	for Income Tax.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I (42.15.118) relating to Exempt Retirement Limitation at page 1186 of the 1987 Montana Administrative Register, issue no. 14.

2. The Department has adopted the rule as proposed.

3. A public hearing was held on August 26, 1987, to consider the proposed adoption of the rule. No one testified at the hearing.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 10/5/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of Rule I through V (ARM )	Rule I through V (ARM
42.23.112 through 42.23.116 )	42.23.112 through 42.23.116
relating to Corporation License)	relating to Corporation
Tax Exemption for Research )	License Tax Exemption for
and Development Firms. )	Research and Development Firms.

TO: All Interested Persons:

1. On August 27, 1987, the Department published notice of the proposed adoption of Rule I through V (ARM 42.23.112 through 42.23.116) relating to Corporation License Tax Exemption for Research and Development Firms at page 1450 of the 1987 Montana Administrative Register, issue no. 16.

2. The Department has adopted these rules with a minor change to Rule I which is as follows:

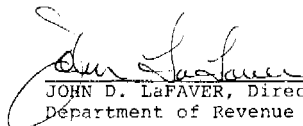
RULE I (42.23.112) RESEARCH AND DEVELOPMENT - APPLICATION AND ELIGIBILITY (1) through (3) remain the same.

(4) To obtain the corporate license tax exemption, the firm must file an annual application with the department before the end of the first calendar quarter during which the firm does business in Montana. THE INITIAL APPLICATION MUST BE FILED BEFORE THE END OF THE FIRST COMPLETE CALENDAR QUARTER DURING WHICH THE CORPORATION ENGAGED IN BUSINESS IN MONTANA. FOR EXAMPLE, IF A CORPORATION BEGAN OPERATING IN MONTANA ON SEPTEMBER 15, THAT CORPORATION WOULD HAVE UNTIL DECEMBER 31 OF THAT YEAR TO FILE FOR THE EXEMPTION.

(5) remains the same.

3. A public hearing was held on September 17, 1987, to consider the proposed adoption of the rule. No one testified at the hearing and no written comments were received by the department.

4. Rule I (42.23.112) has been amended to clarify the time frame in which the initial application for the corporate license tax exemption may be filed. The amendment clarifies that the taxpayer will have at least one full quarter in which to file for the exemption.

  
JOHN D. LAFAVER, Director  
Department of Revenue

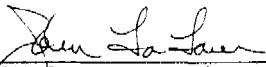
Certified to Secretary of State 10/5/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of ARM 42.31.2141 relating to )	ARM 42.31.2141 relating
Personal Property and Over- )	to Personal Property and
payment Refunds for Public )	Overpayment Refunds for
Contractors. )	Public Contractors.

TO: All Interested Persons:

1. On August 27, 1987, the Department published notice of the proposed amendment of ARM 42.31.2141 relating to Personal Property and Overpayment Refunds for Public Contractors at page 1438 of the 1987 Montana Administrative Register, issue no. 16.
2. The Department has adopted the amendments as proposed.
3. Public hearing was not held on these amendments and no comments were received by the department.

  
\_\_\_\_\_  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 10/5/87.

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

In the matter of the adoption	)	AMENDED NOTICE OF THE
of Rule (II) 46.12.505	)	ADOPTION OF RULE (II)
pertaining to DRGs in the	)	46.12.505 PERTAINING TO
Montana Medicaid program	)	INPATIENT HOSPITAL
	)	SERVICES, REIMBURSEMENT

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services' rule notice published at page 1658, issue number 18, 1987 Montana Administrative Register, amended and adopted several rules. One correction to that notice is necessary.

2. The comment-response section states at page 1677:

"COMMENT: The Department should reduce the length of stay requirement from 9 months to as low as 90 days. The long period of time will cause a cash flow burden on hospitals.

RESPONSE: The Department does not intend for this policy to apply to persons who have extended lengths of stay. Rather, the policy is intended for those persons who are likely to be in a hospital setting beyond 9 months. In recognition of the cash flow burden, the Department proposes to allow hospital residency status to be conveyed after 6 months of occupancy and allow cycle billing every 30 days thereafter."

3. The final notice regarding Rule (II) 46.12.505 is corrected as follows:

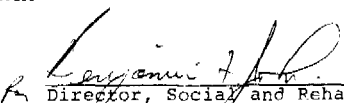
46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT  
Subsections (1) through (10)(a)(i) remain as adopted.

(ii) recipients must have been an inpatient in an acute care hospital for a minimum of ~~nine-(9)~~ SIX (6) continuous months; and

Subsections (10)(a)(iii) through (11)(b) remain as adopted.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 5, 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 Rules 46.13.302,	)	RULES 46.13.302, 46.13.303,
46.13.303, 46.13.304,	)	46.13.304, 46.13.401,
46.13.401, 46.13.403 and	)	46.13.403 AND 46.13.502
46.13.502 pertaining to the	)	PERTAINING TO THE LOW INCOME
Low Income Energy Assistance	)	ENERGY ASSISTANCE PROGRAM
Program	)	

TO: All Interested Persons

1. On August 27, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.13.302, 46.13.303, 46.13.304, 46.13.401, 46.13.403 and 46.13.502 pertaining to the Low Income Energy Assistance Program at page 1454 of the 1987 Montana Administrative Register, issue number 16.

2. The Department has amended Rules 46.13.302, 46.13.303, 46.13.304, 46.13.403 and 46.13.502 as proposed.

3. The Department has amended ARM 46.13.401 as proposed with the following changes:

46.13.401 BENEFIT AWARD MATRICES Subsection (1) remains as proposed.

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by household income level, (100% if at or below 100% of OMB poverty, 75% if between 101% - 125% of OMB poverty level) type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. Applicants may claim no more bedrooms than household members- except that SINGLE elderly and handicapped households who can demonstrate unmet need are entitled to a MINIMUM MAXIMUM of two bedrooms if the home contains more than one bedroom. The maximum benefit also varies by local contractor districts to account for climatic differences across the state.

The proposed benefit matrices remain as proposed except for the following changes:

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield,  
McCone, Richland, Dawson, Prairie, Wibaux, Rosebud,  
Treasure, Custer, Fallon, Powder River and Carter Counties

Single Family Units

bedrooms	natural gas	M.D.U. electricity	fuel		propane	wood	coal	R.F.A. electricity
			oil	gas				
one	\$279 247	\$608 557	\$347 318	\$297 272	\$180 165	\$166 152	\$416 380	
two	\$330 302	\$744 680	\$423 387	\$363 332	\$225 206	\$208 190	\$508 465	
three	\$374 342	\$845 773	\$481 440	\$413 378	\$270 247	\$249 228	\$577 528	
four	\$420 384	\$946 866	\$539 493	\$462 423	\$315 288	\$291 266	\$646 591	

Multi Family Units

bedrooms	natural gas	M.D.U. electricity	fuel		propane	wood	coal	R.E.A. electricity
			oil	gas				
one	\$235 215	\$529 484	\$302 276	\$259 237	\$157 143	\$145 132	\$362 331	
two	\$287 263	\$647 592	\$348 337	\$316 289	\$196 179	\$181 165	\$442 404	
three	\$325 297	\$735 672	\$419 383	\$359 329	\$235 215	\$213 199	\$502 459	
four	\$366 334	\$823 753	\$469 429	\$402 368	\$274 251	\$252 232	\$562 514	

Mobile Family Units

bedrooms	natural gas	M.D.U. electricity	fuel		propane	wood	coal	R.E.A. electricity
			oil	gas				
one	\$254 230	\$566 518	\$323 295	\$277 253	\$168 153	\$155 142	\$347 354	
two	\$307 281	\$691 633	\$394 360	\$338 309	\$209 192	\$193 177	\$422 432	
three	\$347 318	\$786 719	\$448 409	\$384 351	\$251 230	\$232 212	\$517 491	
four	\$394 358	\$880 805	\$502 459	\$430 394	\$293 268	\$271 248	\$601 550	

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT IV

Liberty, Hill and Blaine Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$234 206	\$441 405	\$368 338	\$238 402	\$191 176	\$176 162
two	\$274 251	\$539 495	\$449 412	\$325 491	\$239 219	\$221 203
three	\$340 284	\$612 562	\$540 469	\$508 538	\$287 263	\$265 243
four	\$348 320	\$686 630	\$572 525	\$601 625	\$334 307	\$309 284

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$195 179	\$382 352	\$339 294	\$381 350	\$166 153	\$152 141
two	\$234 219	\$469 430	\$390 359	\$465 427	\$208 191	\$192 176
three	\$269 247	\$533 489	\$444 408	\$529 486	\$249 229	\$230 211
four	\$303 278	\$596 548	\$498 457	\$592 544	\$291 267	\$269 247

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$208 191	\$410 376	\$342 314	\$407 374	\$178 163	\$164 151
two	\$254 234	\$501 460	\$417 383	\$497 457	\$222 204	\$205 188
three	\$288 264	\$569 523	\$475 436	\$565 519	\$267 245	\$246 226
four	\$324 297	\$638 566	\$532 488	\$633 581	\$311 286	\$287 264

MAXIMUM BENEFIT AWARD MATRIX FOR  
IC DISTRICT V

Glacier, Toole, Pondera, Teton,  
Chouteau and Cascade Counties

Single Family Units

bedrooms	natural		electricity	fuel		propane	wood		coal		Great Falls natural gas	
	gas	oil		oil	wood		wood	coal				
one	\$192	175	\$378	345	\$286	270	\$272	341	\$164	150	\$151 138	\$209 191
two	\$234	214	\$462	422	\$360	329	\$355	416	\$205	187	\$189 173	\$255 233
three	\$265	243	\$525	480	\$410	375	\$372	473	\$246	225	\$227 207	\$289 264
four	\$298	273	\$588	537	\$459	420	\$379	530	\$287	262	\$265 242	\$325 297

Multi Family Units

bedrooms	natural		electricity	fuel		propane	wood		coal		Great Falls natural gas	
	gas	gas		oil	oil		wood	wood	coal	coal		
one	\$167	153	\$329	301	\$247	235	\$324	296	\$143	130	\$132 120	\$182 166
two	\$204	186	\$402	367	\$314	287	\$396	362	\$178	163	\$164 150	\$222 203
three	\$231	211	\$456	417	\$357	326	\$450	411	\$214	195	\$192 180	\$251 230
four	\$260	237	\$511	467	\$400	365	\$504	461	\$249	228	\$230 210	\$283 259

Mobile Family Units

bedrooms	natural		electricity	fuel		propane	wood		coal		Great Falls natural gas	
	gas	oil		oil	oil		wood	wood	coal	coal		
one	\$178	163	\$351	321	\$235	251	\$346	317	\$152	139	\$141 129	\$194 178
two	\$218	199	\$429	393	\$335	306	\$423	387	\$190	174	\$176 161	\$237 217
three	\$247	226	\$488	446	\$381	348	\$481	440	\$229	209	\$211 193	\$269 246
four	\$278	254	\$547	500	\$427	390	\$539	492	\$267	244	\$246 225	\$302 276



MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT VI

Fergus, Judith Basin, Petroleum, Wheatland,  
Golden Valley and Musselshell Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$347 200	\$438 394	\$367 337	\$344 317	\$146 171	\$171 158
two	\$366 245	\$523 482	\$447 411	\$420 387	\$232 214	\$214 197
three	\$384 277	\$595 547	\$508 468	\$478 439	\$248 256	\$252 237
four	\$398 311	\$666 613	\$570 524	\$535 492	\$325 299	\$300 276

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$189 174	\$323 343	\$319 294	\$299 275	\$142 149	\$149 137
two	\$231 213	\$455 419	\$389 358	\$366 336	\$202 186	\$186 171
three	\$262 241	\$517 476	\$442 407	\$415 382	\$242 223	\$224 206
four	\$294 271	\$579 533	\$496 456	\$465 428	\$283 260	\$261 240

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$202 186	\$308 366	\$341 314	\$320 294	\$123 159	\$159 147
two	\$247 227	\$427 448	\$416 383	\$391 360	\$216 199	\$199 183
three	\$280 257	\$523 509	\$473 435	\$444 409	\$259 238	\$230 220
four	\$315 289	\$619 570	\$530 487	\$497 458	\$302 278	\$279 257

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Montana Administrative Register

MAXIMUM BENEFIT AWARD MATRIX FOR

IC DISTRICT VII

Sweetgrass, Stillwater, Carbon,  
Yellowstone and Big Horn Counties

Single Family Units

bedrooms	M.P.C.		electricity	fuel		propane	wood	coal	M.D.U.	
	M-P-C	M-P-Cr		oil	oil				M-P-Cr	natural gas
one	\$181 166		\$357 327	\$294 270	\$261 239	\$155 124	\$143 131	\$232 213		
two	\$221 203		\$436 400	\$359 329	\$318 292	\$193 177	\$179 164	\$284 260		
three	\$251 230		\$496 455	\$408 374	\$363 332	\$232 213	\$214 197	\$321 294		
four	\$282 259		\$555 509	\$457 419	\$405 372	\$271 248	\$250 229	\$361 331		

Multi Family Units

bedrooms	M.P.C.		electricity	fuel		propane	wood	coal	M.D.U.	
	M-P-C	M-P-Cr		oil	oil				M-P-Cr	natural gas
one	\$158 145		\$310 285	\$256 235	\$227 208	\$135 124	\$124 114	\$202 185		
two	\$193 177		\$379 348	\$312 286	\$277 254	\$168 154	\$155 143	\$247 226		
three	\$218 200		\$431 396	\$355 326	\$315 289	\$202 185	\$186 171	\$279 256		
four	\$245 225		\$483 443	\$398 365	\$355 323	\$236 216	\$212 200	\$314 288		

Mobile Family Units

bedrooms	M.P.C.		electricity	fuel		propane	wood	coal	M.D.U.	
	M-P-C	M-P-Cr		oil	oil				M-P-Cr	natural gas
one	\$169 155		\$332 305	\$274 251	\$242 222	\$144 132	\$133 122	\$216 198		
two	\$204 189		\$406 372	\$334 306	\$296 272	\$186 165	\$166 152	\$264 242		
three	\$233 214		\$461 423	\$373 348	\$336 309	\$216 198	\$199 183	\$298 274		
four	\$262 241		\$516 474	\$425 390	\$377 346	\$252 231	\$232 213	\$336 308		

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT VIII

Lewis & Clark, Jefferson and  
Broadwater Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$211 192	\$416 379	\$347 317	\$431 393	\$180 164	\$166 152
two	\$258 235	\$508 463	\$423 386	\$526 480	\$225 205	\$208 190
three	\$292 266	\$572 526	\$481 439	\$598 546	\$270 246	\$249 228
four	\$328 299	\$646 590	\$539 492	\$670 611	\$315 288	\$291 265

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$184 167	\$362 330	\$302 275	\$375 342	\$157 143	\$145 132
two	\$224 205	\$442 403	\$368 336	\$458 418	\$196 179	\$181 165
three	\$254 232	\$502 458	\$419 382	\$521 475	\$235 214	\$217 198
four	\$286 260	\$562 513	\$469 428	\$583 532	\$274 250	\$253 231

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$196 179	\$387 352	\$323 294	\$401 366	\$168 153	\$155 141
two	\$240 219	\$472 431	\$394 359	\$490 447	\$209 191	\$193 176
three	\$271 248	\$537 489	\$448 408	\$556 507	\$251 229	\$232 212
four	\$305 278	\$601 548	\$503 457	\$623 568	\$293 267	\$271 247

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT IX

Meagher, Callatin and Park Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$211 193	\$416 380	\$365 334	\$455 417	\$180 165	\$166 152
two	\$258 236	\$508 465	\$445 407	\$556 509	\$225 206	\$208 190
three	\$292 267	\$577 528	\$506 463	\$632 578	\$270 247	\$249 228
four	\$328 300	\$646 591	\$567 518	\$708 648	\$315 288	\$291 266

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$184 168	\$362 331	\$317 290	\$396 362	\$157 143	\$145 132
two	\$224 205	\$442 404	\$387 354	\$484 443	\$196 179	\$181 165
three	\$254 232	\$502 459	\$449 402	\$558 503	\$225 215	\$217 199
four	\$286 261	\$562 514	\$493 451	\$616 563	\$274 251	\$253 232

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$196 180	\$387 354	\$339 310	\$423 387	\$168 153	\$155 142
two	\$249 219	\$472 432	\$413 378	\$517 473	\$209 192	\$193 177
three	\$271 248	\$527 491	\$470 430	\$566 538	\$251 230	\$232 212
four	\$305 279	\$601 550	\$527 482	\$658 602	\$293 268	\$271 248

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT X

Lincoln, Flathead, Lake  
and Sanders Counties

Single Family Units

bedrooms	natural gas	M.P.C.		fuel		wood	P.P.L.	
		electricity	oil	propane	coal		electricity	coal
one	\$234 204	\$444 402	\$349 319	\$444 405	\$194 174	\$126 161	\$437 417	
two	\$274 249	\$549 491	\$446 388	\$543 495	\$249 218	\$224 201	\$559 509	
three	\$310 282	\$612 558	\$485 442	\$617 562	\$287 261	\$265 241	\$635 579	
four	\$348 317	\$666 625	\$523 495	\$691 630	\$324 305	\$306 281	\$711 648	

Multi Family Units

bedrooms	natural gas	M.P.C.		fuel		wood	P.P.L.	
		electricity	oil	propane	coal		electricity	coal
one	\$195 178	\$383 350	\$304 277	\$387 352	\$166 152	\$153 140	\$398 362	
two	\$238 217	\$469 427	\$371 338	\$472 430	\$208 189	\$192 175	\$486 443	
three	\$269 245	\$533 485	\$422 384	\$537 489	\$249 227	\$230 210	\$552 503	
four	\$303 276	\$596 544	\$472 431	\$601 548	\$291 265	\$269 245	\$618 564	

Mobile Family Units

bedrooms	natural gas	M.P.C.		fuel		wood	P.P.L.	
		electricity	oil	propane	coal		electricity	coal
one	\$408 190	\$410 374	\$325 296	\$413 377	\$178 162	\$164 150	\$425 387	
two	\$554 232	\$501 457	\$396 361	\$505 460	\$222 203	\$205 187	\$519 474	
three	\$688 262	\$569 519	\$471 411	\$574 523	\$267 243	\$246 224	\$596 518	
four	\$724 295	\$628 581	\$525 460	\$642 586	\$311 284	\$287 262	\$641 603	

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$213 195	\$420 383	\$333 304	\$374 341	\$182 166	\$148 153
two	\$261 238	\$513 468	\$406 370	\$457 417	\$227 208	\$210 192
three	\$295 269	\$583 532	\$461 421	\$449 474	\$272 249	\$257 230
four	\$332 303	\$653 596	\$517 472	\$582 531	\$319 291	\$294 268

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$185 169	\$365 333	\$200 264	\$325 297	\$158 145	\$146 133
two	\$231 207	\$446 407	\$333 322	\$397 363	\$198 181	\$183 167
three	\$256 234	\$507 463	\$401 366	\$452 412	\$238 217	\$219 200
four	\$289 263	\$566 519	\$450 411	\$506 462	\$277 253	\$256 233

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$198 181	\$390 356	\$310 283	\$348 318	\$169 155	\$156 143
two	\$243 221	\$472 436	\$377 345	\$425 388	\$212 193	\$195 178
three	\$274 250	\$542 495	\$439 392	\$483 441	\$254 232	\$234 214
four	\$308 282	\$607 554	\$481 439	\$541 494	\$296 270	\$272 250

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT XII

Powell, Granite, Deer Lodge, Silver Bow,  
Beaverhead and Madison Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$247 228	\$487 448	\$346 365	\$532 471	\$211 194	\$495 175
two	\$302 278	\$595 547	\$483 445	\$626 575	\$264 243	\$244 224
three	\$342 315	\$676 622	\$550 506	\$711 654	\$317 291	\$292 269
four	\$385 354	\$757 697	\$616 567	\$796 733	\$369 340	\$341 314

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$245 198	\$424 390	\$345 317	\$446 410	\$184 169	\$129 156
two	\$263 242	\$518 476	\$420 387	\$544 501	\$230 211	\$212 195
three	\$297 274	\$588 541	\$478 440	\$619 569	\$276 253	\$254 234
four	\$335 308	\$659 606	\$536 493	\$692 637	\$321 296	\$297 273

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$230 212	\$452 417	\$369 339	\$476 438	\$196 181	\$181 167
two	\$261 259	\$553 509	\$449 413	\$582 535	\$245 226	\$227 208
three	\$298 293	\$629 579	\$511 470	\$661 608	\$295 271	\$272 250
four	\$329 329	\$704 648	\$573 527	\$741 681	\$344 316	\$317 292

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch.  
609, L. 1987, Eff. 7/1/87  
IMP: Sec. 53-2-201 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: Benefit levels should not be reduced.

RESPONSE: We are attempting to ensure that we have sufficient funds to honor all client expectations. Last year, through a number of unforeseen events, benefit levels had to be reduced during the program year, causing a hardship for clients, local agencies and fuel vendors alike. A repeat of that reduction must be avoided, if at all possible.

We have tried to match anticipated demand for fuel bill, supplemental and emergency assistance to anticipated federal funds.

COMMENT: Benefit levels appear too high for anticipated revenues. The Department should recheck its calculations.

RESPONSE: The Department agrees that it is possible that expenditures may exceed projections and benefit levels have been adjusted accordingly.

Since the initial rule was developed, the Senate Appropriations Subcommittee has passed a budget for FY 88 LIEAP which is approximately 33% lower than last year. Even by utilizing the entire reserve set aside, less funds will be available for fuel bills than at any previous time.

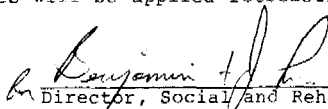
COMMENT: There is a typographical error in the benefit table for District VII.

RESPONSE: The Department agrees and the table will be correctly labeled.

COMMENT: There is an omission and a typographical error in 46.13.401.

RESPONSE: The Department staff recognized the error and has corrected the language. Opening comments by the Department at the hearing reflect the intent of the rule.

5. These rule changes will be applied retroactively to October 1, 1987.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 5, 1987.

Montana Administrative Register

19-10/15/87



VOLUME NO. 42

OPINION NO. 26

ARMED FORCES - Town not required to give paid military leave of absence;  
CITIES AND TOWNS - Town not required to give paid military leave of absence;  
LEAVES OF ABSENCE - Town not required to give paid military leave of absence;  
LOCAL GOVERNMENT - Town not required to give paid military leave of absence;  
MUNICIPAL GOVERNMENT - Town not required to give paid military leave of absence;  
MONTANA CODE ANNOTATED - Sections 7-1-4111, 7-1-4121(9), 10-1-604;  
MONTANA CONSTITUTION - Article XI, section 1;  
UNITED STATES CODE - 38 U.S.C. §§ 2024(d), 2024(f).

HELD: An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

17 September 1987

Donald D. Cole  
Saco Town Attorney  
171 South Central Avenue  
Malta MT 59538

Dear Mr. Cole:

Your request for my opinion inquires whether a town employee who is a member of the National Guard is entitled to a leave of absence with pay while attending a training session with the National Guard. The subject of military leave is addressed by section 10-1-604, MCA, as follows:

A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be

given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time. [Emphasis added.]

Your letter concludes that this section has no application to a town employee. I agree with your conclusion.

The Montana Constitution defines the term "local government units" to include counties and incorporated cities and towns. Mont. Const. art. XI, § 1. Cities and towns are separately defined entities according to population, as set forth in section 7-1-4111, MCA. The term "municipality" means "an entity which incorporates as a city or town." § 7-1-4121(9), MCA. The plain meaning of the word "city" is not synonymous with the word "town." I cannot insert what the Legislature has omitted. If the Legislature had intended to include towns in section 10-1-604, MCA, it could have expressly done so either by enumeration or by utilization of the term "local government units" or "municipalities." As a rule in statutory construction, expressio unius est exclusio alterius, i.e., the expression of one excludes the other. I conclude that section 10-1-604, MCA, does not apply to a town, and that a town is therefore not required to grant paid leaves of absence for military training.

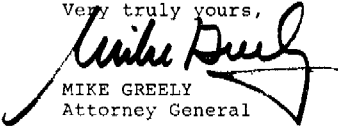
According to federal law, a public or private employer must grant a leave of absence for the period required to perform active duty for training or inactive duty training in the armed forces of the United States, including the National Guard. 38 U.S.C. §§ 2024(d), (f). The federal law further provides: "Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes." 38 U.S.C. § 2024(d). While the section is

ambiguous with respect to whether the leave of absence must be given on a paid or unpaid basis, it has been determined that the Veteran's Reemployment Rights Act does not require an employer to pay a reservist for the time he is away on reserve training duty but only requires that a reasonable request for an unpaid leave of absence upon proper notice be granted. Hilliard v. New Jersey Army National Guard, 527 F. Supp. 405 (D.N.J. 1981).

THEREFORE, IT IS MY OPINION:

An employee of a town is not entitled to a leave of absence with pay while attending regular encampments, training cruises, or similar training programs of the organized militia or of the military forces of the United States.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 42

OPINION NO. 27

LIENS - Definition of "owner" of real property being purchased under a contract for deed;

TAXATION AND REVENUE - Definition of "owner" of real property being purchased under a contract for deed; MONTANA CODE ANNOTATED - Sections 15-8-601, 15-16-402(1);

OPINIONS OF THE ATTORNEY GENERAL - 9 Op. Att'y Gen. at 440 (1920-22), 23 Op. Att'y Gen. No. 114 (1950).

- HELD: 1. One who is purchasing land under a contract for deed is not the "owner" of the property for purposes of section 15-16-402(1), MCA.
2. The procedure for revising erroneous tax assessments is set forth in section 15-8-601, MCA.

18 September 1987

Thomas R. Scott  
Beaverhead County Attorney  
Beaverhead County Courthouse  
Dillon MT 59725

Dear Mr. Scott:

You have asked my opinion on several questions concerning the existence of a lien upon real property created by the nonpayment of property taxes.

The specific facts of your request involve real property purchased by B from S in 1975 under a contract for deed. The deed to the property was apparently placed in escrow until the conditions of the contract were met, i.e., full payment was made. B defaulted on the required payments and the contract was never fully executed. See § 28-2-104, MCA. A quitclaim deed from B to S was recorded in 1987.

Your inquiry involves a lien which attached to the land in question when B failed to pay taxes on real and personal property in 1985-86. S disputes that portion

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of the lien which represents B's unpaid personal property taxes.

Section 15-16-402(1), MCA, makes taxes assessed on account of personal property a lien upon the real estate of the owner.

Tax on personalty lien on realty--separate assessment. (1) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof from and after 12 midnight of January 1 in each year. [Emphasis added.]

Your first question deals with whether B was the "owner" of the land purchased under contract for deed, to the extent that a lien could attach for nonpayment of taxes on his personal property.

Montana's statutes distinguish between a purchaser under contract for deed and the record owner of the property being purchased. A "purchaser under contract for deed" is defined as one who "has entered into a contract with the record owner of real property in which it was agreed that the record owner will deliver the deed to the property to the purchaser when certain conditions have been met, such as completion of payments by the purchaser; and ... has recorded the contract." § 70-20-115(1), MCA. When legal notice is required by statute to be given to the "owner" of real property, notice must also be given to a purchaser of that property under a contract for deed. § 70-20-115(2), MCA. See also §§ 7-13-2304(2)(c) (notice of intention to levy tax); 15-7-102 (notice of classification and appraisal); 15-7-208 (reclassification notice); 15-18-202 (notice of application for tax deed); 15-23-102(2)(a) (notice of assessed value), MCA.

The relevant case law suggests that in Montana a purchaser under a contract for deed, while the contract is executory, does acquire a right of property in the land, but that right lacks legal title and is equitable only. See First State Bank of Thompson Falls v. United

States, 92 F.2d 132, 134 (9th Cir. 1937) (purchaser of realty under a contract for deed is the owner for purposes of liability for costs of extinguishing forest fire on the property); Pollard v. City of Bozeman, 44 St. Rptr. 1436, \_\_\_ P.2d \_\_\_ (1967) (pending final payment under a contract for sale, title remains with seller for purpose of assessment of taxes); and Calvin v. Custer County, 111 Mont. 162, 167, 107 P.2d 134, 136 (1940) (purchaser of realty under a contract for deed is owner for purposes of determining exemption from taxes). See also Glacier Campground v. Wild Rivers, Inc., 182 Mont. 389, 405, 597 P.2d 689, 698 (1978); State v. Kistner, 132 Mont. 437, 441, 318 P.2d 223, 225 (1957), and Kern v. Robertson, 92 Mont. 283, 288, 12 P.2d 565, 567 (1932). Once a purchaser under a contract for deed defaults and surrenders the property to the vendor, there is no property or right to property to which a tax lien against the purchaser may attach, in the absence of a showing of any unjust enrichment to the vendor. Greenup v. United States, 239 F. Supp. 330, 333 (D. Mont. 1965) (tax lien may attach to a purchaser's cause of action for unjust enrichment). See also M & R Construction Co. v. Shea, 180 Mont. 77, 80, 589 P.2d 138, 140 (1979) (a mere executory contract of purchase between others does not furnish a sufficient basis upon which to predicate a mechanic's lien against the owner of the land).

In 23 Op. Att'y Gen. No. 114 (1950), Attorney General Olsen concluded that the purchaser of real property under an executory contract of sale is the "owner" of the property. However, the facts there dealt with a purchaser's right to vote in local elections, and the opinion should not be broadly applied to other factual situations. 9 Op. Att'y Gen. at 440 (1920-22), which actually dealt with tax liens, concluded that personal property taxes assessed to the purchaser of land under a contract for deed would not constitute a lien upon the land, since title remains in the seller until the contract is finally executed.

There is no clear statutory authority for treating the purchaser of real property under a contract for deed as the "owner" of the property for purposes of attaching a tax lien. Indeed, as I have noted, the tax notice statutes suggest that an "owner" and a "purchaser under contract for deed" are different persons. Although some court decisions have held that a purchaser under a

contract for deed is deemed to be the beneficial or equitable owner of such property and may be treated as the "owner" for some purposes, I have found no decisional authority that concludes such a purchaser is to be treated as the "owner" under section 15-16-402(1), MCA. Thus, I conclude that the holding in 9 Op. Att'y Gen. at 440 (1920-22) remains valid.

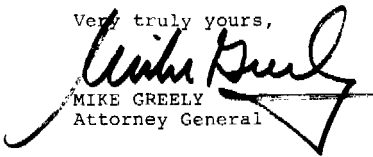
Because I conclude that the tax lien did not properly attach to the land in question during the life of the contract for deed, your second question does not need to be addressed.

Your last question is: If the taxes upon B's personal property are not properly a lien on the real property purchased under the contract for deed, what is the proper procedure for reassessing those taxes? The procedure for revising erroneous tax assessments is set forth in section 15-8-601, MCA. That procedure should be followed in the situation you have described.

THEREFORE, IT IS MY OPINION:

1. One who is purchasing land under a contract for deed is not the "owner" of the property for purposes of section 15-16-402(1), MCA.
2. The procedure for revising erroneous tax assessments is set forth in section 15-8-601, MCA.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 42

OPINION NO. 28

ALCOHOLIC BEVERAGES - Treatment and services for intoxicated persons and persons incapacitated by alcohol;

MONTANA CODE ANNOTATED - Sections 53-24-101, 53-24-103(7), 53-24-302 to 53-24-304.

- HELD: 1. An approved public treatment facility must have a licensed physician examine a person who appears to be incapacitated by alcohol when that person has been taken into protective custody and is brought to the approved public treatment facility by the police.
2. An approved public treatment facility is not required to treat a person who is determined to be incapacitated pursuant to section 53-24-303(4), MCA, but may admit and treat the person for up to 48 hours.

21 September 1987

Russell R. Andrews  
Teton County Attorney  
Teton County Courthouse  
Choteau MT 59422

Dear Mr. Andrews:

You requested an opinion concerning whether an approved public treatment facility must accept for examination a person incapacitated by alcohol when the person is brought to the facility involuntarily while in the protective custody of police pursuant to section 53-24-303(2), MCA. You also ask whether, if an approved treatment facility is required to examine such a person, it is also required to treat the incapacitated person under the terms of section 53-24-303(4), MCA.

Title 53, chapter 24, MCA, sets forth Montana's statutes on alcoholism and drug dependence. Part 3 of that chapter specifically provides for the treatment of alcoholics and intoxicated persons. The Legislature has established a policy of recognizing alcoholism and



chemical dependency as a problem affecting the State of Montana and as a problem which is subject to and worthy of treatment. § 53-24-101, MCA. Public intoxication may not be considered a criminal offense, nor may it constitute an element of an offense giving rise to a criminal or civil penalty or sanction. §§ 53-24-106, 53-24-107, MCA. Funds generated by liquor and beer taxes may be distributed to state-approved private nonprofit or public programs as set forth in section 53-24-108, MCA.

The Department of Institutions administers the provisions of Title 53, chapter 24, MCA. As part of its administrative duties, the department establishes standards for approved treatment facilities which must be met for a treatment facility to be approved as a public or private treatment facility. The Department must periodically inspect approved public and private treatment facilities and may, after hearing, suspend, revoke, limit, or restrict an approval or refuse to grant an approval where the standards are not met. § 53-24-208, MCA. See also §§ 20.3.101, et seq., ARM.

The questions you pose arise out of a situation where on numerous occasions an approved public treatment facility has refused to examine and treat incapacitated persons. The facility has explained its refusal by stating that it is against the facility's policy to treat a person on an involuntary basis without a court order of commitment. In each instance, however, your request has been for treatment and services pursuant to section 53-24-303, MCA, rather than a request for commitment pursuant to section 53-24-302 or section 53-24-304, MCA.

Title 53, chapter 24, MCA, defines four categories of services and treatment for alcoholic and intoxicated persons: (1) voluntary treatment, § 53-24-301, MCA; (2) involuntary commitment, § 53-24-302, MCA; (3) treatment and services for intoxicated persons and persons incapacitated by alcohol, § 53-24-303, MCA; and (4) emergency commitment of intoxicated persons and persons incapacitated by alcohol, § 53-24-304, MCA. Categories (1), (2), and (4) are not at issue here. Your question does not involve treatment where persons voluntarily apply directly to approved facilities for treatment, or involuntary commitments where, following a hearing, persons are committed to the custody of the department by the district court. Section 53-24-304,

MCA, provides an emergency commitment procedure for incapacitated persons, but it does not apply here because your questions involve requests for treatment and services, not commitment.

Section 53-24-303, MCA, specifically provides for treatment and services for intoxicated persons and persons incapacitated by alcohol who are not a danger to others. It states:

Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, are taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved

public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission may not be detained at the facility once he is no longer incapacitated by alcohol or, if he remains incapacitated by alcohol, for more than 48 hours after admission as a patient unless he is committed under 53-24-304. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin may be notified if the patient consents to such notification. [Emphasis added.]

Section 53-24-103, MCA, defines incapacitated persons:

(7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

Section 53-24-303, MCA, requires that a police officer take a person who appears to be incapacitated by alcohol into protective custody and to an approved public treatment facility for emergency treatment. The statute also places a clear duty on the approved public treatment facility to have a licensed physician examine the person as soon as possible. The statute uses mandatory language which requires the officer to take the person to the facility for treatment and requires that the facility have him examined as soon as possible. The police officer's authority to make any decision

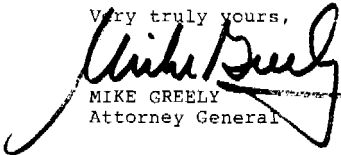
regarding the person's care and treatment appears to end at that point. The approved public treatment facility may then determine how the person should be cared for.

The language of the remainder of the statute is permissive and allows the facility to exercise any one of several options. The facility may admit the person for treatment, or it may arrange to transfer him to another health facility. If the person is incapacitated, he may be admitted for up to 48 hours, after which time he must be released if not committed pursuant to section 53-24-304, MCA. The person may be taken to his home. If the person has no home, the facility must assist him in obtaining shelter. This opinion does not address any questions regarding liability which may arise if an approved public treatment facility declines to treat an incapacitated person and sends him away. That may, however, be a matter for the approved public treatment facility to consider in making a decision on how the person should be cared for or treated.

THEREFORE, IT IS MY OPINION:

1. An approved public treatment facility must have a licensed physician examine a person who appears to be incapacitated by alcohol when that person has been taken into protective custody and is brought to the approved public treatment facility by the police.
2. An approved public treatment facility is not required to treat a person who is determined to be incapacitated pursuant to section 53-24-303(4), MCA, but may admit and treat the person for up to 48 hours.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 41

OPINION NO. 29

COMMUNITY COLLEGES - Authority to issue revenue bonds to finance construction of;  
COUNTIES - Authority to issue revenue bonds to finance community college construction;  
SCHOOL DISTRICTS - Authority to issue revenue bonds to finance community college construction;  
MONTANA CODE ANNOTATED - Sections 20-6-621, 20-9-401(2), 20-9-406, 20-9-421, 20-9-451 to 20-9-456, 20-15-101, 20-15-103, 20-15-301, 20-15-309, 20-15-311, 20-15-403, 20-15-404, 90-5-101(4), 90-5-101(5), 90-5-101(8), 90-5-102(1).

HELD: Flathead Valley Community College District may borrow funds from Flathead County to finance proposed school construction, subject to applicable school law.

2 October 1987

Ted O. Lympus  
Flathead County Attorney  
Flathead County Courthouse  
Kalispell MT 59901

Dear Mr. Lympus:

You have requested my opinion concerning an arrangement between Flathead Valley Community College District (the District) and Flathead County (the County), whereby the County would issue revenue bonds for the purpose of defraying the costs associated with the District's proposed project to acquire, construct, and furnish buildings to be used for college purposes. You have posed several questions about the propriety of such an arrangement, which would involve either a loan agreement or a lease-purchase agreement between the County and the District.

A. County's Authority to Issue Bonds.

Your first question is whether the County has the authority to issue revenue bonds for the purpose of

financing the costs of the proposed campus construction. Under one alternative plan, the County would enter into an agreement to loan the proceeds from the bond sale to the District for the construction project. The second alternative plan involves the County or a third party undertaking the construction project and leasing it to the District by means of a lease-purchase agreement, with title passing to the District after 20 years. Under both alternatives the District would pay off the loans (or the lease) from revenue sources provided in the District's unrestricted budget, with no use of revenues from a voted levy unless approved by the voters. The principal amount of the loan (or lease), when added to all other indebtedness of the District, would not exceed the maximum amount for which a school district may become indebted by the issuance of bonds under section 20-9-406, MCA.

Counties are authorized to issue revenue bonds to defray the cost of industrial development projects. § 90-5-102(1)(d), MCA. As the result of an amendment enacted by the Montana Legislature in 1986, the definition of "project" includes land, buildings, or other improvements, and any other real or personal property deemed necessary in connection therewith, which shall be suitable for use for "higher education facilities." § 90-5-101(8), MCA. The phrase "higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education. § 90-5-101(4), MCA. I assume for the purposes of this opinion that Flathead Valley Community College is an institution of higher education. See §§ 20-15-101, 90-5-101(5), MCA.

The statutes pertaining to the issuance of revenue bonds for industrial development projects contemplate that the proceeds from the sale of revenue bonds may be loaned to others for the purpose of defraying the costs of the project or may be used by the county itself to acquire or construct the project and lease it to another. §§ 90-5-102(1)(a) through (c), MCA. I conclude from these statutes that Flathead County does have authority to issue revenue bonds for the purpose of financing Flathead Valley Community College District's proposed project, and that the County may either loan the proceeds from the bond sale to the District or carry out the project itself and then lease it to the District. My opinion is subject to the County and the District

meeting all other legal requirements contained in the statutes on industrial development bonds and the statutes on bonded indebtedness in general. Some of these statutes are discussed below.

B. Community College District's Authority to Borrow.

Your second and third questions concern whether the District has the authority to borrow money from the County to finance the project either through a loan agreement or a lease-purchase agreement, as previously described in the first part of this opinion.

In order to answer these questions, it is necessary to consider the community college statutes (Tit. 20, ch. 15, MCA), as well as those statutes which authorize the issuance of industrial development bonds for higher education facilities (Tit. 90, ch. 5, pt. 1, MCA). Every new act takes its place as a component part of an extensive system of existing written laws, 2A Sutherland Statutory Construction § 53.01 (4th ed. 1973), and statutes must be harmonized if possible. Crist v. Segna, 38 St. Rptr. 150, 152, 622 P.2d 1028, 1029 (1981).

Section 20-15-301, MCA, permits community colleges to construct or purchase school buildings, borrow moneys for those purposes, and repay such obligations from the various revenues of the college.

Certain restrictions do apply, however. Sources of revenue for community colleges are limited by section 20-15-311, MCA, and supervision by the state's Board of Regents is necessary. See §§ 20-15-103, 20-15-309, MCA. Moreover, section 20-15-404, MCA, provides a list of specific statutes to which the trustees of a community college district must adhere. Some of the statutes listed in section 20-15-404, MCA, may apply to the facts of your inquiry, and others may not. For example, section 20-9-406, MCA, must be adhered to because it sets limits on the amount that a school district may become indebted by the issuance of bonds, regardless of whether they are issued by the County or by the District. Section 20-6-621, MCA, requires that qualified electors in a district approve most school site selections, as has apparently been done by the electors in Flathead Valley Community College District,

according to the material supplied with your opinion request.

C. Requirement for Holding an Election for Bonds.

Section 20-15-404, MCA, also requires that community colleges adhere to the school bond statutes found in Title 20, chapter 9, MCA. Some of these statutes require that elections be held under certain circumstances. If a conflict arises between the provisions of the school laws and any other state law, the school laws govern. § 20-9-401(2), MCA. Section 20-9-421, MCA, which requires voter approval if a school district issues bonds, does not apply in this case since it is contemplated that the County, rather than the District, will issue bonds authorized by the industrial development bond statutes. Section 20-9-451, MCA, however, which requires an election for bonds issued by a county in connection with a county high school, is applicable in the instant case, for the following reasons.

As has already been mentioned, the community college statutes specifically require adherence to certain other statutes, including sections 20-9-451 to 456, MCA. Sections 20-9-451 to 456, MCA, set forth the procedure for indebteding a county for high school facilities when the county high school in such county has not been placed in a high school district by the high school boundary commission. Voter approval is required before bonds may be issued. § 20-9-453, MCA. At first glance it might seem that these statutes are inapplicable to bonds issued for defraying the costs of a community college district. However, the Legislature expressly required that community colleges adhere to these statutes. See Kish v. Montana State Prison, 161 Mont. 297, 301, 505 P.2d 891, 893 (1973). Thus, for purposes of your request, sections 20-9-451 to 456, MCA, should be read to apply to the Flathead Valley Community College District by inserting the phrase "community college" in place of "a county high school that has not been placed in a high school district."

I conclude that those statutes mentioned in the foregoing discussion authorize Flathead Valley Community College District to borrow money from Flathead County to finance the District's proposed school construction

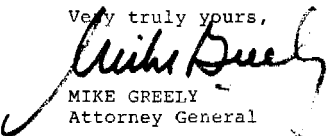


project, either through the loan agreement or the lease-purchase agreement described in your opinion request. As already noted, the County and the District must comply with other applicable statutes, some of which I have discussed in this opinion. See generally the statutes on community colleges, §§ 20-15-101 to 404, MCA, and specifically §§ 20-15-403 and 20-15-404, MCA.

THEREFORE, IT IS MY OPINION:

Flathead Valley Community College District may borrow funds from Flathead County to finance proposed school construction, subject to applicable school law.

Very truly yours,



MIKE GREELY  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

# HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of, all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

## Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject<br>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<br>Number and<br>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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