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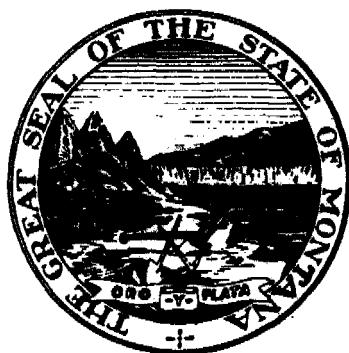
OCT 28 1988

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

DOES NOT CIRCULATE

1988 ISSUE NO. 20
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PAGES 2266-2332



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

| | |
|----------------------------------|----------------------------|
| In the matter of the proposed) | NOTICE OF PUBLIC HEARING |
| adoption, amendment and repeal) | ON PROPOSED AMENDMENT OF |
| of rules relating to the) | RULE 4.12.3501, AND REPEAL |
| grading of certified seed) | OF 4.12.3503 AND |
| potatoes) | 4.12.3504, AND ADOPTION |
|) | OF NEW RULES RELATING TO |
|) | THE GRADING OF CERTIFIED |
|) | SEED POTATOES |

TO: All Interested Persons

1. On November 17, 1988, at 10:00 a.m., a public hearing will be held in Room 225, Agriculture/Livestock Building, 6th and Roberts, Helena, Montana 59620-0201, to consider the adoption, repeal and amendment of rules as above stated relating to the grading of certified seed potatoes.

2. The proposed amendment of 4.12.3501 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rules are located at page 4-525, 4-526, Administrative Rules of Montana).

4.12.3501 GENERAL REQUIREMENTS (1) through (2) no changes.

(3) Final Pack Inspection.

(a) All Montana certified seed potatoes sold in bulk or offered for sale in bags shall be inspected by a Federal or Federal-State Inspector and a certificate shall be issued as to the grade of the product. The final inspection shall be made before potatoes are moved from the loading point. ~~If the potatoes do not meet the final grade requirements; the grade certificate shall not be issued unless the potatoes are regraded to meet the requirements.~~ Standard method of loading shall be used when loading trucks and/or railroad cars, or bulk shipments.

(b) No change.

(4) through (6) no changes.

(7) Each lot of certified seed potatoes shall be inspected by either Federal or Federal-State inspectors at the time of shipment in accordance with the Montana Seed Potato Grade Standards which uses the U.S. Seed Potato Grade Standards unless otherwise stated by these rules.

(8) No change.

(9) ~~Washing of certified seed potatoes to be tagged with an official tag shall not be permissible unless requested by the buyer. --- Presence of soil on tubers shall not constitute reason for throwing them out of the grade. Grower should allow for weight of soil when packaging potatoes for sale.~~

(10) ~~It shall be permissible to use official tags on~~

potatoes-containing-an-excess-of-oversize,-undersize,-hollow heart-and/or-sprouts-providing-that-the-official-grade certificate-indicates-that-the-potatoes-exceed-the tolerance.--It-shall-be-the-responsibility-of-the-grower-to submit-written-evidence-that-the-purchaser-is-willing-to accept-such-a-grade. Auth: 80-3-104, 80-3-105, MCA Imp: 80-3-104, 80-3-105 MCA

REASON: This clarifies that an inspection certificate shall be issued for every load. The reference to the U.S. Seed Potato Grade Standards and the Montana Seed Potato Grade Standards states a basis upon which the grades are being established.

3. Rules 4.12.3503 BLUE TAGS and 4.12.3504 RED TAGS are proposed for repeal because they are being replaced by Rule I Blue Tags and Rule II Red Tags, as further proposed in this notice. Such rules proposed for repeal may be found at pages 4-526 and 4-527 of the Administrative Rules of Montana. AUTH 80-3-104, 80-3-105 MCA.

4. RULE I BLUE TAGS (1) The official blue tag shall be used to designate seed potato lots that are the equivalent of the U.S. No. 1 seed potato grade. Auth: 80-3-104, 80-3-105, MCA Imp: 80-3-104, 80-3-105 MCA

REASON: This change from basing the grade on the U.S. Potato Grade for tablestock to using the U.S. Seed Potato No. 1 Grade will help bring uniformity to the shipping of seed potatoes nationwide.

5. RULE II RED TAGS (1) The official red tag shall be used to designate seed potato lots which meet the following requirements:

(a) Size - minimum 1 1/2 ounces, unless otherwise specified, and maximum of 12 ounces, unless otherwise specified.

(b) Not seriously misshapen (seriously pointed, dumbbell-shaped or otherwise badly deformed.)

(c) Free from:

(i) Blackheart;

(ii) Late Blight Tuber Rot;

(iii) Nematode or Tuber Moth injury;

(iv) Bacterial Ring Rot; and,

(v) Soft Rot or Wet Breakdown.

(d) Free from serious damage by any other cause, except that:

(i) Growth cracks shall not be scored,

(ii) Cuts and bruises shall be scored when removal causes loss of more than 15% of the total weight of a tuber,

(iii) Sunburn (greening) shall not be scored,

(iv) Dirt shall not be scored,

(v) Stem-end discoloration, means serious

discoloration extending beyond a depth of 1/2 inch, shall be scored unless verified by a department approved pathologist as not being a disease symptom,

(vi) Freezing injury other than the condition of being frozen or affected by soft rot or wet breakdown shall be scored when removal of the affected area causes a loss of more than 10% of the total weight of the tuber.

(2) The tolerances for red tag grade shall be those applicable in the U.S. #1 Seed Potato Grade with the exception of soft rot or wet breakdown which shall allow a 1% tolerance. Auth: 80-3-104, 80-3-105, MCA Imp: 80-3-104, 80-3-105 MCA

REASON: These changes from basing the grade on the U.S. Potato Grade for tablestock to using the U.S. Seed Potato No. 1 Grade will help give our state grades continuity and lessen confusion in their use. The exceptions permitted give Montana growers some allowances for this grade to ship an established grade of product that does not quite measure up to the Blue Tag Grade.


RULE III WHITE TAGS (1) The official white tag shall be used to designate seed potato lots that are the equivalent of the U.S. No. 1 seed grade except for any defect or defects which are then so noted on the official certificate by the inspector only after the grower submits a written statement that he has notified the buyer of these defects. Auth: 80-3-104, 80-3-105, MCA Imp: 80-3-104, 80-3-105 MCA

REASON: This new grade gives the grower the opportunity to ship their potatoes even though they may be out of tolerance for certain defects. The grower submitting a written statement makes it the grower's responsibility that the buyer is aware of any defect which he may be receiving.

6. Interested persons may submit their data, views, or arguments concerning the proposed rules at the hearing or in writing to the Department of Agriculture, Agriculture/Livestock building, 6th and Roberts, Helena, Montana 59620-0201, no later than November 24, 1988.

7. The Director of the Department or his designee shall preside over and conduct the hearing.

8. These rules shall be effective July 1, 1989 for the shipment of the 1989 potato crop.



Keith Kelly, Director
Department of Agriculture

Certified to Secretary of State October 17, 1988

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.34.414 pertain-) OF 8.34.414 EXAMINATIONS AND
ing to examinations and 8.34.) 8.34.418 FEE SCHEDULE
418 pertaining to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 26, 1988, the Board of Nursing Home Administrators proposes to amend the above-stated rule.

2. The proposed amendment of 8.34.414 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1040 and 8-1041, Administrative Rules of Montana)

"8.34.414 EXAMINATIONS (1) through (5) will remain the same.

(6) In the event of failure, the individual may retake the examination within the period of 1 year, by paying only the application examination fee."

Auth: 37-1-134, 37-9-304, MCA Imp: 37-1-134, 37-9-304, MCA

3. REASON: The current application fee does not cover the cost of the examinations. Therefore the change from application fee to examination fee for retakes is necessary in order to clarify what program the fee covers.

4. The proposed amendment of 8.34.418 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1042 and 8-1043, Administrative Rules of Montana)

"8.34.418 FEE SCHEDULE (1) In accordance with the provisions of Title 37, Chapter 9, MCA, each person applying for active license, inactive registration, reciprocity or temporary permit shall pay an application fee of \$70 \$50, which is not refundable.

(2) ~~Each person granted a license as a nursing home administrator shall pay an original license fee of \$65~~ Each applicant shall pay an examination fee of \$100 for the May examination, and \$120 for the November examination. The licenses granted at the May exam expire as of December 31 unless renewed. The licenses granted at the November exam remain in effect until December 31 of the following year and then must be renewed.

(2) through (12) remain the same."

Auth: 37-1-134, 37-9-304, MCA Imp: 37-1-134, 37-9-304, 37-9-305, MCA

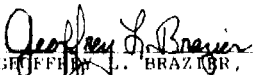
5. REASON: It is necessary to increase the examination fees because of an increase in fees charged by the National Board of Examiners for Nursing Home Administrators for administering its exams.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Nursing Home Administrators, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 24, 1988.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Nursing Home Administrators, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 24, 1988.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 19 based on the 195 licensees in Montana.

BOARD OF NURSING HOME
ADMINISTRATORS
CAROL ANN ANDREWS, CHAIRPERSON

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 17, 1988.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

| | |
|--------------------------------|-------------------------------|
| In the Matter of the Amended) | AMENDED NOTICE OF PROPOSAL |
| Proposal Notice to Statement) | TO STATEMENT #5 OF THE |
| #5 of The Notice of Public) | NOTICE OF PUBLIC HEARING ON |
| Hearing on Proposed Rules) | NEW RULES I THROUGH CLXXXVI |
| for the Montana Accreditation) | FOR THE MONTANA ACCREDITATION |
| Standards and Proposed Repeal) | STANDARDS AND PROPOSED REPEAL |
| of ARM 10.55.101 Through) | OF ARM 10.55.101 THROUGH |
| ARM 10.55.504, Standards of) | ARM 10.55.504, STANDARDS OF |
| Accreditation) | ACCREDITATION |

TO: All Interested Persons

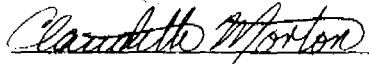
1. The Board of Public Education is proposing the following amended statement to #5 of the Notice of Public Hearing on New Rules I Through CLXXXVI for the Montana Accreditation Standards and Proposed Repeal of ARM 10.55.101 Through ARM 10.55.504, Standards of Accreditation, found in Issue #19 of the Montana Administrative Register, page 2075. The proposal notice is being amended by addition to provide the following reasonable necessity statement:

The Board of Public Education is proposing these new rules because 20-2-121 Montana Codes Annotated mandates the Board to adopt standards of accreditation and HJR16 of the 1987 legislative session required the Board to "administer and coordinate a review of the adequacy of the accreditation standards" and "to consider" linking student performance expectations to the accreditation standards.

2. The citation of rule-making authority at the end of each rule contains a typographical error and should read 20-2-114 MCA instead of 20-4-114 MCA.


ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State October 17, 1988.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PROPOSED AMENDMENT
ment of ARM 1.2.419 regard-) OF ARM 1.2.419 FILING, COMPIL-
ing scheduled dates for the) ING, PRINTER PICKUP AND
Montana Administrative) PUBLICATION FOR THE MONTANA
Register) ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 26, 1988, the office of the Secretary of State proposes to amend ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER
(1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

19889 Schedule

| <u>Filing</u> | <u>Compiling</u> | <u>Printer Pickup</u> | <u>Publication</u> |
|----------------|------------------|-----------------------|--------------------|
| January 43 | January 54 | January 65 | January 1412 |
| January 4816 | January 4917 | January 2018 | January 2826 |
| February 4 | February 2 | | |
| January 30 | January 31 | February 31 | February 449 |
| February 4613 | February 4714 | February 4815 | February 2523 |
| February 29 | | | |
| March 6 | March 47 | March 28 | March 4016 |
| March 4420 | March 4521 | March 4622 | March 2430 |
| April 43 | April 54 | April 65 | April 4413 |
| April 4817 | April 4918 | April 2019 | April 2827 |
| May 21 | May 32 | May 43 | May 4211 |
| May 4615 | May 4716 | May 4817 | May 2625 |
| May 34 | | | |
| June 5 | June 46 | June 27 | June 915 |
| June 4319 | June 4420 | June 4521 | June 2329 |
| July 53 | July 65 | July 26 | July 4413 |
| July 4817 | July 4918 | July 2019 | July 2827 |
| August 47 | August 28 | August 39 | August 4417 |
| August 4521 | August 4622 | August 4723 | August 2531 |
| August 29 | August 30 | August 34 | |
| September 5 | September 6 | September 7 | September 814 |
| September 4218 | September 4319 | September 4420 | September 2228 |
| October 32 | October 43 | October 54 | October 4312 |

| | | | |
|---------------|---------------|---------------|---------------|
| October 4716 | October 4817 | October 4918 | October 2726 |
| | November 4 | | |
| October 3430 | October 31 | November 21 | November 409 |
| November 4413 | November 4514 | November 4615 | November 2322 |
| November 2827 | November 2928 | November 3029 | December 87 |
| December 4211 | December 4312 | December 4413 | December 2221 |

(2) remains the same.

AUTH: 2-4-312, MCA

IMP: 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1989.

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

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

no later than November 25, 1988.


VERNER BERTELSON
Secretary of State

Dated this 17th day of October, 1988

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

| | | |
|-----------------------------|---|-----------------------------|
| In the matter of the amend- |) | NOTICE OF PUBLIC HEARING ON |
| ment of Rules 46.12.204, |) | THE PROPOSED AMENDMENT OF |
| 46.12.901, 46.12.902, |) | RULES 46.12.204, 46.12.901, |
| 46.12.905, 46.12.911, |) | 46.12.902, 46.12.905, |
| 46.12.912 and 46.12.915 |) | 46.12.911, 46.12.912 AND |
| pertaining to co-payments |) | 46.12.915 PERTAINING TO |
| and fees for optometric |) | CO-PAYMENTS AND FEES FOR |
| services |) | OPTOMETRIC SERVICES |

TO: All Interested Persons

1. On November 16, 1988, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.204, 46.12.901, 46.12.902, 46.12.905, 46.12.911, 46.12.912 and 46.12.915 pertaining to co-payments and fees for optometric services.

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

46.12.204 RECIPIENT REQUIREMENTS, CO-PAYMENTS

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

(3) No co-payment will be imposed with respect to:

(a) emergency services; or

(b) family planning services; or

(c) eyeglasses provided under a volume purchasing agreement.

Subsection (4) remains the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.901 OPTOMETRIC SERVICES, DEFINITION

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

(b) Reimbursement under the Montana medicaid program is permitted only for optometric services listed in ARM 46.12.905.

(2) The following definitions apply to optometric services:

(a) "Tonometry" means the measurement of the intraocular pressure (test for presence or absence of glaucoma) by an instrument called a tonometer.

(i) Since tonometry is usually an integral part of a general or complete examination, an independent charge for this service would usually not be appropriate.

(ii) If, on a screening examination, doubt has been raised as to the level of pressure and/or presence of glaucoma, further testing may be necessary.

(b) "Examination of the central and peripheral fields" means tests to determine the side vision in each eye and the presence or absence of ocular disease.

(i) A rough visual field test is part of a general examination. More formal testing, including tangent screen test or perimeter (either manual or automatic) are definitely not part of a routine examination and are performed only in the presence of suspected pathology.

(c) "Minimal medical service" means a level of service supervised by an optometrist but not necessarily requiring his presence. This includes, for example, a visual acuity check or verification of lenses.

(d) "Brief medical service" means a level of service pertaining to the evaluation and treatment of a condition requiring only an abbreviated history and examination. This includes, for example, follow-up for conjunctivitis or removal of sutures from laceration (when not a post-operative part of total surgical service).

(e) "Limited medical service" means a level of service pertaining to the evaluation of a circumscribed acute illness or to the periodic re-evaluation of a problem including an interval history and examination, the review of effectiveness of past medical management, the ordering and evaluation of appropriate diagnostic tests, the adjustment of therapeutic management as indicated, and the discussion of findings and/or medical management. This includes, for example, review of history, external examination of eye, initiation of treatment for acute conjunctivitis, or review of interval history, and physical and sensory status.

(f) "Intermediate optometric services" means a level of service pertaining to the evaluation of a new or existing condition complicated with a new diagnostic or management problem not necessarily relating to the primary diagnosis, including history, general medical observation, external ocular and adnexal examination and other diagnostic procedures as indicated. These services may include the use of mydriasis. Intermediate services do not usually include determination of the refractive state but may do so in an established patient (procedure 92012) who is under continuing active treatment. This includes, for example, review of history, external examination, ophthalmoscopy, biomicroscopy for an acute complicated condition (e.g., iritis) not requiring comprehensive ophthalmological services or review of interval history, external examination, ophthalmoscopy, biomicroscopy and tonometry in established patient with known cataract not requiring comprehensive optometric services.

(g) "Comprehensive optometric services" means a level of service in which a general evaluation of the complete visual system is made. The comprehensive services constitute a single service entity but need not be performed at one session. The service includes history, general medical observa-

tion, external and ophthalmoscopic examination, gross visual fields and basis sensorimotor examination. It often includes, as indicated; biomicroscopy, examination with cycloplegia or mydriasis, tonometry, and usually determination of the refractive state unless known, or unless the condition of the media precludes this or it is otherwise contraindicated, as in presence of trauma or severe inflammation. It always includes initiation of diagnostic and treatment programs as indicated. For example, the comprehensive services required for diagnosis and treatment of a patient and symptoms indicating possible disease of the visual system or to rule out disease of the visual system, new or established patient.

(h) "Initiation of diagnostic and treatment program" includes the prescription of medication, lenses and other therapy and arranging for special optometric diagnostic or treatment services, consultations, laboratory procedures and radiological services as may be indicated. Prescription of lenses may be deferred to a subsequent visit, but in any circumstance is not reported separately. ("Prescription of lenses" does not include anatomical facial measurements for or writing of laboratory specifications for spectacles. For spectacle services, see procedure 92340 et seq.)

(i) "Determination of the refractive state" means the quantitative procedure that yields the refractive data necessary to determine the best visual acuity with lenses and to prescribe lenses. It is not a separate medical procedure, or service entity, but is an integral part of the general optometric services, carried out with reference to other diagnostic procedures. The evaluation of the need for and the prescription of lenses is never based on the refractive state alone. Determination of the refractive state is not reported separately. It is usually part of the comprehensive optometric services (procedures 92004, 92014), but may occasionally be a part of intermediate optometric services to an established patient (procedure 92012) who, under continuing active treatment with periodic observation, may not require comprehensive re-evaluation.

(j) "Special optometric services" means services in which a special evaluation of part of the visual system is made, which goes beyond the services usually included under general optometrical services, or in which special treatment is given. Medical diagnostic evaluation by the optometrist is an integral part of all optometric services. Technical procedures (which may or may not be performed by the optometrist personally) are often part of the service, but should not be mistaken to constitute the service itself. Intermediate and comprehensive optometric services constitute integrated services in which medical diagnostic evaluation cannot be separated from the examining techniques used. Itemization of service components, such as slit lamp examination, keratometry, ophthalmoscopy, retinoscopy, determination of refractive state, tonometry, motor evaluation, etc. is not applicable.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77,
L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.902 OPTOMETRIC SERVICES, REQUIREMENTS

Subsections (1) and (2) remain the same.

(3) Each medicaid recipient shall be allowed one eye examination for determination of refractive state per fiscal year 12 month period unless one of the following circumstances exist:

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

(b) Visual training shall be limited to two one-hour sessions per week up to a maximum of 24 sessions per fiscal year 12 month period, if provided by a licensed optometrist.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77,
L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.905 OPTOMETRIC SERVICES, REIMBURSEMENT

(1) The department will pay the lowest of the following for optometric services:

(a) the provider's actual (submitted) charge for the service;

(b) the amount allowable for the same service under med-icare. This amount is stated on the medicare explanation of benefits; or

(c) the department's fee schedule as specified in this rule.

~~(2)---The---following---procedures---are---included---in---visual examination---for---diagnosis---only---~~

~~(a)---Case-history,---symptoms,---and---occupational-vision evaluation~~

~~(b)---Analysis---and---neutralization-of-patient's-current lenses-and-frames~~

~~(c)---Visual-acuity-testing,---distance-and-near~~

~~(d)---Eye-health-examination~~

~~(i)---pupillary-reflexes-(direct,---consensual,---and-accom- modative)~~

~~(iii)---ophthalmoscopy-(media-and-fundus-inspection)~~

~~(iii)---external-inspection-(cornea,---lids,---and-adnexa)~~

~~(iv)---ocular-motility-(versions)~~

~~(e)---Visual-Analysis~~

~~(i)---keratometry-or-ophthalmometry~~

~~(ii)---preliminary-oculometer-coordination-evaluation (puruits,---saccades,---cover-tests,---NRP.G.)~~

~~(iii)---refraction-at-far-point,---static-retinoscopy,---sub- jective-refraction~~

~~(iv)---refraction---at---near-point,---dynamic-retinoscopy, subjective-refraction~~

(tv)----phorometric--tests--at--far-point-and-near-point:
 phorias,ductions,blur-points,accommodative-measurements
 (ff)----The-fee-is-\$28.13
 (3)----The-following-procedures--are-included--in-visual
 examination,prescription,and-follow-up:
 (a)----Case-history,symptoms,and--occupational--vision
 evaluation;
 (b)----Analysis--and-neutralization-of-patient's-current
 lenses-and-frames
 (c)----Visual-acuity-testing,distance-and-near
 (d)----Eye-health-examination
 (i)----pupillary---reflexes--(direct,---consensual,---and
 accommodative)
 (ii)----ophthalmoscopy--(media-and-fundus-inspection)
 (iii)----external-inspection--(cornea,lids,and-adnexa)
 (iv)----ocular-motility--(versions)
 (e)----Visual-Analysis
 (i)----keratometry-or-ophthalmometry
 (ii)----preliminary--oculomotor--coordination--evaluation
 (pursuits,saccades,cover-tests,N.P.C.)
 (iii)----refraction-at--far--point,---static--retinoscopy,
 subjective-refraction
 (iv)----refraction--at--near-point,---dynamic-retinoscopy,
 subjective-refraction
 (v)----phorometric--tests--at--far--point-and-near-point:
 phorias,ductions,blur-points,accommodative-measurements
 (f)----Prescribing,--writing--ophthalmic-lens-power-pre-
 scription(s)
 (g)----Follow-up--observation--at--visit--following--the
 delivery-and-fitting-of-new-lens-prescription,--observation-of
 patient's-reactions-and-evaluation-of-visual-performance--with
 new-glasses-or-other-therapy-performing-of-any-indicated-frame
 or--lens-adjustments-re-prescribing-of-lens--and/or--frame--if
 indicated
 (h)----The-fee-is-\$37.51
 (4)----Measuring-services-include-the-following:
 (a)----measuring,verifying,single-vision--service--(for
 standard-frame-and-basic-power-ophthalmic-lenses)---\$11.25
 (b)----measuring,--verifying,--bifocal--lens--service---
 \$15.00
 (c)----measuring,--verifying,--trifocal--lens--service---
 \$10.76
 (d)----measuring,--verifying,--cataract--lens--service---
 \$20.13
 (5)----Fitting-services-include-the-following:
 (a)----fitting,servicing,single-vision-frame--service---
 \$11.25
 (b)----fitting,--servicing,--bifocal--frame---service---
 \$15.00
 (c)----fitting,--servicing,--trifocal--frame--service---
 \$10.76

{d}-----fitting,--servicing,--cataract--frame--service---\$28.13
 {6}-----Hearing-aid-dispensing-services-include--the-following:
 {a}-----Add-to-measuring-and-verifying-services---\$9.37
 {b}-----Add-to-fitting-services---\$9.37
 {7}-----Non-basic-diagnostic-services-include-the-following:
 {a}-----Visual-examination,--additional-visits---\$9.37
 {b}-----Visual-field,--Peripheral-field-examination,--using-perimeter-or-equivalent,--white-fields---\$9.37
 {c}-----Visual-fields,--peripheral-field-examination-using-perimeter-or-equivalent,--color-fields---\$13.12
 {d}-----Visual-fields,--central--field-examination-using-tangent-screen-or-equivalent
 {i}-----white-fields---\$9.37
 {ii}-----color-fields---\$13.12
 {e}-----Screening,--visual--skills-examination,--using-key-stone-tests-or-equivalent---\$7.50
 {f}-----Screening,--multiple--pattern-visual-fields,--using-harrington-flecks-or-equivalent---\$5.62
 {g}-----Screening,--limited-tests-for-completion-of-insurance,--government-or-school-forms---\$7.50
 {h}-----Color-vision-tests,--using--20--isochromatic--or-equivalent---\$3.75
 {i}-----Tonometry,--tension---\$7.50
 {j}-----Biomicroscopy---\$7.50
 {k}-----Special-reports---\$56.27-per-hour
 {l}-----Consultation-(schools,--government)---\$56.27--per-hour
 {m}-----Office-consultation---\$7.50
 {n}-----Out-of-office-calls-(add-to-other-services)
 {i}-----day-time---\$9.37
 {ii}-----night-time---\$15.00
 {o}-----Mileage-charge-(beyond--10-miles--from--office)---\$19-per-mile
 {p}-----Post-cataract-diagnostic-examination---\$28.13
 {q}-----Cataract-lens-change-or-regrind---\$18.76
 {8}-----Non-Basic--ophthalmic--lens--services-include-the-following:
 {a}-----Non-Basic-spherical-and-sphere-cylindric-powers-(+--+-or---+)--for-each--4-diopters-of-sphere-over-Basic-Power-up-to-12.00D-(not-applicable--to-cataract--lenses)---add,--per-pair-\$5.62
 {b}-----For--each-2--diopters-cylinder-over-basic-power--add,--per-pair-\$5.62
 {c}-----Special-base-curve---add,--per-pair-\$3.75
 {d}-----Prism-power
 {i}-----total-prism-power--less-than--5-prism-diopters--add,--per-pair-\$5.62

(ii)---total--prism--power-5-diopters-or-more---add,-per pair-\$9.37

(e)---bifocal-grinding

(i)---concave---add,-per-pair-\$9.37

(ii)---convex---add,-per-pair-\$9.37

(f)---Slab-off-grinding---add,-per-pair-\$9.37

(g)---Tinted-or-colored-glass

(i)---single-vision-lenses---\$3.75

(ii)---multifocal-lenses---\$3.75

(h)---Oversize,-fused-flat-top-multifocal-segment,-35-6 45-mm-wide---\$3.75

(i)---Dual-segment--bifocal---(to-be-added--to-bifocal value-units)---add,-per-pair-\$10.76

(j)---Dual-segment-trifocal---(to-be-added--to-trifocal value-units)---add,-per-pair-\$10.76

(k)---High-add-fused-bifocal,-3.00---4.00-diopters-- add,-per-pair-\$3.75

(i)---High-add--fused--bifocal,-over---4.00--add,-per pair-\$9.37

(m)---High-add-one-piece--bifocal-over-4.00-diopters-- add,-per-pair-\$9.37

(n)---Plastic-single-vision-lens---add,-per-pair-\$3.75

(o)---Plastic-multifocal-lens---add,-per-pair-\$9.37

(p)---Coating,-anti-reflection-or-color---add,-per-pair \$3.75

(q)---Isi-kenic-lens---add,-per-pair-\$160.00

(r)---Safety-hardening---add,-per-pair-\$3.75

(9)---Service-code-for-metal-frames---\$7.50

(10)---Contact-lens-therapy-services-are-to-be-performed at-visits--following--the-visual--examination--and-include-the following:

(a)---Contact-lens-diagnostic-examination--include-bio- microscopy,-corneal-measurements,-ocular-adnexa--measurements, contact--lens--observations,-and--contact--lens--refraction-- \$10.76

(b)---Fitting-procedure,-basic-spherical-lens-include

(i)---integration-of-all-diagnostic-data-to-determine physical-specifications-and-refractive-prescription-of-initial lens,

(ii)---ordering-from-laboratory,

(iii)---verifying-finished-lenses-for-physical-specifica- tions-and-refractive-properties,

(iv)---biomicroscopic-and-fluorescein-evaluation-of-fin- ished-lenses-in-patient's-eye,

(v)---contact-lens-refraction-with-finished-lens,

(vi)---instructing-patient-in-insertion-and-removal-pro- cedures,

(vii)---subsequent-office-visits-to-evaluate-lens-perfor- mance-as-wearing-time-is-increased-(biomicroscopic-and-fluor- escein-inspections),

{viii}--determination--of-necessary-lens-modifications-or
complete-lens-changes-as-indicated;
{ix}---re-specifying,-re-prescribing,-and-re-ordering-of
lenses-as-indicated;
{x}-----office-laboratory-modifications-as-indicated,-and
{xi}---re-verifying-of-new-or-modified-lenses.
{xii}---The-fee-is-\$201.33
{e}-----The-following-fees-may-be-added--to-contact-lens
diagnostic-examination--or--contact--lens--fitting--procedure;
basic-spherical-lens.
{i}-----Fitting-procedures,-spherical---prism---ballast
lenses---\$90.48
{ii}-----Fitting-procedures,-lenticular-and/or--aphakic
lenses---\$46.88
{iii}---Fitting-procedures,-toric-lenses---\$93.78
{iv}---Fitting-procedures,-bifocal-lenses---\$107.55
{v}---Fitting-procedures,-keratoconus-lenses---\$107.55
{vi}---Office-call,-observation-and-consultation---\$9.37
{ii}---The-following-contact--lense-services--are--inde-
pendent-procedures:
{a}-----Instruction--visit--for--previous---contact--lens
wearer;
{i}-----fitted-elsewhere---\$20.13
{ii}---fitted-in-your-office---\$13.12
{b}-----Fitting-procedure-for-previous-contact-lens-wear-
er---\$181.50
{c}-----Duplication-of-new-contact-lenses---\$70.32
{d}-----Fitting-procedure,-monocular-only---\$181.50
{i2}---Contact-lens-laboratory-adjustments-apply-to--new
patients--fitted--elsewhere--and-the-provider's-patient's-past
customary-servicing-period-and-include:
{a}-----Edge-refinishing,-size--reducing,-fenestrating,
repolishing-and-beeding---\$9.37;
{b}-----Analysis-and-neutralization--of-contact--lenses--
\$11.25
{i3}---Servicing,-repairs-and-frame-adjustments-apply-to
new-patients--fitted-elsewhere-and-the-provider's-past-custom-
ary-servicing-period,-and-include-the-following:
{a}-----Conventional-frame-{minor-adjustments}---\$3.75
{b}-----Conventional-frame-{complete-realignment}---\$7.50
{c}-----Isokonic-lenses---\$7.50
{d}-----Low-vision-aid---\$9.37
{e}-----Spectal-frame---\$9.37
{f}-----Hearing-aid-frame---\$9.37
{i4}---Servicing,-repairs--and--replacements--of-frames
include-the-following:
{a}-----Duplicate-frame--(1-003+-004-using-single-vision
service-units)---\$16.07
{b}-----Different-frame--(requiring-lens-or-frame-reshap-
ing)---\$20.63

(e)----Front-replacement--(1-003--+--004--using--single vision-service-units)---\$14.06
 (d)----Temple-replacement,per-temple-(service-per-pair) --\$5.00
 (e)----Hinge-repair---\$5.62
 (f)----Ptosis-crutch---\$10.76
 (15)----Minor-servicing-and-repairs-of-frames-include-the following:
 (a)----Replace-screws---\$1.07
 (b)----Supply-jumbo-pads---\$1.07
 (c)----Supply-temple-covers---\$1.07
 (d)----Supply-pad-covers---\$1.07
 (e)----Supply-hinge-springs-or-tension-washers---\$3.75
 (f)----Solder-repair---\$3.75
 (g)----Recking--pads-added--to-nyl--or-aluminum--frame--\$3.75
 (h)----Rightening-hinge-to-front-or-temple---\$1.07
 (i)----New-top-rims---\$3.75
 (16)----Servicing-and-repairs-of-lenses--include-the-following:
 (a)----Neutralization-of-lenses-for-copy-of-prescription --\$5.62
 (b)----lens--replacement,one-lens, single-vision-service --\$11.25
 (c)----lens--replacement,--one-lens,--bifocal--service--\$15.00
 (d)----lens--replacement,--one-lens,--trifocal-service--\$10.76
 (17)----Diagnostic-drug-procedures-include-the-following:
 (a)----Cycloplegic-examination/refraction,--independent procedure---\$46.00
 (b)----Supplemental--mydriatic,add-to-fee-for-other-procedures---\$9.37
 (c)----Supplemental--cycloplegic--including--post-cycloplegic-office-visit---\$10.76
 (d)----Ophthalmoscopy,--independent--procedures,--with mydriasis, direct-and/or-indirect---\$10.76
 (e)----Ophthalmoscopy--with--contact--fundus--lens--procedure,add-to-fee-for-other-procedures---\$13.10
 (f)----Gonioscopy,add--to--fee--for--other--procedure--\$15.00
 (g)----Gonioscopy, independent-procedure---\$26.26
 (h)----Tonography, independent-procedure---\$37.51
 (i)----Intra-ocular-photography, independent--procedure, anterior-segment---\$10.76
 (j)----Intra-ocular-photography, independent--procedure, posterior-segment---\$37.51
 (k)----Supplemental--differential--diagnostic-procedures using-topical-pharmaceuticals,add-to-fee-for-other-procedures --\$13.12

{i}-----Ophthalmoscopy--with--contact--fundus--lens--proce-
dure,--independent--procedure---\$26-26
{m}-----Ophthalmodynamometry,--supplemental--procedure,--add
to--fee--for--other--procedures---\$11-25
{n}-----Ophthalmodynamometry,---independent--procedure---
\$17-05

{18}-----Visual--training--shall--be--reimbursed--at--the--lowest
of--usual--and--customary--charges,--which--are--reasonable,--the
amount--payable--by--medicare--or--\$21.78--per--hour;

(2) Professional services are provided as follows:

(Procedures marked with an "*" shall be allowed only when eyeglasses are allowed.)

(Procedures marked with an "***" shall be subject to the limits on routine eye examinations when the diagnosis is refractive error.)

Fee

OFFICE MEDICAL SERVICES, NEW PATIENT

| | | |
|---------|-----------------|-------|
| 90000** | Brief service | 18.34 |
| 90010** | Limited service | 28.24 |

OFFICE MEDICAL SERVICES, ESTABLISHED PATIENT

| | | |
|---------|------------------|-------|
| 90030** | Minimal services | 7.54 |
| 90040** | Brief service | 11.30 |
| 90050** | Limited service | 15.07 |

HOME MEDICAL SERVICES

| | | |
|---------|--|-------|
| 90100** | Home medical service, new patient; brief service | 28.24 |
| 90130** | Home medical service, established patient; minimal service | 14.12 |
| 90140** | brief service | 18.83 |

HOSPITAL SERVICES

| | | |
|---------|--|-------|
| 90200** | Initial hospital care; brief history and examination, initiation of diagnostic and treatment programs, and preparation of hospital records | 29.30 |
| 90240** | Subsequent hospital care, each day; brief services | 12.72 |

NURSING HOME, BOARDING HOME, ETC. SERVICES

| | | |
|---------|---|-------|
| 90300** | Initial care, skilled nursing, intermediate care, or long-term care facility; brief history and physical examination, initiation of diagnostic and treatment programs, and preparation of medical records | 32.64 |
|---------|---|-------|

| | | |
|---------|--|-------|
| 90340** | <u>Subsequent care, skilled nursing, intermediate care or long-term care facility; brief service</u> | 16.50 |
| 90400** | <u>Nursing home, boarding home, domiciliary, or custodial care medical service, new patient; brief services (Payment for skilled nursing, intermediate care, long term care, nursing home, boarding home, domiciliary or custodial care services for established patient is limited to one unit per day by a provider if multiple patients are seen)</u> | 28.24 |

INITIAL CONSULTATION

| | | |
|---------|--------------------------------------|-------|
| 90600** | <u>Initial consultation; limited</u> | 28.24 |
| 90605** | <u>intermediate</u> | 37.66 |
| 90610** | <u>extensive</u> | 41.03 |
| 90620** | <u>comprehensive</u> | 65.91 |
| 90630** | <u>complex</u> | 68.91 |

FOLLOW-UP CONSULTATION

| | | |
|---------|--------------------------------------|-------|
| 90640** | <u>Follow-up consultation, brief</u> | 28.24 |
| 90641** | <u>limited</u> | 37.66 |
| 90642** | <u>intermediate</u> | 41.03 |
| 90643** | <u>complex</u> | 65.91 |

GENERAL OPTOMETRIC SERVICES

| | | |
|---------|---|-------|
| 92002** | <u>Medical examination and evaluation with initiation of diagnostic and treatment program; intermediate, new patient</u> | 34.23 |
| 92004** | <u>comprehensive, new patient, one or more visits</u> | 42.80 |
| 92012** | <u>Medical examination and evaluation, with initiation or continuation of diagnostic and treatment program; intermediate, established patient</u> | 25.54 |
| 92014** | <u>comprehensive, established patient, one or more visits</u> | 27.98 |

SPECIAL SERVICES

| | | |
|---------|---|---------------------------------|
| 92020** | <u>Gonioscopy with medical diagnostic evaluation (separate procedure)</u> | 18.34 |
| 92060** | <u>Sensorimotor examination with medical diagnostic evaluation (separate procedure)</u> | 14.60 |
| 92065 | <u>Orthoptic and/or pleoptic training, with continuing medical direction and evaluation - visual training. (The 24 hour per 12 month limit as provided for in ARM 46.12.902 applies. The limit on eye examinations does not apply.)</u> | 21.78 per hour in the office |
| 92081** | <u>Visual field examination with medical diagnostic evaluation; limited examination (e.g., tangent screen, Autoplot, arc perimeter or single stimulus level automated test, such as Octopus 3 or 7 equivalent)</u> | 18.84 |

| | | |
|----------------|---|--------------|
| <u>92082**</u> | <u>intermediate examination (e.g., multistimulus level, full field, quantitative perimetry, several isopters on Goldmann perimeter or multilevel, full field automated test such as Octopus program 33 or 34 equivalent)</u> | <u>21.13</u> |
| <u>92083**</u> | <u>extended examination, quantitative perimetry (e.g., manual static and kinetic perimetry on Goldmann or Tubingen perimeter or equivalent, or automated static perimetry, complex, such as Octopus program 31 + 41, or 32 + 41)</u> <u>(Gross visual field testing (e.g., confrontation testing) is a part of general ophthalmological services and is not reported separately)</u> | <u>21.13</u> |
| <u>92100**</u> | <u>Serial tonometry with medical diagnostic evaluation (separate procedure), one or more sessions, same day</u> | <u>14.12</u> |
| <u>92120**</u> | <u>Tonography with medical diagnostic evaluation, recording indentation tonometer method or perilimbal suction method</u> | <u>28.24</u> |
| <u>92130**</u> | <u>Tonography with water provocation</u> | <u>28.24</u> |
| <u>92140**</u> | <u>Provocative tests for glaucoma, with medical diagnostic evaluation, without tonography</u> | <u>18.82</u> |

OPHTHALMOSCOPY

| | | |
|----------------|--|--------------|
| <u>92225**</u> | <u>Ophthalmoscopy, extended as for retinal detachment (may include use of contact lens, drawing or sketch, and/or fundus biomicroscopy), with medical diagnostic evaluation; initial</u> | <u>20.64</u> |
| <u>92226**</u> | <u>subsequent</u> | <u>10.75</u> |
| <u>92230**</u> | <u>Ophthalmoscopy, with medical diagnostic evaluation; with fluorescein angiography (observation only)</u> | <u>47.08</u> |
| <u>92235**</u> | <u>with fluorescein angiography (includes multiframe photography)</u> | <u>64.80</u> |
| <u>92250**</u> | <u>with fundus photography</u> | <u>32.96</u> |
| <u>92260**</u> | <u>with ophthalmodynamometry</u> | <u>37.66</u> |

OTHER SPECIALIZED SERVICES

| | | |
|----------------|--|--------------|
| <u>92265**</u> | <u>Oculoelectromyography, one or more extraocular muscles, one or both eyes, with medical diagnostic evaluation</u> | <u>15.82</u> |
| <u>92283**</u> | <u>Color vision examination, extended, e.g., anomaloscope or equivalent</u> <u>(Color vision testing with pseudoisochromatic plates (such as HRR or Ishihara) is not reported separately. It is included in the appropriate general or ophthalmological service.)</u> | <u>28.24</u> |
| <u>92284**</u> | <u>Dark adaptation examination, with medical diagnostic evaluation</u> | <u>4.89</u> |

| | | |
|---------|--|-------|
| 92285** | <u>External ocular photography with medical diagnostic evaluation for documentation of medical progress (e.g., close-up photography, slit lamp photography, gonio-photography, stereo-photography)</u> | 18.76 |
| 92286** | <u>Special anterior segment photography with medical diagnostic evaluation; with specular endothelial microscopy and cell count</u> | 37.51 |

CONTACT LENS SERVICES

| | | |
|---------|---|--------|
| 92310** | <u>Prescription of optical and physical characteristics of and fitting of contact lens, with medical supervision of adaptation; corneal lens, both eyes, except for aphakia</u> | 281.33 |
| 92311** | <u>corneal lens for aphakia, one eye</u> | 281.33 |
| 92312** | <u>corneal lens for aphakia, both eyes</u> | 328.21 |

The following codes are to be used by an optician dispensing contacts prescribed by an optometrist. The prescribing optometrist should bill using the appropriate general Optometric Service Code (92002-92014)

| | | |
|--------|---|--------|
| 92314* | <u>Prescription of optical and physical characteristics of contact lens, with medical supervision of adaptation and direction of fitting by independent technician; corneal lens, both eyes, except for aphakia</u> | 238.53 |
| 92315* | <u>corneal lens for aphakia, one eye</u> | 238.53 |
| 92316* | <u>corneal lens for aphakia, both eyes</u> | 285.41 |

DISPENSING SERVICES

| | | |
|--------|---|-------|
| 92340* | <u>Fitting of spectacles, except for aphakia; monofocal</u> | 22.50 |
| 92341* | <u>bifocal</u> | 30.00 |
| 92342* | <u>multifocal, other than bifocal</u> | 37.52 |
| 92352* | <u>Fitting of spectacle prosthesis for aphakia; monofocal</u> | 56.26 |
| 92353* | <u>multifocal</u> | 56.26 |

DISPENSING SERVICE, LENS ONLY

| | | |
|--------|---|-------|
| 92553* | <u>Measuring, verifying, single vision lens service</u> | 11.25 |
| 92554* | <u>Measuring, verifying, bifocal lens service</u> | 15.00 |
| 92555* | <u>Measuring, verifying, trifocal lens service</u> | 18.76 |
| 92556* | <u>Measuring, verifying, cataract lens service</u> | 28.13 |

DISPENSING SERVICE, FRAME ONLY

| | | |
|--------|--|-------|
| 92557* | <u>Fitting, servicing, single vision frame service</u> | 11.25 |
| 92558* | <u>Fitting, servicing, bifocal frame service</u> | 15.00 |
| 92559* | <u>Fitting, servicing, trifocal frame service</u> | 18.76 |
| 92560* | <u>Fitting, servicing, cataract frame service</u> | 28.13 |

SPECIAL SERVICES AND REPORTS

| | | |
|---------|---|-------|
| 99000** | <u>Handling and/or conveyance of specimen for transfer from the optometrist's office to a laboratory</u> | 3.00 |
| 99050** | <u>Services requested after office hours in addition to basic service (day time)</u> | 9.37 |
| 99052** | <u>Services requested between 10:00 PM and 8:00 AM in addition to basic service</u> | 15.00 |
| 99054** | <u>Services requested on Sundays and holidays in addition to basic service</u> | 11.26 |
| 99056** | <u>Services provided at request of patient in a location other than physician's office which are normally provided in the office</u> | 13.61 |
| 99080** | <u>Special reports such as insurance forms, or the review of medical data to clarify a patient's status - more than the information conveyed in the usual medical communications or standard reporting form</u> | 13.61 |

REMOVAL OF OCULAR FOREIGN BODY

| | | |
|---------|--|-------|
| 65205** | <u>Removal of foreign body, external eye; conjunctival superficial</u> | 15.56 |
| 65210** | <u>conjunctival embedded (includes concretions, subconjunctival, or scleral nonperforating</u> | 15.54 |
| 65220** | <u>corneal, without slit lamp</u> | 17.34 |
| 65222** | <u>corneal, with slit lamp</u> | 21.66 |

AUTH: Sec. 53-6-113 MCA

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

46.12.911 EYEGLASSES, DEFINITION (1) Eyeglasses are lens(es) and/or frames prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the patient may select, to aid and improve vision.

(2) Coverage of eyeglasses is limited to those items specified in ARM 46.12.915.

(3) The date of service for eyeglasses is the date they are received by the recipient.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.912 EYEGLASSES, REQUIREMENTS (1) Each recipient under 21 years ~~old or younger~~ of age is limited to one pair of eyeglasses per ~~state-fiscal-year~~ 12 month period and each recipient over 21 years old of age or older is limited to one pair of eyeglasses every ~~two-state-fiscal-years~~ 24 months unless one of the following circumstances exists:

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

(c) a recipient is unable to wear bifocals because of a diagnosed medical condition. When this is the case, the recipient may be allowed two frames and two pairs of single vision lenses every 24 months if he is 21 years of age or over, or every 12 months if he is under 21 years of age.

(2) A recipient shall be allowed repairs on a pair of glasses during a 12 month period not to exceed the amount of an additional pair of glasses.

(23) Contact lenses may be provided only when they are medically necessary. They shall not be allowed for cosmetic reasons. Claims for contact lenses must be accompanied by a statement explaining the medical reason for them. The limits stated in subsections (1) and (2) apply to contacts.

~~(3)---A recipient shall be allowed repairs on a pair of glasses during the fiscal year not to exceed the amount of an additional pair of glasses.~~

(4) The date of service for eyeglasses is no earlier than the date the recipient receives the eyeglasses. The recipient must be eligible for medicaid services on the date the recipient receives the eyeglasses.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.915 EYEGLASSES, REIMBURSEMENT (1)---The department will pay the lowest of the following for eyeglasses not also covered by medicare--the provider's--actual--(submitted)--charge for the service or the department's--fee schedule contained in this rule.

(1) The department will pay the lowest of the following for eyeglasses which are also covered by medicare:

(a) the provider's--actual--(submitted)--charge laboratory cost to the provider for the service;

(b) the amount allowable for the same service under medicare. This amount is indicated on the medicare explanation of benefits; or

(c) the department's fee schedule contained in this rule.

(2) Except for co-payments specified in ARM 46.12.204, providers may not charge recipients for items specified in ARM 46.12.915 if these items are also billed to medicaid.

(3) The department may contract for coverage of eyeglass materials through a volume purchasing arrangement with a supplier of materials. If the department makes a volume purchase, providers will be notified that eyeglasses may be obtained through a sole source contractor, in which case, the department's fee schedule contained in this rule would not apply.

(24) Lab costs for eyeglasses - optometrist

(a) The following codes can be submitted in addition to basic lens(es) codes, except for lenticular, aniseikonic and fee variable aspheric lens(es):

| | <u>Fee</u> |
|---|-------------|
| (i) Z9597; add on for plastic multifocal lens, per lens | <u>4.69</u> |
| (ii) Z9581; add on for spherical powers 7.00 diopters to 20.00 diopters, add per lens for each full diopter over 7.00 | <u>2.00</u> |
| (iii) Z9582; add on for cylinder powers 4.00 to 12.00 diopters, add per lens for each full diopter over 4.00 diopters | <u>2.00</u> |

| | <u>Per-Pair</u> |
|-------------------------------|-----------------|
| Hardened-lenses-single-vision | \$23-96 |
| Hardened-lenses-bifocals | 36-30 |
| Hardened-lenses-trifocals | 43-92 |
| Plastic-lenses | |
| Add-to-single-lenses | 2-66 |
| Add-to-bifocal/trifocal | 7-99 |
| Tinting,-add-to-lense | 3-99 |
| Frames | 25-41 |
| Contact-lenses | 42-35 |
| Cataract-lense | 74-54-per-lense |
| Balance-lense | 26-62-per-lense |

| | <u>Fee</u> |
|---|--------------|
| (b) | |
| V0130 Frames, purchase (metal) | <u>19.00</u> |
| V2020 Frames, purchases (plastic) | <u>15.00</u> |
| <u>SINGLE VISION, GLASS OR PLASTIC</u> | |
| V2100 Sphere, single vision, plano to plus or minus 4.00D, per lens | <u>11.98</u> |
| V2101 Sphere, single vision, plus or minus 4.12D to plus or minus 7.00D, per lens | <u>11.98</u> |
| V2102 Sphere, single vision, plus or minus 7.12D to plus or minus 20.00D, per lens | <u>11.98</u> |
| V2103 Spherocylinder, single vision, plano to plus or minus 4.00D sphere, .12 to 2.00D cylinder, per lens | <u>11.98</u> |
| V2104 Spherocylinder, single vision, plano to plus or minus 4.00D sphere, 2.12D to 4.00D cylinder, per lens | <u>11.98</u> |
| V2105 Spherocylinder, single vision, plano to plus or minus 4.00D sphere, 4.25D to 6.00D cylinder, per lens | <u>11.98</u> |

| | | |
|----------------------------------|---|--------------|
| V2106 | <u>Sphero-cylinder, single vision, plano to plus or minus 4.00D sphere, over 6.00D cylinder, per lens</u> | <u>11.98</u> |
| V2107 | <u>Sphero-cylinder, single vision, plus or minus 4.25D to plus or minus 7.00D sphere, .12D to 2.00D cylinder, per lens</u> | <u>11.98</u> |
| V2108 | <u>Sphero-cylinder, single vision, plus or minus 4.25D to plus or minus 7.00D sphere, 2.12D to 4.00D cylinder, per lens</u> | <u>11.98</u> |
| V2109 | <u>Sphero-cylinder, single vision, plus or minus 4.25D to plus or minus 7.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>11.98</u> |
| V2110 | <u>Sphero-cylinder, single vision, plus or minus 4.25D to 7.00D sphere, over 6.00D cylinder, per lens</u> | <u>11.98</u> |
| V2111 | <u>Sphero-cylinder, single vision, plus or minus 7.25D to plus or minus 12.00D sphere, .25D to 2.25D D cylinder, per lens</u> | <u>11.98</u> |
| V2112 | <u>Sphero-cylinder, single vision, plus or minus 7.25D to plus or minus 12.00D sphere, 2.25D to 4.00D cylinder, per lens</u> | <u>11.98</u> |
| V2113 | <u>Sphero-cylinder, single vision, plus or minus 7.25D to plus or minus 2.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>11.98</u> |
| V2114 | <u>Sphero-cylinder, single vision, sphere over plus or minus 12.00D, per lens</u> | <u>11.98</u> |
| V2115 | <u>Lenticular (myodisc), per lens, single vision</u> | <u>37.27</u> |
| V2116 | <u>Lenticular lens, nonaspheric, per lens, single vision</u> | <u>37.27</u> |
| V2117 | <u>Lenticular, aspheric, per lens, single vision</u> | <u>37.27</u> |
| V2118 | <u>Aniseikonic lens, single vision</u> | <u>11.98</u> |
| <u>BIFOCAL, GLASS OR PLASTIC</u> | | |
| V2200 | <u>Sphere, bifocal, plano to plus or minus 4.00D, per lens</u> | <u>18.15</u> |
| V2201 | <u>Sphere, bifocal, plus or minus 4.12D to plus or minus 7.00D, per lens</u> | <u>18.15</u> |
| V2202 | <u>Sphere, bifocal, plus or minus 7.12D to plus or minus 20.00D, per lens</u> | <u>18.15</u> |
| V2203 | <u>Sphero-cylinder, bifocal, plano to plus or minus 4.00D sphere, .12D to 2.00D cylinder, per lens</u> | <u>18.15</u> |
| V2204 | <u>Sphero-cylinder, bifocal, plano to plus or minus 4.00D sphere, 2.12D to 4.00D cylinder, per lens</u> | <u>18.15</u> |
| V2205 | <u>Sphero-cylinder, bifocal, plano to plus or minus 4.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>18.15</u> |
| V2206 | <u>Sphero-cylinder, bifocal, plano to plus or minus 4.00D sphere, over 6.00D cylinder, per lens</u> | <u>18.15</u> |
| V2207 | <u>Sphero-cylinder, bifocal, plus or minus 4.25D to plus or minus 7.00D sphere, .12D to 2.00D cylinder, per lens</u> | <u>18.15</u> |
| V2208 | <u>Sphero-cylinder, bifocal, plus or minus 4.25D to plus or minus 7.00D sphere, 2.12D to 4.00D cylinder, per lens</u> | <u>18.15</u> |

| | | |
|-----------------------------------|---|--------------|
| V2209 | <u>Spherocylinder, bifocal, plus or minus 4.25D to plus or minus 7.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>18.15</u> |
| V2210 | <u>Spherocylinder, bifocal, plus or minus 4.25D to plus or minus 7.00D sphere, over 6.00D cylinder, per lens</u> | <u>18.15</u> |
| V2211 | <u>Spherocylinder, bifocal, plus or minus 7.25D to plus or minus 12.00D sphere, .25D to 2.25D cylinder, per lens</u> | <u>18.15</u> |
| V2212 | <u>Spherocylinder, bifocal, plus or minus 7.25D to plus or minus 12.00D sphere, 2.25D to 4.00D cylinder, per lens</u> | <u>18.15</u> |
| V2213 | <u>Spherocylinder, bifocal, plus or minus 7.25D to plus or minus 12.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>18.15</u> |
| V2214 | <u>Spherocylinder, bifocal, sphere over plus or minus 12.00D, per lens</u> | <u>18.15</u> |
| V2215 | <u>Lenticular (myodisc), per lens, bifocal</u> | <u>45.00</u> |
| V2216 | <u>Lenticular, nonaspheric, per lens, bifocal</u> | <u>45.00</u> |
| V2217 | <u>Lenticular, aspheric lens, bifocal</u> | <u>45.00</u> |
| V2218 | <u>Aniseikonic, per lens, bifocal</u> | <u>18.15</u> |
| <u>TRIFOCAL, GLASS OR PLASTIC</u> | | |
| V2300 | <u>Sphere, trifocal, plano to plus or minus 4.00D, per lens</u> | <u>21.97</u> |
| V2301 | <u>Sphere, trifocal, plus or minus 4.12D to plus or minus 7.00D, per lens</u> | <u>21.97</u> |
| V2302 | <u>Sphere, trifocal, plus or minus 7.12D to plus or minus 20.00, per lens</u> | <u>21.97</u> |
| V2303 | <u>Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, .12D to 2.00D cylinder, per lens</u> | <u>21.97</u> |
| V2304 | <u>Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, 2.25D to 4.00D cylinder, per lens</u> | <u>21.97</u> |
| V2305 | <u>Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>21.97</u> |
| V2306 | <u>Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, over 6.00D cylinder, per lens</u> | <u>21.97</u> |
| V2307 | <u>Spherocylinder, trifocal, plus or minus 4.25D to plus or minus 7.00D sphere, .12D to 2.00D cylinder, per lens</u> | <u>21.97</u> |
| V2308 | <u>Spherocylinder, trifocal, plus or minus 4.25D to plus or minus 7.00D sphere, 2.12D to 4.00D cylinder, per lens</u> | <u>21.97</u> |
| V2309 | <u>Spherocylinder, trifocal, plus or minus 4.25D to plus or minus 7.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>21.97</u> |
| V2310 | <u>Spherocylinder, trifocal, plus or minus 4.25D to plus or minus 7.00D sphere, over 6.00D cylinder, per lens</u> | <u>21.97</u> |
| V2311 | <u>Spherocylinder, trifocal, plus or minus 7.25D to plus or minus 12.00D sphere, .25D to 2.25D cylinder, per lens</u> | <u>21.97</u> |

| | | |
|-------|--|---------------|
| V2312 | <u>Spherocylinder, trifocal, plus or minus 7.25D to plus or minus 12.00D sphere, 2.25D to 4.00D cylinder, per lens</u> | <u>21.97</u> |
| V2313 | <u>Spherocylinder, trifocal, plus or minus 7.25D to plus or minus 12.00D sphere, 4.25D to 6.00D cylinder, per lens</u> | <u>21.97</u> |
| V2314 | <u>Spherocylinder, trifocal, sphere over plus or minus 12.00D, per lens</u> | <u>21.97</u> |
| V2315 | <u>Lenticular, (myodisc), per lens, trifocal</u> | <u>55.00</u> |
| V2316 | <u>Lenticular, nonaspheric, per lens, trifocal</u> | <u>55.00</u> |
| V2317 | <u>Lenticular, aspheric lens, trifocal</u> | <u>55.00</u> |
| V2318 | <u>Aniseikonic lens, trifocal</u> | <u>21.97</u> |
| V2410 | <u>Variable asphericity lens, single vision, full field, glass or plastic, per lens</u> | <u>99.83</u> |
| V2430 | <u>Variable asphericity lens, bifocal, full field, glass or plastic, per lens</u> | <u>114.95</u> |

CONTACT LENSES

| | | |
|-------|---|---------------|
| V2500 | <u>Contact lens, PMMA, spherical, per lens</u> | <u>21.18</u> |
| V2501 | <u>Contact lens, PMMA, toric or prism ballast, per lens</u> | <u>68.07</u> |
| V2502 | <u>Contact lens, PMMA, bifocal, per lens</u> | <u>114.96</u> |
| V2503 | <u>Contact lens, PMMA, color vision deficiency, per lens</u> | <u>21.18</u> |
| V2510 | <u>Contact lens, gas permeable, spherical, per lens</u> | <u>21.18</u> |
| V2511 | <u>Contact lens, gas permeable, toric, prism ballast, per lens</u> | <u>68.07</u> |
| V2512 | <u>Contact lens, gas permeable, bifocal, per lens</u> | <u>114.96</u> |
| V2513 | <u>Contact lens, gas permeable, extended wear, per lens</u> | <u>21.18</u> |
| V2520 | <u>Contact lens, hydrophilic, spherical, per lens</u> | <u>21.18</u> |
| V2521 | <u>Contact lens, hydrophilic, toric, or prism ballast, per lens</u> | <u>68.07</u> |
| V2522 | <u>Contact lens, hydrophilic, bifocal, per lens</u> | <u>114.96</u> |
| V2523 | <u>Contact lens, hydrophilic, extended wear, per lens</u> | <u>21.18</u> |

EYE PROSTHESIS

| | | |
|-------|---|-----------|
| V2620 | <u>Prosthetic, eye, glass, stock (90% of billed charges by report)</u> | <u>BR</u> |
| V2621 | <u>Prosthetic, eye, plastic, stock (90% of billed charges by report)</u> | <u>BR</u> |
| V2622 | <u>Prosthetic, eye, glass, custom (90% of billed charges by report)</u> | <u>BR</u> |
| V2623 | <u>Prosthetic, eye, plastic, custom (90% of billed charges by report)</u> | <u>BR</u> |

| | | |
|-------|--|--------------|
| V2700 | <u>Balance lens, per lens</u> | <u>10.98</u> |
| V2710 | <u>Slab off prism, glass or plastic (one unit allowed)</u> | <u>42.00</u> |
| V2715 | <u>Prism, per lens</u> | <u>20.00</u> |
| V2730 | <u>Special base curve, glass or plastic, per lens</u> | <u>1.88</u> |
| V2740 | <u>Tint, plastic, rose 1 or 2, per lens</u> | <u>1.88</u> |
| Z9638 | <u>Neutralization of lenses for copy of prescription</u> | <u>5.62</u> |

REPAIR PAYMENTS

* Payment for replacement of broken lens shall not exceed the allowed charge for the original lens. Use the code for the original lens plus the code for appropriate add ons. Each code should be followed by the modifier letters RP. Only two lenses with the modifier RP will be allowed in a 12 month period.

| | | |
|-------|--|----------------------------------|
| V2030 | <u>Minor frame repair - including minor parts (except bows and front piece), not in addition to V2025 or V0132</u> | <u>14.31 per 12 month period</u> |
| V2025 | <u>Replacement of plastic frame (parts or total frame)</u> | <u>15.00 per 12 month period</u> |
| V0132 | <u>Replacement of metal frame (parts or total frame)</u> | <u>19.00 per 12 month period</u> |

Per-Pair

| | |
|--------------------------------|-----------------|
| Single-Vision | \$36.30 |
| Bifocal | 52.03 |
| Trifocal | 66.55 |
| Plastic-lenses | |
| Add-to-single-lenses | 4.84 |
| Add-to-bifocal/trifocal | 13.31 |
| Tint-(soft-tight-17-27-and-37) | 3.99 |
| Frame | 31.46 |
| Metal-Frame | 36.30 |
| Cataract-lense | 74.54-per-lense |
| Balance-lense | 26.62-per-lense |
| 4-drop-ataract | |
| Single-vision | 199.65 |
| Bifocal | 229.90 |
| Balance-lense | 81.68 |
| Frame-(for-4-drop-ataract) | 36.30 |

AUTH: Sec. 53-6-113 MCA

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

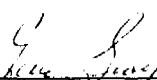
3. This rule change is necessary to address three major issues in the areas of optometrist services and coverage of eyeglasses. The expansion of optometrists' practice under Senate Bill 170, Chapter 588, Laws of Montana, 1987, requires a change in Medicaid coverage if these new optometrist services are to be covered by Medicaid. The current dual fee schedule for eyeglasses, which results in different levels of reimbursement to optometrists as opposed to opticians or ophthalmologists has disadvantages to both groups and needs to be standardized. There is a need for cost savings through adjustment of fees and the establishment of authority for volume purchasing.

The rule overall is budget neutral. The change in optometric practice may result in higher costs due to increased utilization. The adjustment to fees in the area of eyeglasses should offset these increases. Volume purchasing will result in further savings.

Copies of this notice are available for review at local human services offices and county welfare offices.

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 24, 1988.

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 October 17, 1988.

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

| | | |
|-----------------------------|---|-----------------------------|
| In the matter of the amend- |) | NOTICE OF PUBLIC HEARING ON |
| ment of Rules 46.12.503 and |) | THE PROPOSED AMENDMENT OF |
| 46.12.505 pertaining to |) | RULES 46.12.503 AND |
| inpatient hospital services |) | 46.12.505 PERTAINING TO |
| |) | INPATIENT HOSPITAL SERVICES |

TO: All Interested Persons

1. On November 16, 1988, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.503 and 46.12.505 pertaining to inpatient hospital services.

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

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITION

Subsections (1) through (11) remain the same.

(12) "Disproportionate share hospital" means a hospital which meets the following criteria:

(a) it has a medicaid inpatient utilization rate of at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the state, or a low income utilization rate exceeding 25 percent; and

(b) urban hospitals must have at least two obstetricians with staff privileges who have agreed to provide obstetric services to medicaid patients. Rural hospitals must have at least two physicians with staff privileges to perform non-emergent obstetric procedures who have agreed to provide obstetric services to medicaid recipients.

(c) paragraph (b) does not apply to hospitals which:

(i) serve inpatients who are predominantly individuals under 18 years of age; or

(ii) do not offer non-emergent obstetric services as of December 21, 1987.

(13) "Medicaid inpatient utilization rate" means the hospital's percentage rate computed by dividing the total number of medicaid inpatient days in the hospital's fiscal year by the total number of the hospital's inpatient days in that same period. The period used will be the most recent calendar year for which final cost reports are available for all providers.

(14) "Low income utilization rate" is the percentage rate computed as follows:

(a) $(A + B)/C + (D/E)$ where:

(i) "A" is the total medicaid payments to the hospital for patient services in the hospital's fiscal year;

(ii) "B" is the cash subsidies received directly from state and local governments for patient services in the hospital's fiscal year;

(iii) "C" is the total revenues of the hospital for patient services, including the amount of such cash subsidies in the hospital's fiscal year;

(iv) "D" is the total hospital charges for inpatient hospital services attributable to charity care in the hospital's fiscal year. This amount shall not include contractual allowances and discounts (other than for indigent patients not eligible for public assistance.)

(v) "E" is the hospital's total charges for inpatient hospital services in the hospital's fiscal year.

(b) The above amounts used in the formula must be from the hospital's most recent fiscal year for which costs have been settled with the department.

(15) "Urban hospital" means an acute care hospital that is located within a metropolitan statistical area as defined by the federal executive office of management and budget.

(16) "Rural hospital" means an acute care hospital that is not located within a metropolitan statistical area as defined by the federal executive office of management and budget.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85

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

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsections (1) through (11) remain the same.

(12) Disproportionate share hospitals shall receive an additional payment amount equal to the product of the hospital's prospective rate times the adjustment percentage of:

(a) 4 percent for rural hospitals;

(b) 5 percent for urban hospitals having less than 100 beds; or

(c) for urban hospitals having 100 or more beds, the adjustment shall be computed as $(P - 15) (.5) + 2.5$, where "P" is the greater of the hospital's medicaid inpatient or low income utilization rate.

(i) This adjustment will be phased in over a three year period. One-third of the adjustment will be reimbursed with services provided on or after July 1, 1988, two-thirds will be reimbursed with services provided on or after July 1, 1989, and the full adjustment will be reimbursed with services on or after July 1, 1990.

AUTH: Sec. 53-6-113 MCA

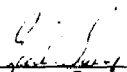
IMP: Sec. 53-6-141 MCA

3. These amendments are proposed to implement Section 4112 of the Omnibus Budget Reconciliation Act of 1987. That act requires the Department to provide additional reimbursement to those hospitals who serve a disproportionate share of low income patients.

Preliminary data suggests that 6 hospitals will qualify for the disproportionate share adjustment in state fiscal year 1989. These facilities are rural and would obtain an increase in their PPS payments of 1.33 percent in 1989, 2.66 percent in 1990 and 4 percent in 1991. Hospitals may also qualify if their low income utilization rates exceed 25 percent. This information must come from the facilities and, although the number of hospitals qualifying under this criteria is not available, it is not expected to be material.

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 28, 1988.

4. 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 October 17, 1988.

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

In the matter of proposed) NOTICE OF AMENDMENT OF RULE
amendment of Rule 8.86.301) 8.86.301(8)(f)
(8)(f) as it relates to the)
transportation of class III) PRICING RULES
milk)
) DOCKET #88-88

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

1. On July 14, 1988, the Montana board of milk control published notice of a proposed amendment of rule 8.86.301(8)(f) relating to the transportation of class III milk. Notice was published at page 1304 of the 1988 Montana Administrative Register, Issue No. 13, as MAR Notice No. 8-86-28.

2. The hearing was held on August 19, 1988 at 3:00 p.m. at the Sheraton Inn, Aaronson room, 400 10th Avenue South, Great Falls, Montana. Ten persons appeared at the hearing to offer testimony and comment on the proposed amendment. Six persons spoke in favor of the proposed amendment. Three were in opposition and one spoke for the information of the board.

3. After considering the testimony and comments received, the board is adopting the amendment exactly as originally proposed.

4. The authority for the board to amend the rule is contained in section 81-23-302, MCA, and implements section 81-23-302, MCA.

5. The principal reasons for the adoption of the amendment to the rule were as follows:

(a) The amendment permits costs of transportation to be charged to the producers who cause the surplus problem.

(b) The present formula for surplus freight rates as it exists in rule 8.86.301(8)(b) does not discourage producers from producing unwanted milk.

(c) Because of limited local outlets available for surplus milk, if surplus is not controlled, consumer costs could be increased to cover the extra cost of transportation to distant markets.

6. Principal reasons given against adoption of the amendment were as follows:

(a) The incentives to market the class III milk profitably are destroyed when producers are required to bear the full cost of surplus milk disposal.

(b) When the processor receives revenue in excess of the class III price for surplus milk, he is not required to share these proceeds with his producers. So the producer should not

have to bear the full cost on transporting any of the excess milk.

(c) The amendment will affect more than just Meadow Gold producers, but it was noticed as only affecting Meadow Gold producers.

(d) The amendment eliminates the incentive of growth to a dairyman, because he can't afford to overproduce during the quota building period due to the extremely low price.

7. The principal reasons for denying the objections were as follows:

(a) The board did not think it was appropriate for dairies to grow when there is unwanted excess milk. The board felt there was ample flexibility in the plan for producer growth between the high and the low range, which was a difference of seven percent (7%).

(b) The board felt the market for the producer would be more stable if they have to bear the full cost of disposing of the surplus, instead of receiving no value for unwanted milk when there isn't a market for it.

(c) The board felt that the concern about plant receipts in excess of the class III price for the milk was speculative and ought not be a factor in this issue.

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 17, 1988.

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

| | | |
|------------------------------|---|-------------------------------|
| In the matter of adoption of |) | NOTICE OF ADOPTION OF RULES |
| rules establishing a quota |) | 8.86.501, 8.86.502, 8.86.503, |
| plan as a method of payment |) | 8.86.504, 8.86.505, and |
| of milk producer prices |) | 8.86.506 |
| |) | |
| |) | QUOTA RULES FOR MEADOW GOLD |
| |) | DAIRIES INC. AND BLACK HILLS |
| |) | MILK PRODUCERS |
| |) | |
| |) | DOCKET #87-88 |

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

1. On July 14, 1988, the Montana board of milk control published notice of proposed adoption of rules 8.86.501, 8.86.502, 8.86.503, 8.86.504, 8.86.505, and 8.86.506 as a method of payment of milk producer prices. Notice was published at page 1301 of the 1988 Montana Administrative Register, Issue No. 13, as MAR Notice No. 8-86-27.

2. A hearing was held August 19, 1988, at 1:00 p.m. in the Aronson Room, Sheraton Inn, 400 10th Avenue South, Great Falls, Montana. Ten persons appeared at the hearing to offer data, views and arguments on the proposed new rules. Six persons spoke in favor of the proposed rules, three spoke in opposition and one other person participated.

3. After thoroughly considering all of the testimony, the board has adopted new rules as follows:

"8.86.501 QUOTA DEFINITIONS (1) The following definitions apply to ARM 8.86.502, 8.86.503, 8.86.504, 8.86.505 and 8.86.506 unless the context otherwise requires:

(a) "Eligible producer" is a producer who:

(i) is actively producing and selling milk to a Montana Meadow Gold plant at the time the plan becomes effective; or

(ii) is approved by a Meadow Gold plant and acquires quota pursuant to additional assignments to quota milk; or

(iii) acquires quota through transfer.

(b) "Immediate family" includes spouses, ancestors, lineal descendants and their spouses, brothers or sisters. The term also includes a corporation, partnership, or other entity of which at least half interest therein is owned by one or more members of the immediate family.

(c) "Quota" is a daily figure expressed in pounds of milk as computed in accordance with ARM 8.86.502(1) and (2) and adjusted thereafter pursuant to ARM 8.86.505(1)(a) and (d).

(d) "Quota milk" means that share of producer milk received during the month from a dairyman which falls within the limits of a figure computed by multiplying such dairyman's quota by the number of days in the month.

(e) "Excess milk" means all of the milk received from a dairyman during the month which is in excess of his quota milk.

(f) "Quota transfer" is defined as a transfer of all or a minimum portion of an eligible producer's production history quota. Quota transfers must be made in increments of at least one hundred (100) pounds per day or for the entire amount of quota, whichever is less.

(g) "Administrator" is the bureau chief of the milk control bureau.

(h) "He or his" is a term used for explanatory purposes only and does not refer to the sex of any person."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.502 INITIAL DETERMINATION AND/OR LOSS OF QUOTA

(1) Each eligible producer's initial quota will be based upon his highest total production from one of the following periods:

(a) September 1, 1986 through August 31, 1987;

(b) March 1, 1987 through February 29, 1988; or

(c) calendar year 1985 through calendar year 1987. Divide the total pounds of milk by the number of days in the selected period above. (As an example, divide the three year period by 1095.)

(2) On or before the 20th day after the effective date of this plan, the administrator shall compute a quota assignable to each eligible producer. The figure computed shall be rounded to the nearest whole number and assigned to each eligible producer as quota.

(a) In the case of Black Hills milk producers, the above calculations will become their highest option for calculating their initial daily average quota. The Black Hills total quota to be assigned will be the Billings Meadow Gold plant total daily average quota divided by .77, minus the Billings Meadow Gold daily average quota. Each producer's daily average quota will then be determined by multiplying the above result by the percentage that result is of the highest option qualifying for quota.

(3) The administrator will promptly notify each eligible producer in writing of his computed quota, enter such information on the official records of the milk control bureau and thereafter continue to maintain a current and up-to-date record of each eligible producer's quota pounds whether the quota was received pursuant to paragraph 1 and 2 hereof or another paragraph hereof or through transfer. The Meadow Gold plant will be notified of the production history and quota assignment for each eligible producer. Upon request of such notice, each Meadow Gold plant shall promptly post in a

conspicuous place in its facility a list showing each eligible producer's quota.

(4) In computing initial quota, an eligible producer who has acquired a previous producer's production history through bona fide sale or transfer will receive such production history as credit.

(5) No such assignment shall be made to any eligible producer who elects within twenty-one (21) days after receiving notice pursuant to paragraph 3 hereof to refuse quota assignment.

(6) An eligible producer who discontinues the delivery of milk must forfeit his entire quota effective at the end of the sixty-first (61st) day after his last delivery unless such quota is transferred prior to that time."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.503 ADDITIONAL ASSIGNMENT TO QUOTA MILK (1) A producer who does not hold quota and has not transferred quota to another person during the preceding year but now has been accepted by a Meadow Gold plant as a producer shall have a portion of his marketing of milk assigned to quota milk each month in accordance with the following schedule of percentages for the respective months of the year is an eligible producer.

| <u>MONTHS</u> | <u>PERCENTAGE TO BE ASSIGNED TO QUOTA MILK</u> |
|----------------------|--|
| April through August | 20% |
| All other months | 35%" |

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.504 TRANSFER OF QUOTA (1) Production history quota is the property of each eligible producer. It may be transferred pursuant to the following terms and conditions:

(a) A quota transfer is defined as a transfer of all or a portion of an eligible producer's production history quota. Quota transfer must be made in increments of at least one hundred (100) pounds per day or for the entire amount of quota, whichever is less.

(b) The producer committee, the Meadow Gold plant, and the administrator must be notified in writing by the proposed quota transferor at least ten (10) days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred.

(c) All quota transfers shall be effective only upon approval by the producer committee. The proposed quota transfer must be bona fide and not for the purpose of evading any provisions of this plan or applicable law.

(d) Except for an emergency approved by the producer committee, quota acquired through transfer may not be retransferred for six (6) months.

(e) A quota transfer may be made only to an eligible producer or one who has been accepted by a Meadow Gold plant as a producer not later than the last day of the month during which the transfer is contemplated.

(f) Intrafamily quota transfer is defined as a transfer of quota from an eligible producer to the eligible producer's immediate family or from one nonprofit religious entity or corporation which is currently an eligible producer (such as a Hutterite Colony) to a substantially similar and affiliated nonprofit religious entity or closely held corporation controlled by the same immediate family.

(g) Transfers which do not qualify as intrafamily or are not the result of a bona fide sale and purchase by a person not now a quota holder in the market of the entire farm, including the herd, production facilities and substantially all of the land associated with the production of milk (subject to the judgment of the producer committee that the purchaser will be substantially standing in the shoes of the seller and continuing the production operation without interruption) shall only be made as follows:

(i) Ten percent (10%) of the quota to be transferred shall be forfeited and ninety percent (90%) issued to the transferee. All forfeited quota will be added to the amount of new quota available for issue on the next quota adjustment date.

(ii) The transferor's quota, production history, and credit for production, used to determine a production history quota, shall be reduced by the full amount of any transfer plus forfeiture, if any.

(h) A partial transfer of quota is defined as a transfer of quota to an eligible producer who already holds or owns quota. A partial transfer of quota shall be effective only upon approval by the producer committee and shall be effective on the first day of the month following the date of transfer.

(i) An entire transfer of quota to a producer who does not hold quota shall be effective on the date the transfer of the herd and farm or on the first day of the month following the date of transfer if both herd and farm were not included in the transfer, provided in either case that a quota transfer request must be made to and approved by the producer committee before the first day of the month of the transfer."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.505 READJUSTMENT AND MISCELLANEOUS QUOTA RULES

(1) Eligible producers whose marketings of milk during the months of seasonally low production fall below the level specified herein forfeit quota in accordance with the following computations:

(a) On or before January 20th after this plan has been in effect for at least six (6) months, and on or before each succeeding January 20th thereafter, the administrator shall:

(i) compute the total pounds of milk marketed by each eligible producer during the immediately preceding months of September, October, November and December;

(ii) compute the pounds of quota held by each eligible producer on the first day of each of the same four (4) months, multiply the quota pounds so determined by the number of days in the respective months, and combine the results into one figure and multiply this figure by 0.90;

(iii) in the case of each eligible producer for whom the figure computed under section (ii) hereof exceeds that computed under section (i) hereof, compute the difference and divide the resulting figure by 122;

(iv) reduce each eligible producer's quota for whom a figure was computed under section (iii) hereof by the number so computed effective on February 1 next following.

(b) No quota will be readjusted before January 1990. Provided that Meadow Gold plants have sufficient milk during September, October, November and December of 1989 and 1990, no quota will be readjusted before January 1991.

(c) No additional quota will be issued until there is less than twelve percent (12%) in class III. If the quota to be assigned is less than five-tenths of one percent (0.5%) of the quota held by all eligible producers, the entire quota pounds to be assigned shall be carried over until the following year and combined with any other quota for assignment at that time.

(d) On or before the first day of April each year where applicable, the administrator shall calculate each eligible producer's additional quota to be assigned in accordance with the following computations:

(i) compute the total pounds of class I and class II milk of all Meadow Gold plants during the twelve (12) month period ending February 28 immediately preceding;

(ii) subtract the total pounds of class I and II milk from the previous twelve month period from the result obtained in section (i);

(iii) divide any positive figure resulting from the computation in section (ii) by 365;

(iv) determine the total pounds of quota that has been forfeited during the preceding twelve (12) month period pursuant to rules 8.86.502(5), (6), 8.86.504(1)(g) and 8.86.505 (1)(a)(iv) hereof or for any other reason;

(v) combine the pounds determined pursuant to sections (1)(d)(iii), (iv) hereof with any pounds carried over from the previous year;

(vi) the resulting pounds shall be prorated to all eligible producers on the basis of their average daily marketings of all plant milk during the preceding months of September through December and assigned to them as quota effective on May 1st next following.

(e) If the established quota contains more surplus than can be effectively handled, any affected party may petition the milk control board for a hearing.

(f) Each eligible producer will have six (6) months after this plan's effective date to reduce his production to his assigned quota. Following the initial six (6) months, any freight costs and loss on the movement and sale of surplus milk over quota will be charged back to those eligible producers who produced above their quota. The proceeds for the sale of surplus milk above quota, less transportation, will be paid to the eligible producers who ship in excess of their quota."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.506 PRODUCER COMMITTEE (1) The producer committee has authority to approve all transfers of quota and to review all requests for hardship or equitable relief.

(2) The producer committee shall consist of nine (9) eligible producers. Two (2) producers will be selected by the eligible producers supplying each Meadow Gold plant located at Billings, Great Falls, Kalispell and Missoula, Montana and approved by the board of milk control. One (1) producer will be selected by all eligible producers.

(3) The administrator or his designated representative will attend, participate, and maintain a record of each producer committee meeting. The administrator or his designated representative will not have a vote in any decision of the producer committee.

(4) The producer committee will invite each Meadow Gold plant manager or his designated representative to attend its meetings. Each Meadow Gold manager or his designated representative will not have a vote in any decision of the producer committee.

(5) Producer committee meetings will not be held without at least ten (10) days written notice given to each committee member, the administrator, and each plant manager or their designated representatives.

(6) The producer committee members will serve terms of two (2) years each but no more than two (2) consecutive terms. Vacancies on the committee will be filled in the same manner as the original appointment. Successors will complete the term of the original committee member. Upon the inception of the plan, one member from each plant will serve only a one year term.

(7) Five (5) voting members of the producer committee shall constitute a quorum for the transaction of business. A majority vote shall be sufficient to make an official decision.

(8) After quotas are first issued under this plan and after quotas are issued under each succeeding quota readjustment, any eligible producer may request review on the following grounds:

(a) he was not issued a quota;

(b) his production history quota is not appropriate because of unusual conditions during the base earning period,

such as loss of buildings, herds, or other facilities as the result of fire, floods, storms, official quarantine, disease, pesticide residue or condemnation of milk;

(c) he lost or might lose quota because justifiably or excusably off market for thirty (30) or more consecutive days;

(d) he lost or might lose quota because of under delivery;

(e) inability to transfer quota.

(9) Loss of milk production due to inability to obtain adequate labor to maintain milk production will not be considered a ground for hardship adjustment.

(10) The request for review shall be filed with the producer committee and the board of milk control not later than forty-five (45) days after notice of the quota issued or not later than forty-five (45) days after the occurrence of the alleged hardship. The request shall set forth:

(a) the conditions that caused the alleged hardship or inequity;

(b) the extent of relief or adjustment requested;

(c) the basis upon which the amount of relief or adjustment requested should be computed; and

(d) the reasons why relief or adjustment should be granted.

(11) With respect for request for review of production history, quota, forfeiture of quota, or other related problems, the producer committee may grant or adjust production history quota on average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of quota, restore forfeited quota or reduce average daily producer milk deliveries where appropriate.

(12) Producer committee decisions shall be final subject to appeal to the board of milk control. Notice of appeal shall be filed within fifteen (15) days after written notification of the decision of the producer committee. In the event an action by the producer committee is in violation of the plan, the administrator shall bring it to the attention of the aggrieved party.

(13) The administrator shall maintain records of all requests of the producer committee and the disposition thereof. Such files shall be open for inspection by any interested persons during the regular office hours of the Montana milk control bureau."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

4. Principal reasons for the adoption of the new rules are as follows:

(a) The quota plan would provide a mechanism to discourage wasteful and costly overproduction of milk by producers.

(b) The quota plan will assure producers that unnecessary production is not encouraged. Thus producers will not need to increase production just to maintain their share

of the market with the result that their blend prices are diluted.

(c) Responsibility for controlling production will be shifted from the plant to the producers, providing a more stable market which will enable producers to maximize returns easier and in a more efficient manner.

(d) The plan will enhance adaptability to changing conditions because of the discipline it creates in the market. Producers will have an incentive to produce for the market in the fall and not to overproduce during the flush season.

(e) Without production controls the supply of milk could exceed levels for which there are available local markets and prices to consumers could be increased to cover the extra cost of transportation to remote markets.

5. Principal reasons stated against adoption of the proposed new rules were as follows:

(a) The Meadow Gold quota plan will not solve the problems caused in this state by surplus milk production because it does not address the entire supply.

(b) The Meadow Gold quota plan will be an impediment to a future state-wide plan because of the vested interests dairymen will acquire because of the Meadow Gold plan.

(c) The adoption of the quota plan will only serve to divide producers further at a time when unity is needed to solve the problems in this state.

6. The principal reasons for denying the objections were as follows:

(a) Most of the testimony against the proposal was for the adoption of a state-wide pool. Since the pool is no longer a point of consideration, those objections are no longer relevant.

(b) The evidence at the hearing indicated that Meadow Gold Dairies, Inc. needed relief now, in the form of a quota plan, from the threat of the surplus milk. Meadow Gold and its producers could not wait for the eventuality of a state-wide plan when all the evidence indicates that had the board adopted the state-wide pool, the referendum in all probability would fail.

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 17, 1988.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

| | | |
|-------------------------------|---|-----------------------------|
| In the matter of the repeal |) | NOTICE OF REPEAL OF RULES |
| of rules 24.9.249 - 24.9.260; |) | 24.9.249 - 24.9.260; THE |
| the amendment of rules |) | AMENDMENT OF RULES 24.9.212 |
| 24.9.212 Confidentiality, |) | CONFIDENTIALITY, 24.9.225 |
| 24.9.225 Procedure on finding |) | PROCEDURE ON FINDING OF NO |
| of no cause; and the adoption |) | CAUSE; AND THE ADOPTION OF |
| of Rules I - XIV, Procedures |) | RULES I - XIV, PROCEDURES |
| for hearings of petitions for |) | FOR HEARINGS OF PETITIONS |
| declaratory rulings. |) | FOR DECLARATORY RULINGS. |

TO: All Interested Persons

1. On June 9, 1988, at page 1117 of the 1988 Montana Administrative Register, Issue No. 11 the human rights commission proposed to repeal rules 24.9.249 through 24.9.260.

2. The commission has repealed the rules as proposed.

3. The commission received no comments in opposition to the proposed repeal of these rules.

4. The authority of the commission to repeal the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-104, 2-4-106, 2-4-602, 2-4-623, 2-4-302, 49-2-201, 49-2-203, 49-2-501, 49-2-502, 49-2-503, 49-2-505, and 49-2-506, MCA.

5. On June 9, 1988, the human rights commission published notice of proposed amendments to rules 24.9.212 and 24.9.225 at page 1117 of the 1988 Montana Administrative Register, Issue No. 11. These rules relate to confidentiality and procedure on finding of no cause.

6. The commission has amended the rules as proposed.

7. The commission received a comment from John MacMaster of the legislative council on the proposed amendment of rule 24.9.212. He stated the commission should expand the rationale statement for the rule because the original rationale statement did not explain why the circumstances under which access to commission files is restricted should be defined more narrowly.

The commission has reviewed its rule on confidentiality in light of the provisions of the constitution guaranteeing the public right to know, the individual right of privacy, the federal privacy act, and other federal laws. The commission believes restricting access to information about a case during the investigation is justified by the right of individual privacy due to the unsubstantiated nature of the allegations until the investigation is complete. The commission also has an interest in maintaining the integrity of the investigation by not revealing information obtained in the investigation until it is complete. Finally, because the commission contracts with federal agencies to investigate cases, there are times when the federal privacy act and other federal laws apply to the ability of the commission to grant access to a file. The old rule, which denied access to a file until a case was certified for hearing was overly restrictive in view of the

reasons supporting restricted access, however. For example, some cases are closed without ever being certified for hearing, either through settlement or an unappealed no cause determination. The rule as amended allows access to the file at the conclusion of the investigation.

8. The authority of the commission to amend the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules as amended implement sections 49-2-504, 49-2-505, 49-3-307, 49-3-308, 49-2-509, and 49-3-312, MCA.

9. On June 9, 1988, the human rights commission published notice of the proposed adoption of rules governing procedures for hearings of petitions for declaratory rulings at page 1117 of the 1988 Montana Administrative Register, Issue No. 11.

10. The commission has adopted the rules I - X (24.9.401 - 24.9.410), XII (24.9.412) and XIV (24.9.414) as proposed. The commission has adopted rules XI (24.9.411) and XIII (24.9.413) with the following changes:

RULE XI - 24.9.411 PROPOSED ORDERS (1) Following the introduction of evidence on the petition and the close of hearing the commission or the hearing examiner shall make a proposed order upon the petition in the form of findings of fact, conclusions of law and proposed orders. ~~Conclusions of law may be in the form of an opinion.~~ The findings of fact and conclusions of law may be supported with an opinion of law. Rules 24.9.327 and 24.9.328 will apply to proposed orders made under this rule.

(2) Any party aggrieved by a proposed order may file exceptions to it in accordance with rules 24.9.327 and 24.9.328.

RULE XIII - 24.9.413 EFFECT OF DECLARATORY RULING

(1) Commission rulings and orders on petitions for a declaratory ruling are binding only upon the commission and the parties to the petition.

(2) The commission may limit the scope and application of the ruling or order to the facts or the situation presented by the petition and the evidence. The commission may also limit the precedential weight of it will give to any such ruling or order.

11. The commission received comments from John MacMaster of the legislative council concerning proposed rules III(1)(h), (i), and (2), IV(3), VI(1) and (3), XI, XII(2) and XIII(2).

With respect to proposed rules III(1)(h), (i), and (2), VI(1) and (3), and XII(2), he questioned whether it is proper for the commission to shift the burden to the petitioner of identifying persons who may be affected by the proposed declaratory ruling, of giving notice of hearing to persons who

may be affected, and of bearing the cost of publication of the declaratory ruling.

The commission believes it is not inappropriate to allocate these burdens to the petitioner. There is no legal requirement that the commission or its staff perform these functions and it is common for the parties to other types of litigation to have the kinds of responsibilities outlined in the rules. The requirements are not unduly burdensome. With respect to the requirement of identification, often the petitioner is the only party with knowledge of persons with an interest in the declaratory ruling proceeding. The commission has experienced difficulty in the past in obtaining the cooperation of the petitioner in identifying persons with an interest in the proceeding. With respect to publication costs, the issue may be moot because the secretary of state does not presently charge for the publication of opinion material in the register. The commission maintains that it is appropriate to require the petitioner to pay the publication costs should a charge be imposed in the future, however. The commission has therefore adopted the rules as proposed.

With respect to proposed rule IV(3), MacMaster questioned whether the absence of a genuine case or controversy or the availability of other adequate remedies at law are proper grounds for the commission to refuse to consider a petition for declaratory ruling.

The commission does not intend to place technical bars upon the availability of declaratory rulings, but maintains that circumstances do arise when a petition for declaratory ruling is properly dismissed on these grounds. For example, the commission has received petitions for declaratory ruling from parties to contested case proceedings before the commission asking for a declaratory ruling on issues pending in the contested case. In this situation, the petitioner clearly has another adequate remedy at law and the commission should not be required to expend duplicative time and effort to hear the petition for declaratory ruling. Similarly, the commission should not be required to hear a purely hypothetical question. The commission has therefore adopted the rule as proposed.

With respect to proposed rule XI, MacMaster suggested that the second sentence of the rule was confusing and would not make sense to a non-lawyer. The commission agrees and has adopted the rule with amendments to reflect this concern.

With respect to proposed rule XIII(2), MacMaster felt the subsection could be clarified so it does not appear that the commission is attempting to limit the weight a court or another agency might give to the ruling. The commission agrees and has adopted the rule with amendments to reflect his concern.

12. The authority of the commission to adopt the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-501, 2-4-603, 2-4-604, 2-4-611, 2-4-621,

2-4-623, 49-2-401 through 49-2-403, 49-3-104, and 49-3-105,
MCA.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
ANNE L. MACINTYRE
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State October 17, 1988.

VOLUME NO. 42

OPINION NO. 114

CITIES AND TOWNS - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

EMPLOYEES, PUBLIC - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

MUNICIPAL GOVERNMENT - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

POLICE - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

SALARIES - Whether statute requiring first- or second-class cities to pay the difference between workers' compensation benefits and regular salary to police officer injured in the line of duty requires accrual of vacation and sick leave benefits during the period of disability;

STATUTES - Duty of interpreting authority to declare clear terms of statute as written;

ADMINISTRATIVE RULES OF MONTANA - Sections 2.21.133(11), 2.21.221(9);

MONTANA CODE ANNOTATED - Sections 1-2-101, 2-18-611, 2-18-618, 7-32-4132;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 69 (1988).

HELD: Under section 7-32-4132, MCA, a police officer of a first- or second-class municipality who is injured in the performance of duty, is entitled to the difference between any workers' compensation benefits he receives and his regular salary. However, the statute does not provide for the accrual of either vacation

or sick leave benefits during the period of disability.

6 October 1988

Jim Nugent
City Attorney
201 West Spruce Street
Missoula MT 59802

Dear Mr. Nugent:

You have requested my opinion on the following question:

Whether section 7-32-4132, MCA, which requires that a first- or second-class city pay the difference between workers' compensation benefits and full salary to a police officer injured in the line of duty, also requires accrual of vacation and sick leave benefits during the period of disability.

I find no authority within the terms of the statute for requiring such benefits.

Section 7-32-4132, MCA, states:

A member of a municipal law enforcement agency of a first- or second-class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the difference between his full salary and the amount he receives from workers' compensation until his disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever shall first occur.

The meaning of this statute is quite clear: The municipality must pay the difference between the amount a disabled officer receives in workers' compensation benefits and the normal salary of the officer. See 42 Op. Att'y Gen. No. 69 (1988). It neither expressly nor

impliedly requires accrual of vacation or sick leave benefits.

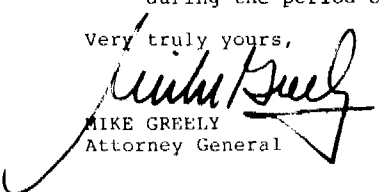
Since section 7-32-4132, MCA, does not provide for accrual of benefits, the regular statutes governing vacation and sick leave benefits apply. Under state law, a person absent from employment during a period of disability would not be eligible for vacation or sick leave accrual. § 2-18-611, MCA (vacation leave) and § 2-18-618, MCA (sick leave). Both of these statutes, and the rules which implement them (§§ 2.21.133(11) and 2.21.221(9), ARM), contemplate that an employee must be in an actual pay status in order to accrue vacation and sick leave benefits.

I am aware of the argument that the Legislature, in providing for the increased disability payment to an officer injured in the performance of duty, must have meant to include accrual of vacation and sick leave benefits within its terms. When, as here, I find the terms of the statute to be clear and unambiguous, my duty is to declare them as written. See § 1-2-101, MCA; State ex rel. Palmer v. Hart, 201 Mont. 526, 655 P.2d 965 (1982) (it is the court's duty to declare the law as it finds it); Tongue River Electric Co-op v. Montana Power Co., 195 Mont. 511, 636 P.2d 862 (1981) (where the terms of the statute are clear, there is no need for further interpretation).

THEREFORE, IT IS MY OPINION:

Under section 7-32-4132, MCA, a police officer of a first- or second-class municipality who is injured in the performance of duty, is entitled to the difference between any workers' compensation benefits he receives and his regular salary. However, the statute does not provide for the accrual of either vacation or sick leave benefits during the period of disability.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 115

SCHOOL BOARDS - Definition of "eligible transportee" under school transportation statutes;

SCHOOL BOARDS - Permission required for eligible transportee to be provided transportation out of district;

SCHOOL DISTRICTS - Definition of "eligible transportee" under school transportation statutes;

SCHOOL DISTRICTS - Permission required for eligible transportee to be provided transportation out of district;

MONTANA CODE ANNOTATED - Sections 20-5-301(3), 20-5-302, 20-10-101, 20-10-121(1), 20-10-122.

- HELD: 1. To be designated an "eligible transportee" for the purpose of the school transportation statutes, a pupil must reside more than three miles from the closest school, regardless of the school's location inside or outside the resident school district.
2. If an "eligible transportee" wishes to attend a school outside his district, he or she must obtain permission from the resident district school board in order to be provided transportation by the resident district.

14 October 1988

Ted O. Lymus
Flathead County Attorney
P.O. Box 1516
Kalispell MT 59903-1516

Dear Mr. Lymus:

You requested my opinion on the following question:

What is the obligation of a school district which does not provide bus transportation to pay transportation costs to parents who enroll their child without permission of the resident district's board of trustees in a district other than the district of residence?

20-10/27/88

Montana Administrative Register

In your request you stated that several school districts in Flathead County do not provide school buses for student transportation, but instead provide reimbursement contracts to those who are eligible for transportation. Your question is whether those contracts must be offered to parents who, without permission of the resident district school board, send their children to schools outside their resident district.

The governing statute is section 20-10-121(1), MCA, which provides in part:

The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation.

An "eligible transportee" is defined in section 20-10-101(2), MCA, as:

[A] public school pupil who:

(a) is not less than 5 years of age nor has attained his 21st birthday;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school. [Emphasis added.]

Thus a pupil is not an "eligible transportee" if he or she resides within three miles of a school regardless of the school's location inside or outside the resident school district.

The meaning of a statute and the legislative intent are to be ascertained from the plain, unambiguous language used. State ex rel. Huffman v. District Court, 154 Mont. 201, 461 P.2d 847 (1969). The rules of statutory construction require the statutory language to be read with a view to giving vitality to and making operative all provisions of law, accomplishing the intention of the Legislature when possible. Burritt v. City of Butte, 161 Mont. 530, 508 P.2d 563 (1973).

Under section 20-10-121(1), MCA, the resident school district is obligated to provide transportation to all eligible transportees if it provides transportation to any. No such obligation exists with respect to pupils who are not "eligible transportees." §§ 20-10-122, MCA.

However, the clear language of section 20-10-121(1), MCA, authorizes the resident school district to provide transportation for an eligible transportee to attend school outside the district only when the student "has been granted permission."

The language of the pertinent statutes leads me to conclude that if a school district is providing transportation to any "eligible transportee" it is obligated to provide transportation to all "eligible transportees" to attend school in their district. However, an "eligible transportee" who wishes to attend a school outside his district must obtain permission from his school board to be provided transportation by his district.

My conclusion is supported by the fact that the school tuition provisions were enacted in the same year as the school transportation statutes. §§ 20-5-301 to 314, MCA. Statutes passed at the same time and relating to the same general subject are to be construed together. City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221, 230 (1971). The school tuition and transportation statutes both authorize the resident school district to pay for students to attend school outside the district under certain circumstances. Under section 20-5-301(3)(a), MCA, if a resident school is more than

three miles and a nonresident school is less than three miles from the pupil's residence, the resident district is required to pay tuition for the pupil to attend school outside his district. If a child lives more than three miles from any available school and his resident district is providing transportation to eligible transportees, the resident district is not required to pay tuition for the child to attend a nonresident school; the child must specifically request the school to pay his tuition to attend a school outside his district. §§ 20-5-301(3)(b), 20-5-302, MCA. Thus, a student who lives more than three miles from any school--an "eligible transportee" under the school transportation statutes--and whose resident district provides transportation to "eligible transportees," must obtain permission from his school board for payment of his tuition to attend a school in another district.

By the same token, when a pupil's district is providing transportation to any "eligible transportees," an "eligible transportee" is entitled to transportation to a school in his district; however, he must obtain his school board's permission to be provided transportation by his district to a nonresident school.

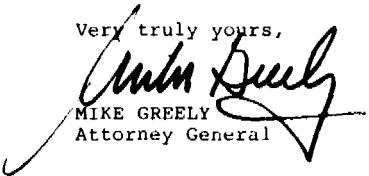
As mentioned earlier, some school districts are not providing actual transportation but instead are reimbursing "eligible transportees" for transportation costs. This type of reimbursement is included in the definition of "transportation" for the purpose of the school transportation statutes. § 20-10-101(1)(c), MCA.

THEREFORE, IT IS MY OPINION:

1. To be designated an "eligible transportee" for the purpose of the school transportation statutes, a pupil must reside more than three miles from the closest school, regardless of the school's location inside or outside the resident school district.
2. If an "eligible transportee" wishes to attend a school outside his district, he or she must

obtain permission from the resident district
school board in order to be provided
transportation by the resident district.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known Subject Matter | 1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute Number and Department | 2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1988. This table includes those rules adopted during the period June 30, 1988 through September 30, 1988 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, 1988, this table and the table of contents of this issue of the MAR.

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- 46.12.3601 Non-Institutionalized SSI-Related Individuals and Couples, p. 1883, 2231
- 46.13.301 and other rules - Montana Low Income Energy Assistance Program, (LIEAP), p. 1788, 2041