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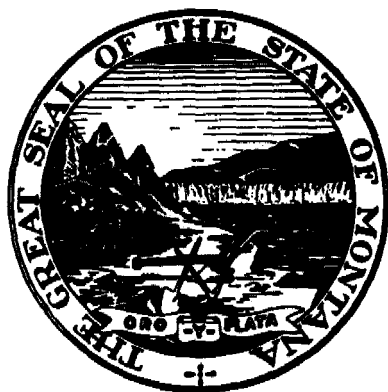
MAY 12 1988

OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

**DOES NOT  
CIRCULATE**

1988 ISSUE NO. 8  
APRIL 28, 1988  
PAGES 785-845



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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.

Page Number

### TABLE OF CONTENTS

#### NOTICE SECTION

#### COMMERCE, Department of, Title 8

8-24-14 (Board of Landscape Architects)  
Notice of Proposed Amendment - Examinations.  
No Public Hearing Contemplated. 795-786

#### NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-16-3 (Board of Natural Resources and  
Conservation) Notice of Public Hearing on  
Proposed Amendment - Definitions - Forms -  
Applications - General - Application Content -  
Analysis of Need - Application Content -  
Determination of Amount - Management Plans -  
Processing Applications and Monitoring  
Reservations - Board Responsibilities - Action  
on Applications - Board Decision Criteria -  
Individual Users - Fees and Costs - Applications  
in Missouri River Basin. 787-802

#### SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-534 Notice of Public Hearing on Proposed  
Amendment - Nursing Home Reimbursement. 803-809  
46-2-535 Notice of Public Hearing on Proposed  
Amendment - Outpatient Speech Therapy Services. 810-813  
46-2-536 Notice of Public Hearing on Proposed  
Amendment and Repeal - Reimbursement For Physician  
Services. 814-819  
46-2-537 Notice of Public Hearing on Proposed  
Amendment - Diagnosis Related Groups (DRGS). 820-822

RULE SECTION

COMMERCE, Department of, Title 8

NEW (Board of Medical Examiners) Nutrition  
Practice Rules - Licensing - Conduct - Fees  
for Nutritionists. 823-824

FAMILY SERVICES, Department of, Title 11

NEW Recovery of Foster Care or Day Care  
AMD Overpayments. 825

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

AMD Definitions of PM-10 - PM-10 Emissions and Total  
Suspended Particulate - High-volume Measurement  
for Lead - Ambient Air Quality Standards for  
PM-10 - Significant Emission Rates for PM-10 -  
Ambient Air Increments for Total Suspended  
Particulate. 826-827

SECRETARY OF STATE, Title 44

NEW Fees for Filing Federal Tax Liens and Filing  
AMD Documents. 828

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee. 829  
How to Use ARM and MAR. 830  
Accumulative Table. 831-845

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

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of a rule pertaining ) AMENDMENT OF 8.24.405  
to examinations ) EXAMINATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1988, the Board of Landscape Architects proposes to amend the above-stated rule.

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

"8.24.405 EXAMINATIONS (1) and (2) will remain the same.

~~(3)--Beginning-with-the-June-1984-licensing--examination, a--first--time--candidate--failing--to-pass-any-part(s)--of-the examination-may-repeat-the-part(s)--failed-at--two--consecutive examinations---Failure--to--pass--the--repeated--part(s)--will result-in-the-candidate-not-being-allowed-to-repeat-the-failed part(s)-for-a-period-of-three-years.~~

(4) through (7) will remain the same but will be renumbered as (3) through (6)."

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

REASON: The board was concerned that there would be a conflict with requirements of the Uniform National Examination (UNE). Also, a question has been raised whether the rule constitutes an improper extension of authority.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 26, 1988.


4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 26, 1988.

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

Administrative Register. Ten percent of those persons directly affected has been determined to be 3 based on the 30 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS  
VALERIE TOOLEY, CHAIRMAN

BY:

  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1988.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendments to rules ARM 36.16.101	)	ON THE PROPOSED AMENDMENT
concerning the policy and purpose	)	OF RULES ARM 36.16.101
of the rules; 36.16.102 concerning	)	POLICY AND PURPOSE OF RULES;
definitions; 36.16.103 concerning	)	36.16.102 DEFINITIONS;
forms; 36.16.104 concerning	)	36.16.103 FORMS; 36.16.104
applications - general; 36.16.105A)	)	APPLICATIONS - GENERAL;
concerning applications content - )	)	36.16.105A APPLICATION
analysis of need; 36.21.105B	)	CONTENT - ANALYSIS OF NEED;
concerning application content - )	)	36.16.105B APPLICATION
determination of amount; 36.16.106)	)	CONTENT - DETERMINATION
concerning application content - )	)	OF AMOUNT; 36.16.106
management plans; 36.16.107	)	APPLICATION CONTENT -
concerning processing of	)	MANAGEMENT PLANS;
applications and monitoring	)	36.16.107 PROCESSING
reservations - department	)	APPLICATIONS AND MONITORING
responsibilities; 36.16.107A	)	RESERVATIONS - DEPARTMENT
concerning action on applications )	)	RESPONSIBILITIES; 36.16.107A
and monitoring reservations - )	)	ACTION ON APPLICATIONS AND
board responsibilities; 36.16.107B)	)	MONITORING RESERVATIONS -
concerning action of applications )	)	BOARD RESPONSIBILITIES;
- board decision criteria; )	)	36.21.107B ACTION ON
36.16.112 concerning individual )	)	APPLICATIONS - BOARD
users; 36.16.114 concerning fees )	)	DECISION CRITERIA; 36.16.112
and costs; and 36.16.117	)	INDIVIDUAL USERS; 36.16.114
concerning applications in	)	FEEES AND COSTS; 36.16.117
Missouri River Basin.	)	APPLICATIONS IN MISSOURI
	)	RIVER BASIN.

To: All Interested Persons:

1. On Monday, June 20, 1988, at 1:30 p.m., a public hearing will be held in the Director's Conference Room, Lee Metcalf Building, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana, to consider the above-stated rules amendments.

2. The proposed amendment of ARM 36.16.101 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rules is located at page 36-337, Administrative Rules of Montana)

"36.16.101 POLICY AND PURPOSE OF RULES (1) ...

(2) The water reservation process, as ~~presented in~~ provided by section 85-2-316, MCA, is a means whereby this policy can be implemented. This law provides for the establishment of reservations of water by governmental entities for beneficial uses that are necessary and shown to be in the public interest. Section 85-2-331, MCA, provides for a comprehensive water reservation proceeding within the Missouri River Basin.

(3) ..."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

3. Because other revisions to this chapter were required as a result of statutory changes, a comprehensive review of the entire chapter was undertaken, and rule amendments are proposed to improve the wording and eliminate unnecessary language. The amendment to 36.16.101 is proposed for this reason.

4. The proposed amendment to 36.16.102 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-337-339, Administrative Rules of Montana)

"36.16.102 DEFINITIONS Unless the context requires otherwise, in these rules:

(1) ...

(10) "Financial feasibility" means that financing for a water reservation project can be secured and that project costs will be recovered from project revenues generated over the project life, or through available subsidies, or from a combination thereof.

(11) ...

(16) "Management plan" means a detailed plan that accompanies a reservation application and that will be used as guidance in the application of reservation waters to beneficial use if the reservation is granted. Management plans for diversionary uses contain information on proposed project design and operation. Management plans for instream uses must contain a schedule for estimating and monitoring flows not quantified at the time the application is submitted, and for reporting findings to the board if required.

(17) ...

(18) "Period of use" means the time period in a calendar year, expressed in days and months, during which reserved water will be used in a calendar year.

(19) ...

(20) "Project" means any water storage or diversion facility or a combination thereof, including, but not limited to dams, water spreading systems, diversion canals, laterals, waste and drainage canals, dikes, wells, pumping units, mains, pipelines, power generators, and waterworks systems needed for application of reserved water to beneficial use.

(21) ...

(24) "Reservation term" means the period of years ordered by the board during which reservation waters must be applied to beneficial use.

(25) ..."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101,

316, 331, 605, MCA.

5. The reasons for the proposed amendments of rule 36.16.102, subsections (10), (16), (18), and (24) are those referred to in paragraph 3. The amendment of subsection (20) is intended to clarify that the list of storage and diversion facilities is not exclusive.

6. The proposed amendment of 36.16.103 will read as follows: (new matter underlined, deleted matter interlined)

"36.16.103 FORMS (1) The necessary forms for the administration of these rules are available from the Water Resources Division of the department, 1520 East Sixth Avenue, Helena, Montana 59620-2301. The forms hereinafter listed must be used in the administration of these rules:

(a) Form No. 610A, Application for Reservation of Water--Diversionary Uses.

(b) Form No. 610B, Application for Reservation of Water--Instream Uses.

(c) Form No. 623, Notice of Beneficial Use of Reserved Waters."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

7. The amendment to 36.21.103 is proposed to require the use of separate forms for diversionary and instream uses.

8. The proposed amendment of 36.16.104 will read as follows: (new matter underlined, deleted material interlined) (full text of rule is located at page 36-340, Administrative Rules of Montana)

"36.16.104 APPLICATIONS - GENERAL (1) Each application for reservation of water shall be accompanied by a completed Form 610A or 610B, available from the department, and shall be submitted to the board through the Water Resources Division of the department, 1520 East Sixth Avenue, Helena, Montana 59620-2301. A fee of \$100 shall be submitted with the application.

(2) ...

(5) The text and appendices must be consecutively numbered in a manner that provides each page in the application with a unique page number.

(6) An application must contain a list of persons involved in developing sources of information used in preparing the application, including those involved in field investigations and professional consultations, used in preparing the application.

(7) The application must be organized as in the followings order:

(a) ...

(h) a bibliography, appendices, and attachments, where



appropriate.

(82) The department shall return a deficient an incorrect or incomplete application to the applicant for correction or completion as required in ARM 36.16.107(2). An application will not be considered and acted upon by the board until the filing fee has been submitted and the application is found to be correct, complete, and in compliance with the act and these rules.

(93) An applicant may request the department to provide assistance in preparing a reservation application. Department assistance in the preparation of reservation applications shall not require the department to support such applications in making any recommendations to the board for findings pursuant to ARM 36.16.107B. The department will provide such assistance within its budgeting and staffing limitations.

(10) Prior to submitting a final application, an applicant may request that the board waive any application content requirements of ARM 36.16.105, 105A, 105B, 105C, and 106 that may not be required by statute. The board may consult with the department on the merits and effect of the request. The board may grant the waiver if the applicant shows good cause and the board determines that the waiver will not seriously impair its ability to fulfill its responsibilities under ARM 36.16.107A and 107B.

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

9. The amendment to 36.16.104 is proposed for the following reasons: subsection (1) adds the new forms; subsections (5), (6), (7), and (8) provide clarification; the renumbering of subsections (8) and (9) are due to typographical errors in the original rule; subsection (9) is to clarify to the applicant that the department assistance does not imply department support; and subsection (10) provides the applicant with the opportunity to request a waiver from the application requirements of the rules. The Board acknowledges that special instances may arise that could not be foreseen and that these circumstances should not create an undue burden to applicants.

10. The proposed amendment of rule 36.16.105A will read as follows: (new material underlined, deleted material interlined) (full text of rule is located at page 36-341, Administrative Rules of Montana)

"36.16.105A APPLICATION CONTENT - ANALYSIS OF NEED

(1) The application shall present an analysis of why the reservation is needed. The analysis shall include the following, where appropriate:

(a) ...

(c) where the applicant is otherwise eligible to obtain a water right permit, an explanation of constraints to project development that restrict the applicant from perfecting a permit

for the proposed reservation purpose. These constraints may include the inability to finance a project in the near-term, lack of increased demand for water until some time in the future, or the need for additional project planning before water can be applied to beneficial use; or

(d) where the water reserved in a basin designated in 85-2-316(2)(a), MCA would be diverted for beneficial use in another designated basin, a discussion of why stored water for leasing under 85-2-141, MCA would not be considered reasonably available for the proposed use."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

11. The proposed amendment of 36.16.105A is to ensure that applicants provide the information necessary for the board to make an informed decision in the circumstances where water would be diverted from one statutorily designated basin to another. The proposed amendment is a direct result of the legislative changes contained in Ch. 197, Sessions Laws of 1987.

12. The proposed amendment of 36.16.105B will read as follows: (new matter underlined, deleted material interlined) (full text of rule located at pages 36-341-343, Administrative Rules of Montana)

"36.16.105B APPLICATION CONTENT - DETERMINATION OF AMOUNT

(1) The amount of water for the reservation being sought must be expressed in terms of volume, rate, and period of use. An application shall contain an explanation of the methods and assumptions used to calculate the amount of water to be reserved. The firm yield of any proposed reservoir, as defined in ARM 36.16.102 ~~(1)~~ and as required in ARM 36.16.106 (1)(a), shall be considered when determining the desired amount. Where an applicant is already served by existing projects, the total amount requested shall take into account the cost-effectiveness of increasing water-use efficiencies of the existing projects.

(a) The amount of water for municipal uses must be determined established by:

(i) calculating identifying the projected historical peak daily use, and average the historical peak annual use, and the current per capita water use rate for the proposed local service area;

(ii) forecasting the population to the year when all reserved water must be applied to beneficial use describing population growth projections or other assumptions underlying the application for additional water in the proposed local service area;

(iii) calculating the annual and determining future peak daily use and future annual and per capita use consistent with the assumptions described in amount needed on the basis of (i) and (ii); and

(iv) comparing result of (iii) with the current municipal use to determine the additional amount of water required under the reservation to be reserved based on the information provided in (i), (ii), and (iii), in terms of volume, rate and period of use.

(b) The amount of water for future full-service and supplemental irrigation uses must be determined on the basis of monthly crop irrigation requirements, conveyance and on-farm delivery system efficiencies, and the ~~number~~ acreage of irrigable ~~acres~~ land to be served. Irrigable lands shall include those lands as defined in ARM 36.16.102 (15) for which landowners have expressed an interest in developing new or supplemental irrigation. Interest ~~must~~ may be determined from a survey of all potential irrigators in the area that would be affected by the proposed reservation, or by other methods acceptable to the department. Lands for which no survey of landowners was taken or no response or a negative response to the survey was received may be included in an application only if an explanation of why these lands should be included is presented in the application.

(c) ...

(e) The amount of water for other diversionary uses must be calculated using a ~~state-of-the-art~~ methodology approved by the department for determining water requirements.

(f) ...

(2) An analysis must be made to estimate of the physical availability of flows or aquifer yields requested in ARM 36.16.105B(i) must be provided. The department may, upon written request, assist in the design of this analysis subject to available budget and personnel.

(a) For gaged streams where there is a record sufficient to identify long-term hydrologic conditions, the amount of water physically availability of flows on a monthly basis must be demonstrated, using available water resources data. Statistical information on streamflows must include monthly means and 20, 50, and 80th percentile exceedance frequency flows. The applicant must consult with the department to assure, to the fullest extent possible when necessary and practicable, that the period of record selected is consistent with the period chosen by allows for comparison of water availability statistics between any competing applicants. Consideration shall be given to the need for adjusting flows to a prescribed level of development.

(b) For drainages in which gaging records are not sufficient or available, monthly flows must be calculated, unless otherwise waived by the department, using a ~~state-of-the-art~~ flow estimation technique approved by the department.

(c) ...

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

13. The proposed amendment of rule 36.16.105B (1) (a) is to provide more specifically the information the board will need to

determine the amount of municipal water reservations. The amendment to (1) (b) is to clarify that land owner interest may be determined by means other than a survey. A survey may not be practical in all cases. The proposed amendments in (2)(a) and (b) are intended to clarify when gaging records may be used, when other flow estimation techniques may be necessary, and the extent to which the period of record used must be consistent. Other amendments to this rule are for those reasons stated in paragraph 3.

14. The proposed amendment to 36.16.106 will read as follows: (new matter underlined, deleted material interlined) (full text of rule located at pages 36-344 and 36-345, Administrative Rules of Montana)

"36.16.106 APPLICATION CONTENT - MANAGEMENT PLANS (1) A management plan shall accompany all reservation applications for diversionary uses. Plans for diversionary uses shall contain the technical information needed to adequately define project size and function. The plan must be accompanied by maps or drawings showing the project locations, including, where applicable, point(s) of diversion, place(s) of storage, main delivery systems, and place(s) of water use, indicated to an accuracy of the nearest ~~xxx~~ section. Such maps shall include section, township, and range numbers and other relevant information. All project plans shall demonstrate a consideration of water conservation measures.

(a) Plans for storage facilities shall include prefeasibility studies demonstrating estimating firm yield of the proposed reservoir. If the reservoir is planned to supply the demand on a non-firm basis, information shall be included to demonstrate estimate how often the demand is successfully met. Consideration of Montana dam safety regulations laws and federal dam safety funding requirements of potential federal or state funding entities shall also be demonstrated in the storage facility plans. Ownership of lands that would be inundated by a proposed storage facility must be indicated.

(b) The management plan shall include an analysis of the financial feasibility of the project(s). The ability to finance project costs through bond sales, commercial loans, project revenues, or other means must be addressed. If the project is not financially feasible using these means, the application shall contain a discussion of how financial feasibility might be achieved. Among the factors to be considered are the availability of funding subsidies, or changes in interest rates, commodity prices, and production and installation costs.

(c) For applications involving irrigation, the proposed water distribution systems, drainage systems, places of use, and types of irrigation systems shall be delineated, after consultation with the department, on 7.5 minute U.S. geological survey topographic maps, if available. If not available, other maps with a scale acceptable to the department may be used. This base map shall be accompanied by the following overlays:

(i) a transparent overlay to the same scale as the base map

that delineates the location of irrigated and irrigable lands in the project areas. For irrigable lands, this overlay shall delineate soil classifications using the U. S. Soil Conservation Service's soil mapping units, the department's land classification standards, or other methods acceptable to the department. A narrative describing the criteria used for selecting irrigable lands shall accompany this overlay be included in the application. Soil suitability for irrigation must be based on standards acceptable to the department; and

(ii) a transparent overlay showing the ownership of land to be affected by the reservation proposed to be irrigated with reserved water and lands underlying project facilities. A table that lists ownership locations may be substituted for this requirement.

(d) ...

(e) Capability of proceeding with reasonable diligence must be documented by presenting a detailed schedule of activities needed to apply reserved water to beneficial use including target dates or years when financing will be available, facilities built, and the water applied to beneficial use.

(f) Where individual users or groups of users will be responsible for applying the reserved water to beneficial use, the applicant must present a set of administrative procedures that describes who shall qualify to use the reserved water, the steps such users must take to apply the reserved water to beneficial use and, as appropriate, the means by which the reserved waters would be allocated during shortages.

(2) A management plan shall accompany all reservation applications for instream use(s), as defined in ARM 36.16.102 (14), and shall include:

(a) ...

(c) an analysis of the costs and feasibility of purchasing and installing needed gaging stations or, if needed gaging stations are not planned for installation, a description of how reservation flows in ungaged reaches will be subsequently estimated and monitored for the purpose of protecting instream reserved water from future depletions, as determined after consultation with the department and after consideration of items described in ARM 36.16.105B(1)-(f) and ARM 36.16.105B(2) under later-priority water use permits and reservations."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

15. The amendments of ARM 36.16.106 are proposed for those reasons stated in paragraph 3, with the following exceptions:

(1)(c)(i) is proposed to clarify soil classification requirements; (2)(c) is proposed to clarify the purpose of an instream flow management plan and the requirements for the method of estimating the stream flow, once a reservation is granted.

16. The proposed amendment of 36.16.107 will read as

8-4/28/88

MAR Notice No. 36-16-3

follows: (new matter underlined, deleted material interlined)  
(full text of rule is located at page 36-346, Administrative  
Rules of Montana)

"36.16.107 PROCESSING APPLICATIONS AND MONITORING  
RESERVATIONS - DEPARTMENT RESPONSIBILITIES (1) ...

(2) The department shall determine if an application is correct and complete within 90 days after an application has been submitted along with the required application fee. To be determined as correct and complete, a water reservation application shall meet all requirements of ARM 36.16.104, 36.16.105, 36.16.105A, 36.16.105B, 36.16.105C and 36.16.106. A determination that an application is correct and complete is in no way a judgment on the part of the department on the merits of the reservation proposal. The department must notify the applicant must be notified in writing of any deficiencies. Unless otherwise provided in ARM 36.16.117, an application returned to an applicant as not being correct or complete must be resubmitted to the department within 60 days of its return to the applicant or it will be terminated, unless the applicant requests and receives written approval from the department for an extension of time. All department staff who provided technical assistance in the preparation of the application or participated in the review shall be listed in a memorandum to be attached to the application file.

(3) ..."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

17. The amendment of 36.16.107 is proposed to include 36.16.104, which was inadvertently omitted in the original rule adoption. The remainder of the amendment is intended to clarify that even though an application is deemed correct and complete, such a department determination does not imply that the department would support granting the requested reservation.

18. The proposed amendment of 36.16.107A will read as follows: (new matter underlined, deleted matter interlined)  
(full text of rule is located at page 36-346.1, Administrative Rules of Montana)

"36.16.107A ACTION ON APPLICATIONS AND MONITORING  
RESERVATIONS - BOARD RESPONSIBILITIES (1) ...

(2) If an order reserving water is issued by the board with conditions, the board shall allow the applicant a prescribed period of time to revise its reservation proposal management plan in response to board conditions.

(3) ...

(5) The board shall act on requests for changes or transfers requests of reserved water, in accordance with ARM 36.16.118." Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

19. The amendment of ARM 36.16.107A (2) is proposed to specify the exact part of a reservation application that may need to be revised in response to board conditions. The amendment of subsection (5) is for those reasons stated in paragraph 3.

20. The proposed amendment of 36.16.107B will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at pages 36-346.1 - 36-346.3, Administrative Rules of Montana)

"36.16.107B ACTION ON APPLICATIONS - BOARD DECISION

CRITERIA (1) For the board to adopt an order reserving water, it must find that:

(a) ...

(b) the purpose of the reservation is a beneficial use as defined in ARM 36.16.102(3).

(2) For the board to adopt an order reserving water, it must establish that the reservation is needed, as required in 85-2-316(4)(a)(ii), MCA, by finding that:

(a) the applicant has demonstrated that there is a reasonable likelihood that future instate or out-of-state competing water uses would consume, degrade, or otherwise affect the water available for the purpose of the reservation. Such a determination shall be based on a department forecast that identifies the potential impact of competing uses on the purpose of the reservation; or

(b) where information regarding the effect of future water uses on a proposed reservation is not available, or where the applicant may not be eligible to apply for a water use permit, the applicant has demonstrated that the importance of water resource values warrant reserving water for the requested purpose; or

(c) ...

(3) For the board to adopt an order reserving water, it must determine the amount needed to fulfill the purpose of the reservation, as required in 85-2-316(4)(a)(iii), MCA, on the basis of a finding:

(a) that the methodologies and assumptions used to determine the requested amount are ~~reasonable~~, accurate, and suitable; and

(b) that water-use efficiencies associated with diversionary uses are reasonable, and that there are no other reasonable cost-effective measures that could be taken within the reservation term to increase the use efficiency and lessen the amount of water required for the purpose of the reservation; and

(c) for instream flow purposes on gaged streams, that the amount does not exceed the limit provided by 85-2-316(6), MCA.

(4) For the board to adopt an order reserving water, it must find, in its judgment and discretion, that the reservation is in the public interest, as required in 85-2-316 (4)(a)(iv), MCA, based on a weighing and balancing of the following factors, after making a specific finding for each factor:

(a) whether the expected benefits of applying the reserved water to beneficial use are reasonably likely to exceed the costs

where:

(i) benefits include all direct and indirect benefits ~~to the applicant or the state of Montana~~, where any non-market benefits are quantified and valued to the extent reasonably possible;

(ii) costs include all direct and indirect costs ~~to the applicant or the state of Montana~~, where any non-market costs are quantified and valued to the extent reasonably possible; and

(iii) ...

(5) For the board to adopt an order reserving water where the purpose of the reservation requires the diversion of water from one of the basins designated in 85-2-316(2)(a), MCA for use in another of the designated basins, it must find that stored water for leasing is not reasonably available for the proposed use because the applicant or the applicant's project does not meet the statutory terms, conditions, or requirements of a lease under 85-2-141, MCA.

(56) Where the purpose of the reservation requires the withdrawal and transport of water for use outside the state, the board must find by clear and convincing evidence, as required by in consideration of the factors described in 85-2-316(4)(bc), MCA, that:

(a) ...

(67) ...

(78) For the board to adopt an order reserving water, it must find that the reservation, as the board proposed to condition it for adoption, will not adversely affect existing water rights, including other reservations."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

21. The amendments of 36.16.107B are proposed for those reasons stated in paragraph 3 with the following exceptions: the amendment of (2)(a) removes the burden of demonstrating need from the department to the applicant, in keeping with statutory requirements; the amendment of (3)(c) is to draw attention to the fact that a statutory limit of the amount of instream flow is provided by section 85-2-316, MCA; the amendment to new subsection (5) provides an explicit criterion for the board to evaluate whether to grant the reservation of water to be transferred between statutorily designated basins in accordance with the legislative changes in Chapter 197, Session Laws of 1987; and the amendment of (5 6) is, in the judgment of the department, a more accurate interpretation of the board's statutory responsibility.

22. The proposed amendment of 36.16.112 will read as follows: (deleted matter interlined)

"36.16.112 INDIVIDUAL USERS (1) The act does not provide for the reservation of water by individuals and no reservation right may be transferred in whole or in part to private



individuals or entities. However, an applicant's request for a reservation is appropriate if it is based on behalf of the needs of a number of individual users."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

23. The amendment of rule 36.16.112 is proposed because while reservations may not be provided to individuals, a public entity could reserve water on behalf of one individual, as well as a number of individuals.

24. The proposed amendment of 36.16.114 will read as follows: (new matter underlined, deleted matter interlined)

"36.16.114 FEES AND COSTS (1) As required by ARM 36.16.104, a \$100 fee must be paid to the department when filing an application for reservation of water.

(2) In addition to the \$100 fee, as required by section 85-2-316, MCA, the department's cost of giving notice, holding the hearings, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant, unless waived by the department upon a showing of good cause. The applicant is also required to pay a reasonable proportion of the department's costs fees needed for EIS preparation as prescribed in 85-2-124, MCA unless waived by the department upon a showing of good cause by the applicant. If an application is for an instream use, the department shall determine a fee to be paid to the department after consultation with the applicant.

(a) An applicant shall consult with the department prior to submitting an application to develop a preliminary estimate of the department's costs of acting upon such application. Where more than one application is expected to be filed for a common drainage basin, the department may meet with all the applicants in order to determine an appropriate allocation of costs among the applicants that is based on the relative amount of work to process each application. Within a reasonable time after filing an application, the applicant must pay the department 10 percent of the preliminary estimate or, where more than one application is expected to be filed for a common drainage basin, 10 percent of the applicant's share of the preliminary estimate of the total cost, to prepare a scope of work for completing any EIS and any other detailed work plans required in acting upon the applications.

(b) After a scope of work for the EIS and any other detailed plans for acting upon the application have been completed, the department will notify applicants of the maximum cost they will be individually assessed to process their applications. Applicants shall be notified of the maximum cost within 90 days of the department's receipt of the final application. The estimated 10 percent prepayment will be

included in the maximum amount and deducted from each applicant's future obligations. The terms of payment for such fee will be negotiated and set forth in a contract between each applicant and the department. For applications involving the construction of diversion facilities, the costs attributable to EIS preparation shall not exceed the limits provided in 85-2-124, MCA.

(c) An applicant may appeal to the board to have its fees reduced.

(d) Any payments made to the department in excess of what is actually expended shall be remitted to the applicant within a reasonable time after the date of the board order reserving water."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

25. The amendment to rule 36.16.114 is proposed to better organize and define the procedure for determining and paying fees required of reservation applicants. Subsection (2) is created to distinguish the \$100 filing fee from the other fee payment obligations. The changes prior to (2)(a) are intended to improve the consistency of the rule with statutory requirements. The proposed new language under (2)(a) through (d) defines the procedure for determining the amount of the fee, other than the \$100 filing fee, and the method of its payment. New subsection (a) provides for applicant funding of department costs in the initial phase of preparing scopes of work. Any preliminary estimate of the department's costs in processing reservation applications prior to preparing these scopes of work are bound to be inaccurate, however. Subsection (b) provides for setting an upper limit on application fees, but one that is based on detailed scopes of work and thus, a limit that is more likely to be accurate and reasonable. New subsection (b) also provides a time limit within which the upper limit on fees must be set by the department, and defines a flexible mechanism by which the terms of payment may be negotiated. Subsection (c) provides applicants a means of administrative appeal if they believe the upper limits on fees determined by the department are too high. New subsection (d) provides for the disposition of any unexpended funds paid as fees by applicants back to those applicants.

26. The proposed amendment of 36.16.117 will read as follows: (new matter underlined, deleted matter interlined)

"36.16.117 APPLICATIONS IN MISSOURI RIVER BASIN

(1) Applicants seeking a water reservation of water for instream purposes or diversionary uses with points of diversion in the Missouri River basin above Fort Peck Dam pursuant to 85-2-331, MCA, shall submit correct and complete applications prior to on or before July 1, 1989. The board shall make a final determination on all applications for water reservations above Fort Peck Dam on or before December 31, 1991. Correct and complete applications for the reservation of water for instream

purposes or uses with points of diversion below Fort Peck Dam must be submitted on or before July 1, 1991. The board shall make a final determination on applications for water reservations below Fort Peck Dam on or before December 31, 1993. For the purposes of this rule, the Missouri River basin below Fort Peck Dam includes all drainages that would enter the Missouri River downstream of Fort Peck Dam, and any groundwater therein. An application to reserve water below Fort Peck Dam may be filed as an amendment to an application to reserve water above Fort Peck Dam, if filed by the same applicant for the same purpose.

(2) The priority date of Missouri reservations applied for and granted applications submitted in accordance with the deadlines provided in (1) prior to July 1, 1989 and granted prior to December 31, 1991 is July 1, 1985. Applications for water reservations in the Missouri basin submitted after the deadlines provided in (1) will be accepted after the July 1, 1989 deadline, but the priority date shall be the date of the board order granting the reservation reserving water is adopted by the board. Separate environmental impact statements and board hearings may be required for such late applications.

(3) The use of water under water reservations with a July 1, 1985 priority date may, at the discretion of the board, be subordinate to the use of water under permits with priority dates after July 1, 1985 issued before the date of the board order granting such reservations. The board may provide for subordination only if it finds that such permits would not substantially interfere with the purpose of a reservation. The board may consider subordination after issuing its order reserving water. The hearing convened in the matter of objections to the reservations may be bifurcated to separately consider the establishment of the water reservations and the subordination of those reservations.

(4) If, after issuing a final order reserving water in the Missouri basin, the board decides to consider the subordination of the established reservations, the department shall, if necessary, prepare a supplement to the environmental impact statement prepared for the decision to establish the water reservation. This supplement, if necessary, shall address the matter of subordination, including an evaluation of the effects of subordination to the reservants. The record of evidence and testimony presented at the hearing establishing the reservations will be considered part of the record in the hearing on subordination. Additional evidence and testimony limited to the matter of subordination may be presented. Notice of the hearing shall be provided to all affected permittees, permit applicants, reservants, and all parties who participated in the hearing on the matter of establishing the reservations. A separate final order may then be issued by the board on the matter of subordination.

(5) A permit does not substantially interfere with the purpose of a reservation if the reservation is not significantly diminished in value by any reduction in amount or frequency of flows resulting from water use under the permit.

(6) Substantial interference with the purpose of a reservation may result from water use under an individual permit or from the cumulative effect of water use under two or more permits. If substantial interference results from the cumulative effect of two or more permits, the board may subordinate a reservation to water use under the number of permits, in order of priority, which would not result in substantial interference.

(7) If a reservation is subordinated to one or more permits, and that reservation is senior in priority to one or more reservations in the same watercourse, all junior reservations granted pursuant to 85-2-331, MCA shall also be subordinate to the same permit or permits."

Auth: 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573, Eff. 7/1/85; Auth. Extension: Sec. 10, Ch. 535, Eff. 4/17/87; Auth. Extension: Sec. 2, Ch. 197, Eff. 10/1/87 Imp: Sec. 85-2-101, 316, 331, 605, MCA.

27. The amendment to rule 36.16.117 is proposed to clarify the special procedures and requirements of the comprehensive Missouri River basin water reservation proceedings. Changes to subsection (1) are intended to clarify the filing deadlines for applications in different parts of the basin. These changes are consistent with legislative changes made in Sec. 7 of Chapter 535, Session Laws of 1987. A new provision is added providing that applicants desiring reservations in both the upper and lower parts of the basin, for the same purposes, need not unnecessarily duplicate the parts of their applications that would be the same in both parts of the basin. Except for the new last sentence, the changes in subsection (2) are for the reasons cited in paragraph 3 of this notice. The new last sentence of subsection (2) is intended to clarify that late applications, while they must be processed by the department, might not be considered part of the comprehensive basin proceeding provided by the legislature in 85-2-331. New subsection (3) provides for the board to subordinate water reservations established as part of the Missouri Basin proceeding to water use permits with priority dates later than the reservation, but earlier than the date of the board order. The purpose of subordination is for people making investments in the perfection of their water use permits. The legislature has provided that these people should not be subordinate to as-of-yet unquantified water reservations if the board determines that their permits would not substantially interfere with the purpose of a reservation. This is consistent with legislative changes made in Sec. 7 of Chapter 535, Session Laws of 1987. New subsection (3) also clarifies that the decision whether or not to act on subordination is the board's, and that it may be made after the decision on the reservation applications in order to minimize the complexity of the proceeding and to avoid any appearance that the subordination option influenced the decision of the board in the matter of the reservation applications. New subsection (3) also provides that the hearing in the matter of subordination, if required, may be an extension of the hearing in the matter of objections to the

reservation, so that testimony and evidence presented at the first hearing need not be presented again in the second hearing. New subsection (4) further clarifies the process of subordination, with the intent of minimizing any unnecessary duplication in the EIS (if required), hearings, and board order processes. New subsection (5) further defines "substantial interference." New subsection (6) provides that it is not only the individual effects of each permit that may cause substantial interference, but also the cumulative effect of several permits. New subsection (7) clarifies that if a senior water reservation is subordinated to water use permits, junior water reservations must also be subordinate. Otherwise, the system would be unworkable because the permit would be subordinate to the junior water reservation, the junior water reservation would be subordinate to the senior water reservation, and the senior water reservation would be subordinate to the permit. No clear priority would exist and administration of water allocation would be impossible.

28. Interested parties may present their data, views and arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Gerhard Knudsen, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301, no later than June 30, 1988.

29. Board of Natural Resources and Conservation chairman, William Shields, will preside over and conduct the hearing.

BOARD OF NATURAL RESOURCES  
AND CONSERVATION  
WILLIAM SHIELDS, CHAIRMAN

BY: Larry Easbender  
LARRY EASBENDER, DIRECTOR  
DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION

Certified to the Secretary of State, April 18, 1988.

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

In the matter of amendment ) NOTICE OF PUBLIC HEARING ON  
of Rules 46.12.1201, ) THE PROPOSED AMENDMENT OF  
46.12.1202, 46.12.1204, ) RULES 46.12.1201, 46.12.1202,  
46.12.1206, 46.12.1207 and ) 46.12.1204, 46.12.1207 AND  
46.12.1210 pertaining to ) 46.12.1210 PERTAINING TO  
nursing home reimbursement ) NURSING HOME REIMBURSEMENT

TO: All Interested Persons

1. On May 23, 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 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1206 and 46.12.1207 pertaining to nursing home reimbursement.

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

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE  
APRIL JULY 1, 1987

(1) These rules shall be effective July 1, 1987.

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

(b) For all other providers delivering services in long term care facilities and for all providers delivering services in long term care facilities newly constructed after June 30, 1982, regardless of provider:

RO=A

RP=M

where:

R is the payment rate for the current year,

S is the interim property rate in effect on June 30, 1982. In the case where costs to a facility decrease such as through refinancing of debt or the renegotiation of a lease, S will be based on actual costs, if they are less. Decreased costs due to the normal change in interest and principal payments over the terms of an existing mortgage or lease will not lead to an adjustment by the department.

$S(1) = [(V \times S) + (Y \times 8.14)]$  effective-July-17-1987--and 8-31-effective-July-17-1988 divided by  $(V + Y)$

where:

V is the total square footage of the original structure before construction of new beds.

Y is the square footage added to the facility as a result of the construction.

$S(2) =$  the lower of 8.14 effective-July-17-1987--and-8-31-effective-July-17-1988 or  $S + (((F \times 12) \text{ divided by } 365) \times 1.0716)$  effective--July-17-1987--and-1-0988--effective-July-17-1988

where:

F is ((B divided by D) x .80) amortized over 360 months at 12% per annum.

D is the number of licensed beds in the facility.

B is the total allowable remodeling costs.

T is the interim operating rate plus estimated incentive factor in effect on June 30, 1982,

A is the operating rate effective July 1 of the current year in accordance with ARM 46.12.1204(2), and revised as of the effective date of a change which results in a change in rate or, at least annually, in accordance with ARM 46.12.1204(5). Rate revisions effective as of a date other than July 1 may occur under the following circumstances: a change in the number of licensed, ~~certified~~ beds or a change in provider, ~~or due to retroactive adjustment of the patient assessment score resulting from the first monitor of a new provider occurring after the new provider has been in the medicaid program for three months and has had its interim rate set by using the statewide average patient assessment score.~~

M is the property rate effective July 1 of the current year in accordance with ARM 46.12.1204(3), and revised as of the effective date of a change which results in a change in rate or, at least annually, in accordance with ARM 46.12.1204(5). Rate revisions effective as of a date other than July 1 may occur under the following circumstances: certification of newly constructed beds or completion of a remodeling project or a change in provider or refinancing of a mortgage or renegotiation of a lease.

M<sub>1</sub> = the M calculated under ARM 46.12.1204(3) in effect 6/30/85 times 1.0716, ~~effective July 1, 1987 and times 1.093 effective July 1, 1988.~~

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1202 PURPOSE AND DEFINITIONS (1) The purpose of the following rules is to define the basis and procedures the department will use to pay for long-term care facility services provided to medicaid recipients from July 1, 19878 forward.

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

(f) "Average nursing care hourly wage" means the weighted sum of the hourly wages, including benefits for nursing aides employed by providers, identified by the department in its ~~most recent~~ March 1987 survey of providers, divided by the total number of facilities surveyed.

(g) "Average nursing care time" means the sum of management hours of care for medicaid recipients identified by the

department in its most-recent fiscal year 1987 patient assessment survey, divided by the total number of medicaid recipients surveyed. ~~Each survey shall include the most-recent six months available.~~

(h) "Provider's average nursing care time" means the sum of management hours of care expressed in nursing aide hours for medicaid recipients in a specific facility as identified by the department in its most-recent fiscal year 1987 patient assessment survey, divided by the number of medicaid recipients in that facility subject to the provisions of ARM 46.12.1206(4). ~~The most-recent survey shall include a survey period of not less than three months nor more than six months. For facilities new to the medicaid program, 3.157 will be used because there was no fiscal year 1987 survey performed.~~

(i) "Average wage" means 50% of the sum of starting salaries for job openings in the 300-series in the dictionary of occupational titles identified by the department in its most recent survey of jobs opened in Montana's job service offices during a twelve-month-or-more period, divided by the number of job openings surveyed, plus 50% of the sum of the average starting nursing care salaries identified by the department in its most-recent fiscal year 1987 wage survey, divided by the number of facilities surveyed.

Subsections (2)(j) through (2)(z) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1204 PAYMENT RATE Subsection (1) remains the same.

(2) The operating rate A, in dollars per patient day, is given by the following effective July 1, 1987:

$A = A(1)$ , if  $T_1$  is equal to or greater than  $A(1)$ , or

$A = A(2)$ , if  $T_1$  is equal to or less than  $A(2)$ , or

$A = T_1$ , if  $T_1$  is less than  $A(1)$  and greater than  $A(2)$ , or

$A = A(3)$  if the facility was constructed after 6/30/82

where:

$A(1) = B$  times ((C times (( $\$27.77 + (\$54,627$  divided by D)) divided by .9)) + E) ~~effective July 1, 1987~~ +  $\$1.23$

$A(2) = B$  times ((C times (( $\$27.09 + (\$54,627$  divided by D)) divided by .9)) + E) ~~effective July 1, 1987~~ +  $\$1.23$

$A(3) = B$  times ((C times (( $27.43 + (\$54,627$  divided by D)) divided by .9)) + E) ~~effective July 1, 1987~~ +  $\$1.23$

~~The operating rate A, in dollars per patient day, is given by the following effective July 1, 1987: A = B times ((C times ((27.43 + (\$54,627 divided by B)) divided by .9)) + E)~~

B is the area wage adjustment for a provider,

C is the inflation factor used to compute the per diem rates. The inflation factor is the factor necessary to calculate increases in R(1) such that, effective July 1,



1987,  $R(2) = R(1) \times 1.02$ , and effective July 1, 1988,  
 ~~$R(2) = R(1) \times 1.0404$~~

D is the number of licensed beds for a provider times 366 days,

or D is the number of licensed beds for a provider or 25, whichever is greater, times 366 for facilities newly constructed after June 30, 1985 or not in the program on June 30, 1985 or participating in the program with greater than 25 licensed beds on June 30, 1985.

E is the patient care adjustment for a provider,

T<sub>i</sub> is C times the interim operating rate in effect on June 30, 1982, indexed to December 31, 1982.

$R(1)$  = The statewide weighted average per diem rate for R as of June 1, 1987.

$R(2)$  = The statewide weighted average per diem rate for R indexed from  $R(1)$  by 1.02 effective July 1, 1987, and ~~1.0404 effective July 1, 1988.~~

(a) The area wage adjustment for a provider is the result of computing the following formula:

$B = 1 + (((F - G) \text{ divided by } G) \text{ times the ratio of total labor costs to total operating costs, based on the most current fiscal year 1987 information available})$  if F is equal to or greater than one standard deviation from the average wage, or

$B = 1.0$  if F is less than one standard deviation from the average wage,

where:

F is the average wage for a provider's wage area,

G is the average wage for all wage areas plus one standard deviation, if F is more than one standard deviation above the average wage, or

G is the average wage for all wage areas minus one standard deviation, if F is more than one standard deviation below the average wage.

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

(a)  $M = N \times Z$  except for facilities extensively remodeled or with new beds constructed after July 1, 1984.

$M = N(1) \times Z$  for facilities with new beds constructed after July 1, 1984,

$M = N(2) \times Z$  for facilities extensively remodeled after July 1, 1984.

where:

M is the property rate per day of service,

N is the provider's property rate as of 6/30/85. For entire facilities built after 6/30/85

N is \$7.60.

For facilities new to the program constructed prior to 6/30/82 a 6/30/85 rate will be computed according to property rules effective 6/30/85. That rate will be carried forward using  $M = N \times Z$

$N(1) = \text{the lower of } 8.14 \text{ effective-July-17-1987--and-8-31 effective-July-17-1988 or } ((A \times D) + (B \times 7.60)) \text{ divided by } (A + B)) \times 1.0716 \text{ effective-July-17-1987-and--1-0993-effective July-17-1988}$

$N(2) = \text{the lower of } 8.14 \text{ effective-July-17-1987--and-8-31 effective-July-17-1988 or } D \times 1.0716 \text{ effective--July-17--1987 and-1-0993-effective-July-17-1988} + ((F \times 12) \text{ divided by } 365).$

where:

A is the total square footage of the original structure.

B is the square footage added with the construction of new beds.

D is the property rate as of 6/30/85 for the original structure.

F is  $((G \text{ divided by } H \times .80) \text{ amortized over } 360 \text{ months at } 12\% \text{ per annum.}$

H is the number of licensed beds in the facility.

G is total allowable remodeling costs.

Z is 1.0716. ~~effective-July-17-1987--and-1-0993--effective July-17-1988.~~

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

(5) The averages, standard deviations, prorating for additions or area wage adjustments are recalculated once a year, using the most-currently-available fiscal year 1987 data, prior--to--June-1. Revised rates based on the new calculations are issued by July 1 of each year.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1206 PATIENT ASSESSMENTS, STAFFING REPORTS AND DEFICIENCIES

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

(4) At least once annually the monthly patient assessment abstracts will be monitored for accuracy and consistency with medical records maintained by the provider. ~~If--the department's--monitor--team--findings--indicate--that--abstracts verified-by--chart--documentation--are--significantly--different than--the--abstracts--submitted-by--the--provider--for--the--same month--the--provider's--average--nursing--care--time--will--be computed--from--the--abstracts--monitored--by--the--monitor--team.~~

(a) Within a reasonable length of time after the completion of the monitor by the department's monitor team, the department will notify the provider of the results of that monitor. Such notice shall include the patient assessment score as determined by the department from the monitor findings, the provider's patient assessment score for the same month, and a statement of whether or not there is a "significant difference". ~~which--will--affect--a--provider's--reimbursement rate.~~ If a significant difference exists, the facility will be notified that it may appeal the patient assessment score

computed based upon the monitor findings in accordance with ARM 46.12.1210;

Subsection (4)(b) remains the same.

(i) The provider may request a monitor of 100% of the monthly patient assessment abstracts for the month originally monitored. This appeal must be made within thirty (30) days of receipt of the monitor findings. If the 100% monitor indicates that the patient assessment abstracts submitted by the provider remain significantly different from the abstracts monitored, the provider will reimburse the department for the cost of the additional monitor, ~~and the provider's average nursing care time will be computed from abstracts verified by chart documentation during the 100% monitor.~~ Reimbursement for the costs of the monitor must be made within 30 days after receipt of notification of the costs of the monitor, or the department will recover the cost by set-off against amounts paid for long term care facility services. If the 100% monitor indicates that provider patient assessment abstracts submitted are not significantly different from the abstracts verified by chart documentation by the monitor team the cost of the additional monitor will be borne by the department, ~~and the provider's average nursing care time will be determined in accordance with ARM 46.12.1202(2)(g).~~

Subsections (4)(c) through (9)(d) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1207 INCLUDABLE COSTS Subsections (1) through (1)(e)(iv) remain the same.

(v) Paid Accrued vacation and sick leave shall be considered employee benefits to the extent that the facility has in effect a written policy which is uniformly applicable to all employees within a given class of employees, and paid accrued vacation and sick leave are reasonable in amount.

Subsections (1)(f) through (1)(m) remain the same.

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

IMP: Sec. 53-6-111, 53-6-141 and 53-2-201 MCA

46.12.1210 ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES Subsections (1) through (2)(f) remain the same.

(g) The hearings officer will render a written proposed decision within thirty ninety calendar days of final submission of the matter to him.

Subsection (3) remains the same.

(a) All evidence in the record and offers of proof shall be transmitted to the department director by the hearings officer. The decision of the department director shall be based solely on the record transmitted by the hearings officer. A-legal Written briefs or-a-legal and oral arguments

based on the record may be presented personally or through a representative of the provider or the department to the department director.

(b) The department director shall reduce his decision to writing and mail copies to the parties within fifteen ninety days of ~~completion of the hearing~~. final submission of the matter to him. The provider shall be notified of its right to judicial review under the provisions of Title 2, chapter 4, part 7, MCA.

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

IMP: Sec. 53-6-111, 53-6-141 and 53-2-201 MCA

3. This rule change will result in a freeze in reimbursement methodology but will allow for the addition of \$1.23 to all long term care providers rates in effect on June 30, 1988. The \$1.23 will distribute rate increases to all providers to account for increases in overall costs and patient assessment score increases. Based on estimated Medicaid rates in effect on June 30, 1988, the \$1.23 increase to all long term care provider rates is estimated to increase reimbursement 2.44% or \$1,060,653 over the 1988 reimbursement level. This total increase in reimbursement is to be applied to the operating portion of the Medicaid rates for all long term care providers for rate year 1989.

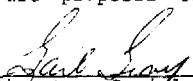
Other changes to decision time frames, etc., are proposed to allow a more reasonable time for hearing officers and the Department director to more carefully analyze the facts and law of each case in order to prepare an appropriate decision.

Copies of this notice are available at local human services 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 June 9, 1988.

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

6. These rule changes are proposed to be effective July 1, 1988.

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

Certified to the Secretary of State April 18, 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 46.12.530,	)	THE PROPOSED AMENDMENT OF
46.12.531 and 46.12.532	)	RULES 46.12.530, 46.12.531
pertaining to outpatient	)	AND 46.12.532 PERTAINING TO
speech therapy services	)	OUTPATIENT SPEECH THERAPY
	)	SERVICES

TO: All Interested Persons

1. On May 18, 1988, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.530, 46.12.531 and 46.12.532 pertaining to outpatient speech therapy services.

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

46.12.530 SPEECH PATHOLOGY THERAPY SERVICES, DEFINITION

(1) "~~Speech pathology services are these therapy~~" means diagnostic, screening, ~~preventive~~ or corrective ~~services provided~~ procedures performed by a licensed speech pathologist, ~~upon physician referral~~, to individuals with speech and language disorders, to detect, assess, prevent, correct, alleviate and limit their malfunction.

(2) "~~Restorative therapy~~" means speech therapy services that are reasonable and medically necessary to the treatment of the individual's disorder as provided in ARM 46.12.531.

(3) "~~Maintenance therapy~~" means repetitive services required to maintain functions and which do not involve complex and sophisticated speech pathology procedures or the judgment or skill of a qualified speech pathologist.

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

46.12.531 OUTPATIENT SPEECH PATHOLOGY THERAPY SERVICES,

REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.102 and 46.12.301 through 46.12.308.

(2) Only restorative therapy which is reasonable and necessary to the treatment of the recipient's disability, disease, condition, or injury will be reimbursed by the Montana medical aid program.

(3) "Reasonable and necessary" means:

(a) The services must be considered under accepted standards of speech therapy practice to be a specific and effective treatment for the patient's disorder;

(b) Therapy services must be of such a level of complexity and sophistication or the recipient's condition is such that the services required can be effectively performed only by a licensed speech pathologist;

(c) Either there must be an expectation that the recipient's condition will improve significantly in a reasonable and predictable period of time based on the assessment made by a physician of the individual's restoration potential with consultation with the licensed speech pathologist or the services must be necessary to the establishment of a safe and effective maintenance program required in connection with a specific disorder;

(i) if an individual's expected restoration potential would be insignificant in relation to the extent and duration of speech therapy services required, the speech therapy would not be considered reasonable and necessary;

(ii) if at any point in the treatment of a disorder it is determined that the expectations will not materialize, the services will no longer be considered reasonable and necessary and will not be reimbursed.

(d) The amount and frequency of the services must be within the recognized standards of speech therapy practices.

(4) Services which do not require the performance or supervision of a licensed speech pathologist are not considered reasonable and necessary even if these services are performed by a speech pathologist.

(5) The establishment of a maintenance plan is reimbursable under the program. Maintenance therapy is not reimbursable under the Montana medicaid program.

(a) Establishment of a maintenance program by a licensed speech pathologist includes the initial evaluation of the individual's needs, a plan designed to be appropriate to the capacity of the individual and which incorporates the treatment objectives of the physician, the instruction of others in carrying out the program, and speech therapy evaluations as required.

(16) Outpatient speech pathology therapy service is limited to a maximum of ~~200 hours~~ 70 hours and an additional 30 hours with prior approval by the department or its designee per fiscal year.

(27) All ~~diagnostic, evaluative~~ outpatient speech pathology services therapy must be prescribed by a physician. referred:

(a) Written physician's prescriptions must be obtained before outpatient speech evaluation or therapy is provided.

(b) Written physician's prescriptions for outpatient speech therapy are valid only for 90 days.

~~(3) All therapy services must be reviewed and renewed by the referring physician at a minimum of 90-day intervals.~~

(4c) Written physicians' orders, diagnostic, evaluative, prescriptions and speech therapy reports case notes must be current within five (5) days of the service and available upon request of the department or its designated representative.

(58) Outpatient speech pathology services therapy will be subject to review by the designated review organization or the department's designee.

~~(6) Speech pathology services provided through a home health care agency shall be part of the agency's 200-visit limitation.~~

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

#### 46.12.532 OUTPATIENT SPEECH PATHOLOGY THERAPY SERVICES,

REIMBURSEMENT ~~(1) The department will pay the lower of the following for speech pathology services not covered by medicare: the provider's actual (submitted) charge for the service or the medicare fee schedule contained in this rule.~~

(21) The department will pay the lowest of the following for outpatient speech pathology therapy services; which are also covered by medicare:

(a) the provider's actual (submitted) charge for the service; ~~the amount allowable for the same service under medicare;~~ or

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

(3) Outpatient speech pathology fee schedule: therapy services which are reimbursable under the Montana medicaid program are limited to the following:

(a) ~~8-9242~~ 992506 - evaluation ... \$26.01 per hour; and

(b) ~~8-9241~~ 992507 - treatment (single) ... \$26.01 per hour; and

(c) 992508 - group treatment ... \$13.00

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


3. The limitations on speech therapy services imposed by limits on visits have not reflected actual usage. The lower limits proposed here were derived with the cooperation of providers and would encompass almost all current usage. The establishment of these practical limitations will provide for future cost containment for the service while assuring the delivery of the service to the extent generally needed. The provision for the addition of 30 visits upon departmental

authorization is to maintain certain identifiable clients in the community through a continuum of services including speech therapy rather than have them enter crisis necessitating institutional type placement.

Establishing upper limits on visits and defining maintenance as opposed to restorative therapy also helps prevent fraud and abuse resulting from overutilization.

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 May 26, 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 April 18, 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 46.12.502,	)	THE PROPOSED AMENDMENT OF
46.12.2001, 46.12.2002,	)	RULES 46.12.502, 46.12.2001,
46.12.2003 and 46.12.2013 and	)	46.12.2002, 46.12.2003 AND
repeal of Rules 46.12.2004,	)	46.12.2013 AND REPEAL OF
46.12.2005, 46.12.2006,	)	RULES 46.12.2004,
46.12.2007 and 46.12.2008	)	46.12.2005, 46.12.2006,
pertaining to reimbursement	)	46.12.2007 AND 46.12.2008
for physician services	)	PERTAINING TO REIMBURSEMENT
	)	FOR PHYSICIAN SERVICES

TO: All Interested Persons

1. On May 20, 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 46.12.502, 46.12.2001, 46.12.2002, 46.12.2003 and 46.12.2013 and repeal of Rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007 and 46.12.2008 pertaining to reimbursement for physician services.

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

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

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

~~Subsections (2)(i) through (2)(p) remain the same.~~

Subsections (2)(j) through (3)(d) remain the same. However, subsections (2)(j) through (2)(p) will be recategorized as (2)(i) through (2)(o).

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 4/24/87

TMP: Sec. 53-2-201, 53-6-103, 53-6-141 and 53-6-402 MCA

46.12.2001 PHYSICIAN SERVICES, DEFINITIONS

(1) "Physician services" are means those services provided by individuals licensed under the State Medical Practice Act to practice medicine or osteopathy which, as defined by state law, are within the scope of their practice. Such services will include those services rendered by physician assistants when furnished under the supervision of a physician and in accordance with title 37, chapter 20, MCA.

(2) "Usual and customary" means those charges that the billing physician would charge for a particular service in a majority of cases, including medicaid and non-medicaid patients.

(3) The department hereby adopts and incorporates by reference the definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois. These materials set forth meanings of terms commonly used by the Montana Medicaid program in implementation of the program's physician fee schedule. A copy of the definitions herein incorporated may be obtained through the Economic Assistance Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, Montana 59604.

AUTH: Sec. 53-6-113 MCA

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

#### 46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS

(1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

Original subsections (1) through (5) will remain the same in text but will be recategorized as (1)(a) through (1)(e).

(2) Use of procedure codes must comport with guidelines set forth by the American Medical Association. The department hereby adopts and incorporates by reference the guidelines set forth throughout the Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois. The CPT4 sets forth guidelines in applying medical procedure codes. A copy of the guidelines herein incorporated may be obtained through the Economic Assistance Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, Montana 59604.

AUTH: Sec. 53-6-113 MCA

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

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The department ~~will pay the lower of the following for physician services not also covered by medicare:~~ hereby adopts and incorporates by reference the procedure code report (PCR) as amended through May 18, 1988. The PCR is published by the Montana department of social and rehabilitation services and lists medicare-payable physician procedure codes and descriptions as delineated in the CPT4 and/or the Health Care Financing Administration's common procedure coding system (HCPCS), fees assigned to relevant procedures and effective dates of fees assigned. A copy of the PCR may be obtained from the Economic Assistance Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604.

(a) Amendments of the PCR will consist of changes to the CPT and HCPCS, and the setting of fees as procedures are

billed to medicaid in sufficient numbers to justify a reasonable fee.

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

(b) the department's fee schedule found in ARM 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008 plus 2% for these services for which a dollar amount is specified.

(2) The department will pay the lowest of the following for physician services which are also covered by medicare:

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

(b) the amount allowable for the same service under medicare, or if such rate is available to medicaid; or

(c) the department's fee schedules found in ARM 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008 plus 2% for these services for which a dollar amount is specified. The following reimbursement fee schedule and modifiers apply to all rules in this sub chapter, as discussed in ARM 46.12.2003(1) above and listed in the PCR.

(3) Services paid by report (BR) will be paid at 65.2% of usual and customary charges which are reasonable.

#### (4) MODIFIERS

Listed services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of the appropriate modifier code, which is a two digit number character alpha numeric modifier placed after the usual procedure number code from which it is separated by a hyphen. If more than one modifier is used, the "Multiple Modifiers" code placed first after the procedure code indicates that one or more additional modifier codes will follow. All procedures where a modifier is used may will be paid By Report (BR) or by a fee established for the particular procedure code/modifier combination. Modifiers commonly used are as follows:

Subsections (4) (-20) through (4) (-23) remain the same.

-25

Digital Radiology (e.g., digital subtraction angiography, digital fluoroscopy, digital radiography). When this technique is utilized, the modifier -25 may be appended to the appropriate five digit number of the radiologic procedure to indicate that the digital modality was applied. The modifier would be applied to both the supervision and interpretation service and complete procedure. When the supervision and interpretation service code is utilized and the injection is done by a second physician, the modifier need not be applied to the surgical injection codes. (Pertains to Radiology.)

Subsections (4) (-26) through (4) (-MP) remain the same.

-AN Physician assistant services for other than assistant  
-at- surgery. This modifier is for informational  
purposes only.

-AS Physician assistant services for assistant -at-  
surgery. This modifier is for informational purposes  
only.

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

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT

(1) Medicaid reimbursement to nurse specialists is only available for those services listed in ARM-46-12-2004--through 46-12-2008, the procedure code report (PCR) incorporated by reference in ARM 46.12.2003.

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

(4) The rate of reimbursement prior to the establishment of a final fee schedule by the department will be 65.2% of billed charges but not more than 80% of the reimbursement for physicians provided in ARM-46-12-2004-through-46-12-2008. the PCR.

Subsections (5) and (5) (a) remain the same.

(b) 80% of the reimbursement for physicians provided in ARM-46-12-2004-through-46-12-2008 the PCR, or

Subsections (5) (c) and (5) (c) (i) remain the same.

(6) Nurse specialists shall use the Health Care Financing Administration's common procedure coding system (HCPCS) found in ARM-46-12-2004-through-46-12-2008 the PCR for all billing purposes.

Subsections (7) through (7) (h) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension, Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85

IMP: Sec. 53-6-101 MCA

4. Rule 46.12.2004, PHYSICIAN SERVICES REIMBURSEMENT/MEDICINE PROCEDURES, as proposed to be repealed is on pages 46-2457 through 46-2490 of the Administrative Rules of Montana.

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

5. Rule 46.12.2005, PHYSICIAN SERVICES REIMBURSEMENT/ANESTHESIA, as proposed to be repealed is on pages 46-2490 through 46-2490.1 of the Administrative Rules of Montana.

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

6. Rule 46.12.2006, PHYSICIAN SERVICES REIMBURSEMENT/ SURGERY PROCEDURES, as proposed to be repealed is on pages 46-2490.1 through 46-2720 of the Administrative Rules of Montana.

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

7. Rule 46.12.2007, PHYSICIAN SERVICES REIMBURSEMENT/ RADIOLOGY, NUCLEAR MEDICINE AND DIAGNOSTIC ULTRASOUND, as proposed to be repealed is on pages 46-2720 through 46-2751 of the Administrative Rules of Montana.

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

8. Rule 46.12.2008, PHYSICIAN SERVICES REIMBURSEMENT/ PATHOLOGY AND LABORATORY, as proposed to be repealed is on pages 46-2752 through 46-2796 of the Administrative Rules of Montana.

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

9. The Department proposes to amend ARM 46.12.502 and 46.12.2001 to implement legislation allowing services by physician assistants. ARM 46.12.2002 is to be amended in organization to conform in format to other administrative rules. ARM 46.12.2003 will be amended to incorporate an external fee schedule, the Procedure Code Report (PCR), which will afford certain advantages to the Department. First, necessary amendments to present rules containing the physicians fee schedule would require a Department expenditure of at least \$7,000 for publication costs alone. Amendment of existing rules would be unduly cumbersome in view of the inordinate amount of staff time required, expensive in view of the minimum \$7,000 estimated cost for publication of an anticipated 200-page first notice, and otherwise inexpedient in view of the logical alternative of incorporating the PCR by reference. The PCR is already available through a contractor with the Department and would result in no additional taxpayer cost.

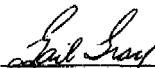
Second, due to the costs of subscription to the ARM, most medical providers do not subscribe. The incorporated material can be made available to interested parties at a much reduced cost.

Based on estimated Medicaid physician costs for FY 89, the 1½% increase to physician rates to be implemented in the PCR will represent \$211,143 in additional segregated costs for the fiscal year. This additional expenditure will be allocated to equalize rates among providers. Together with the carryover of the same increase for FY 88, additional Medicaid fee increases will total \$388,754 for FY 89.

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

10. 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 May 26, 1988.

11. 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 April 18, 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
diagnosis related groups	)	46.12.505 PERTAINING TO
(DRGs)	)	DIAGNOSIS RELATED GROUPS
	)	(DRGS)

TO: All Interested Persons

1. On May 23, 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 diagnosis related groups (DRGs).

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

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITION

Subsections (1) through (9) remain the same.

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

Subsection (11) remains the same.

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 (2)(b) remain the same.

(c) The department computes a Montana average base price per case. This average budget neutral base price per case is \$1,240.10 \$1,320.68 for fiscal year ending June 30, 1989.

Subsections (2)(d) through (3)(a)(i) remain the same.

(ii) ~~For facilities with a base amount greater than \$1,200 as identified in subsection (3)(a)(i), the department will make interim capital payments at least monthly.~~

~~(iii) For facilities with a base amount less than \$1,200 as identified in subsection (3)(a)(i), the department will make a single interim payment of the base amount.~~

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

(ii) ~~For facilities with a base amount greater than \$1,200 as identified in subsection (3)(a)(i), the department will make interim payments at least monthly;~~

~~(iii) For facilities with a base amount less than \$1,200 as identified in subsection (3)(a)(i), the department will make a single interim payment of the base amount.~~

Subsections (5) through (11)(b) "353" remain the same.

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
354	Uterine, Adnexa Proc For Non-Ovar/Adnexa Malign Age 69 and/or C.C. <del>Non-Radiant-Hysterectomy Age Greater Than 69 and/or 6-6r</del>	2.3278	8.52	22
355	Uterine, Adnexa Proc For Non-Ovar/Adnexa Malign Age 70 w/o C.C. <del>Non-Radiant-Hysterectomy Age Less Than 70 w/o 6-6r</del>	2.4899	8.56	17
356	Female Reproductive System Reconstructive Procedures	1.5836	5.87	22
357	Uterus & Adnexa Procedures, for Malignancy	1.5446	6.02	29
358	Uterus & Adnexa Proced. for Non-Malignancy Age 69 or C.C.	1.4538	5.58	23
359	Uterus & Adnexa Proced. for Non-Malignancy Age 70 w/o C.C.	1.3913	6.21	21
		2.4985	10.45	14
		2.4232	9.15	
		1.9960	7.93	
		1.2298	4.72	
		1.4984	5.31	
		0.6813	2.07	



Subsection (11)(b) "360" through "473" remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

3. The Department is proposing these rule amendments to compensate providers to maintain reimbursement at a level no higher than under Medicare cost reimbursement principles.

For the rate year ending June 30, 1988, the base price is inflated by the forecasted market basket published by the Health Care Financing Administration (HCFA) for the remainder of calendar year 1987 ( $3.9 - 3.1 = .8\%$ ) and the forecasted FY 88 market basket of 5.0% for a total increase of 5.8%.

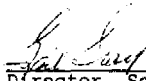
In addition, minor changes are proposed for DRGs 354 to 359 to adjust the relative values and payments to a more appropriate level.

It is estimated that this change will not increase projected expenditures for State fiscal year 1989 in excess of the budgeted appropriation.

Copies of this notice are available at local human services 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 May 26, 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 April 18, 1988.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the adoption ) NOTICE OF ADOPTION OF  
of new rules regarding licens- ) NUTRITION PRACTICE RULES  
ing, conduct and fees for )  
nutritionists )

TO: All Interested Persons:

1. On March 10, 1988, the Board of Medical Examiners published a notice of public hearing on the proposed adoption of the above-stated rules at page 453, 1988 Montana Administrative Register, issue number 5.

2. The hearing was held on March 31, 1988, at 10:00 a.m., in the downstairs conference room of the Department of Commerce building, 1424 9th Avenue, Helena, Montana.

3. On April 12, 1988, the board voted to adopt the rules as proposed, with the following changes: (the new rules will be numbered 8.28.1801 through 8.28.1807 under sub-chapter 18)

"8.28.1803 INITIAL LICENSE (1) through (c) will remain the same.

(d) A copy of the diploma or a complete transcript from an accredited college or university in the field of dietetics, food and nutrition or public health ~~nutrition~~;

(e) will remain the same."

Auth: 37-1-131, 37-25-201, MCA Imp: 37-25-302, MCA

"8.28.1807 UNPROFESSIONAL CONDUCT (1) through (g) will remain the same.

~~(h)--Failing-to-report-to-the-board-facts-known-to-the individual--regarding--incompetence,--unethical--or--illegal practice--of--any--licensed-health-care--professional,--or unlicensed-person-practicing-nutrition.~~

(1) through (n) will remain the same but will be renumbered (h) through (m).

(2) will remain the same."

Auth: 37-1-131, 37-25-201, MCA Imp: 37-25-308, MCA

4. Comments received and the board's responses are as follows:

COMMENT: The Montana Dietetic Association (MDA) moved for insertion of "or complete transcript" in new rule III (8.28.1803) for the reason that members that may lose their diplomas can prove their degrees with a transcript, which can be obtained from their school or college.

RESPONSE: The board concurred and the change has been made as shown above.

COMMENT: The MDA also moved that the words "public health nutrition" in ARM 8.28.1803 be amended to read "public health", for the reason that nutritionists may be registered by the Commission on Dietetic Registration with a degree in

Public Health. As long as applicants are registered, the practice act allows them to be licensed.

RESPONSE: The board concurred and this change has been made as shown above.

COMMENT: The MDA also moved to insert the phrase "unless they qualify as a 'nutritionist'" in proposed new rule VII (ARM 8.28.1807) subsection (h).

COMMENT: Mr. Laughing Water of the Real Food Store in Helena, expressed concerns of naturopaths (an occupation that is not presently licensed in Montana) that they could become the target of complaints about unauthorized practice under proposed new rule VII (ARM 8.28.1807) subsection (h).

COMMENT: It was the presiding officer's recommendation that subsection (h) of proposed new rule VII (ARM 8.28.1807) be deleted because it is not absolutely essential to the administration of the practice act and attempts to amend the subsection in response to stated concerns could make the rule vague and confusing.

RESPONSE: The board concurred and voted to accept the presiding officer's recommendation. Subsection (h) of new rule VII (ARM 8.28.1807) has been deleted as shown above in response to the above three comments.

COMMENT: One comment was received from the MDA on April 8, regarding subsection (d) of proposed new rule III (ARM 8.28.1803). The Association advocated change of the rule to add the phrase "A copy of the diploma or complete transcript from an accredited college or university."

RESPONSE: The board decided to reject this proposal because it was received after the April 7th deadline for public comment.

5. No other comments or testimony were received.

BOARD OF MEDICAL EXAMINERS  
THOMAS J. MALEE, M.D.  
PRESIDENT

BY:

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

Certified to the Secretary of State, April 18, 1988.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of rules and the	)	RULES AND THE AMENDMENT OF
amendment of Rule 11.7.306	)	RULE 11.7.306 PERTAINING TO
pertaining to recovery of	)	RECOVERY OF FOSTER CARE OR
foster care or day care	)	DAY CARE OVERPAYMENTS
overpayments	)	

TO: All Interested Persons

1. On March 10, 1988, the Department of Family Services published notice of the proposed adoption of rules and amendment of Rule 11.7.306 pertaining to recovery of foster care or day care overpayments at page 457 of the 1988 Montana Administrative Register, issue number 5.

2. The Department has amended Rule 11.7.306 as proposed.

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

RULE I 11.7.305 FOSTER CARE OVERPAYMENTS AND UNDERPAYMENTS

AUTH: 41-3-1103(2)(c), MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87  
IMP: 41-3-1103(1) and (3), MCA

RULE II 11.5.1005 DAY CARE OVERPAYMENTS AND UNDERPAYMENTS

AUTH: 53-4-503, MCA  
IMP: 53-4-514, MCA

4. No comments or testimony were received.

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

Certified to the Secretary of State April 18th, 1988.

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

In the matter of the amendment of )	
rules 16.8.701, 16.8.806, 16.8.815, )	NOTICE OF THE AMENDMENT
16.8.821, 16.8.921, 16.8.924, )	OF RULES
16.8.925, 16.8.936, and 16.8.1007, )	
regarding definitions of PM-10, )	
PM-10 emissions and total suspended )	
particulate, high-volume measure- )	
ment method for lead, ambient air )	
quality standards for PM-10, signi- )	
ficant emission rates for PM-10, )	
and ambient air increments for )	
total suspended particulate )	(Air Quality)

To: All Interested Persons

1. On March 10, 1988, at page 463 of issue number 5 of the Montana Administrative Register, the Board published notice of proposed amendments to the above-captioned rules, (a) 16.8.701, 16.8.821, 16.8.921, 16.8.925, and 16.8.936, which incorporate PM-10 and total suspended particulate definitions, ambient air quality standards for PM-10, significant emission rates for PM-10 which establish when a source modification requires permit review, ambient air increments for total suspended particulates, and the level of PM-10 concentration at which a major stationary source or a major modification is exempt from review; and (b) 16.8.806, 16.8.815, 16.8.921, and 16.8.1007, which effect minor changes for purposes of clarification.

2. The proposed amendments effect changes necessary to achieve parity with federal regulatory changes, and to incorporate changes into the State Implementation Plan ("SIP"). All rules and amendments contained in this notice are a part of the SIP. The amendments also implement changes which remove internal inconsistencies and clarify interpretation of the rules.

3. The Board has adopted the amendments to the above-referenced rules as noticed, with the exception of one additional amendment to ARM 16.8.921, as follows (new matter is capitalized and underlined; matter to be stricken is interlined):

16.8.921 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1)-(7) Same as proposed.

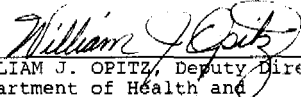
(8) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities are considered as part of the same industrial grouping if they belong to the same "Major Group", those which have the same two-digit code, as described in the

"Standard Industrial Classification Manual, 1972", as amended by the 1977 Supplement, --U.S. Government-- Printing Office stock numbers--4161-8866--and--803-085-00176-07--respectively 1987, AS INCORPORATED BY REFERENCE IN SECTION (1) ABOVE.

4. No comments were received on the proposed amendments.

HOWARD TOOLE, CHAIRMAN, BOARD OF  
HEALTH AND ENVIRONMENTAL SCIENCES

By

  
WILLIAM J. OPITZ, Deputy Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State April, 18, 1988.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION OF RULE
of rule pertaining to fees )	I (44.6.104) AND AMENDMENT
for filing federal tax liens )	OF RULE 44.6.105 - Fees for
and amending fees for filing )	filing federal tax liens
documents. )	and filing documents.

TO: All Interested Persons:

1. On March 10, 1988, the Secretary of State published notice of the proposed adoption and amendment of rules pertaining to fees for filing federal tax liens and fees for filing documents at page 470 of the Montana Administrative Register, issue number 5.

2. The Secretary of State has amended ARM 44.6.105 as proposed and has adopted RULE I (44.6.104) with the following change:

RULE I (44.6.104) FEES FOR FILING FEDERAL TAX LIEN

(1) Effective May 1, 1988, the secretary of state and the county clerk and recorder shall charge and collect for:

- (a) filing a notice of federal tax lien, \$7.00;
- (b) filing any amendment, ~~\$5.00~~ \$7.00;
- (c) filing a certificate of release/termination statement, no fee; and
- (d) issuing a certificate of federal tax lien from the filing officer, \$7.00.

AUTH: Sec. 71-3-206, MCA

IMP: Sec. 30-9-403, MCA

3. One comment was received. The Internal Revenue Service commented that they felt it would be in their best interest to have the fees uniform. The Secretary of State's office agrees and has made the change as indicated above.

Dated this 18th day of April, 1988.



DAVID GOOD  
Acting Secretary of State

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.
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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.
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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 December 31, 1987. This table includes those rules adopted during the period December 31, 1987 through March 31, 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 December 31, 1987, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1987 or 1988 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I-V	and other rules - Use of State's Telecommunications Systems and Facilities, - Approval of Installations, Modifications or Removal of Telecommunications Systems - Use of Systems, p. 1229, 2086
2.5.201	and other rules - Purchasing - Definitions - Department Responsibilities - Delegation of Purchasing Authority - Competitive Sealed Bids and Proposals - Small Purchases of Supplies and Services, p. 799, 2144
2.5.201	and other rules - Contracting for Supplies and Services, p. 1151, 1961
2.21.605	and other rules - Holidays for State Employees, p. 1848, 2369
2.21.804	and other rules - Sick Leave Fund, p. 733, 1202
2.21.810	and other rule - Sick Leave Fund - Structure of Fund - Eligibility to Receive Grants, p. 1, 472
2.21.1301	and other rules - Sexual Harassment Prevention, p. 446
2.21.6706	and other rules - Employee Incentive Award Program, p. 505, 1337
(Public Employees' Retirement Board)	
I-III	and other rules - Salary and Service Credits for Retirement Systems - Qualifying Out-of-state Service in PERS - Purchasing Military Service in the Sheriffs' Retirement System - Granting Full

- Service Credit for Temporary Service Reductions,  
p. 617, 1338  
(Teachers' Retirement Board)  
I-IX and other rules - Teachers' Retirement System,  
p. 1600, 2233  
2.44.517 Formula for Determining Contributions Due on  
Termination Pay, p. 2277, 473  
(State Tax Appeal Board)  
2.51.307 and other rule - Appeals from Real and Personal  
Property Tax Appraisals - Orders of the Board -  
Decision by the Board, p. 154, 474  
(Workers' Compensation Judge)  
2.52.310 and other rule - Procedural Rules - Time and  
Place of Trial - Appeals, p. 1149, 1618

AGRICULTURE, Department of, Title 4

- I Assessment of Fees for Financial Consulting and  
Debt Mediation, p. 803, 1342  
I-II and other rules - Produce Wholesalers - Itinerant  
Merchants - Establishing Bond Equivalents,  
p. 622, 1341  
I-II Emergency Rule - Creating a Quarantine to Prevent  
the Entry of Varroa Mite Infested Honeybees into  
Montana, p. 1963  
I-VII Administration of the Honey Bee Program, p. 1855  
I-XI Administration of the Alfalfa Leaf-cutting Bee  
Program, p. 1232, 1965  
4.4.302 and other rules - Administration of Claims  
Against State Hail Insurance, p. 1861, 267  
4.5.110 and other rules - Regulation of Noxious Weed  
Seeds and Seed Merchandising Licenses, p. 1859,  
268  
4.12.1806 Collection of Fees for Produce Inspections,  
p. 805, 1340

STATE AUDITOR, Title 6

- I-IV Group Coordination of Benefits, p. 940, 1371,  
1766  
I-VII Independent Liability Funds, p. 1864, 2372  
I-IX Periodic Payment of Quarterly Premium Taxes,  
p. 1868, 2373  
I-X Health Maintenance Organizations, p. 1238, 1770  
6.6.1502 and other rules - Crop Hail Insurance Rate  
Filings, p. 631

COMMERCE, Department of, Title 8

- (Board of Architects)  
8.6.413 Fee Schedule, p. 2213, 166  
(Board of Barbers)  
8.10.1006 Procedure Upon Completion, p. 627, 1205

- (Board of Chiropractors)
- 8.12.603 Examinations, p. 2122, 44
- 8.12.606 and other rule - Renewals - Continuing Education - Inactive Status, p. 808, 1343
- 8.12.607 and other rules - Unprofessional Conduct - Code of Ethics - Disciplinary Actions - Independent Medical Evaluations - Consultations, p. 2215, 3, 475
- (Board of Cosmetology)
- 8.14.601 and other rules - Schools - Instructors - Applications - Examinations - Electrology - Sanitary Standards - Salons - Licenses, p. 2278, 4, 704
- (State Electrical Board)
- 8.18.402 and other rules - Applications - Fees - Examinations - Continuing Education, p. 5, 567
- (Board of Horse Racing)
- 8.22.502 and other rules - Licenses Issued for Conducting Parimutuel Wagering on Horse Racing - General Provisions - General Requirements - General Rules - Definition of Conduct Detrimental to the Best Interests of Racing, p. 217, 569, 709
- 8.22.1804 Twin Trifecta, p. 739, 1619
- (Board of Landscape Architects)
- 8.24.405 and other rule - Examinations - Renewals, p. 2124, 167
- 8.24.409 Fee Schedule, p. 9
- (Board of Medical Examiners)
- I-VII Licensing, Conduct and Fees for Nutritionists, p. 453
- 8.28.420 Fee Schedule, p. 2127, 45, 385
- (Board of Morticians)
- I and other rules - Transfer or Sale of Mortuary License - Board Meetings and Fee Schedule, p. 1251, 2088
- (Board of Nursing)
- I and other rules - Verification of License to Another State - Application for Recognition - Certificate of Nurse-Midwifery - Renewals, p. 1253, 1620
- (Board of Nursing Home Administrators)
- 8.34.403 and other rules - Board Meetings - Public Information - Examinations - Continuing Education - Fee Schedule - Reinstatement, p. 223, 1206
- 8.34.414 Examinations, p. 2129, 710
- (Board of Occupational Therapists)
- 8.35.407 Fees, p. 633
- (Board of Optometrists)
- 8.36.406 General Practice Requirements, p. 551
- 8.36.409 and other rules - Fee Schedule - Therapeutic Pharmaceutical Agents, p. 1718, 2234
- (Board of Outfitters)
- 8.39.101 and other rules - Outfitters and Professional

- Guides, p. 553
- 8.39.401 and other rules - Board Organization - Procedural Rules - Public Participation - Outfitters Standards and Requirements, p. 1870, 46  
(Board of Pharmacy)
- 8.40.404 and other rule - Examination Fee - Rescheduling of Dangerous Drugs, p. 2294, 271  
(Board of Physical Therapy Examiners)
- 8.42.403 Fees, p. 2220, 168  
(Board of Professional Engineers and Land Surveyors)
- 8.48.1105 Fee Schedule, p. 810, 1555  
(Board of Private Security Patrolmen and Investigators)
- 8.50.423 and other rules - Definitions - Temporary Employment Without Identification Card - Resident Manager and Qualifying Agents - Identification Pocket Card - Insurance Requirements - Termination of Business - Fee Schedule - Assessment, p. 629, 1779  
(Board of Psychologists)
- 8.52.401 and other rules - Psychology - Applications - Examination - Reciprocity - Licensing - Fees - Standards - Unprofessional Conduct - Ethical Practice, p. 2296, 570  
(Board of Realty Regulation)
- I-XVI Licensure of Timeshare Brokers and Salespersons - Registration of Timeshare Offerings, p. 332
- 8.58.411 Fee Schedule, p. 1256, 1607, 2089
- 8.58.411 Fee Schedule - Late Renewals, p. 1720, 2236
- 8.58.415A Continuing Education, p. 634, 1780  
(Board of Social Work Examiners and Professional Counselors)
- 8.61.402 and other rules - Licensure Requirements - Applications - Hours, Credits and Carry Over - Noncompliance - Fees, p. 1721, 169  
(Building Codes Bureau)
- 8.70.101 and other rules - Incorporation by Reference of Building Codes - Extent of Local Programs - Plumbing Fixtures - Permits - Standards - Fees - Recreational Vehicles, p. 1725, 2237
- 8.70.1401 Application for Fireworks Wholesaler Permit, p. 1735, 171  
(Passenger Tramway Advisory Council)
- 8.72.101 and other rules - Tramway Rules - ANSI Standards, p. 1159, 1621  
(Milk Control Bureau)
- 8.79.301 License Assessments, p. 338, 712  
(Financial Bureau)
- 8.80.501 Application for Satellite Terminal Authorization, p. 1527, 1968  
(Board of Milk Control)
- Notice of Public Hearing for a Statewide Pooling Arrangement With a Quota Plan as a Method of Payment of Milk Producer Prices, p. 1737, 481, 713

- 8.86.301 Emergency Amendment - Pricing Rules - Class I Price Formula, p. 2238, 48
- 8.86.301 Pricing Rules - Class I Price Formula, p. 2318 (State Banking Board)
- I Emergency Rule - Chartering of State Banks Without Notice, p. 1065
- 8.87.203 and other rule - Application Procedure for a Certificate of Authorization for a State Chartered Bank - State Bank Organized for Purpose of Assuming Deposit Liability of Any Closed Bank, p. 1529, 1970
- (Local Government Assistance Division)
- I Administration of the 1987 Federal Community Development Block Grant (CDBG) Program, p. 357, 1207
- I Administration of the 1988 Federal Community Development Block Grant Program (CDBG), p. 635
- 8.94.101 Minimum Contents of Local Subdivision Regulations Adopted Under the Montana Subdivision and Platting Act, p. 1742, 50
- (Montana Economic Development Board)
- 8.97.402 and other rules - Criteria for Determining Eligibility - Bonds and Notes of Board - Loan Loss Reserve Account for the Instate Investment Fund - Application and Financing Fees, Costs and Other Charges - Taxable Revenue Bond Program - Terms, Interest Rates, Fees and Charges - Application Procedure to Become a "Certified" Montana Capital Company - Application Procedure to Become a "Qualified" Montana Capital Company, p. 636, 1070
- 8.97.406 Economic Development Linked Deposit Program, p. 405, 1210
- 8.97.409 Loan Participation - Working Capital, p. 1609, 2145
- 8.97.802 and other rules - Definitions - Applications - Tax Credits, p. 1874, 2241
- (Hard-Rock Mining Impact Board)
- 8.104.203A Definitions, p. 1161, 1781
- (Aeronautics Division)
- 8.106.602 Liability Insurance Requirements, p. 812, 1344
- (Montana Health Facility Authority)
- 8.120.206 Fees, p. 2327, 272
- (Montana Science and Technology Development Board)
- 8.122.101 and other rules - Investments by the Board, p. 2018, 494
- (Video Gaming Control Bureau)
- I-III and other rule - Emergency Rules - Licensing Video Gaming Machines, p. 1067
- I-VIII and other rules - Licenses and Software Specifications for Video Gaming Machines - Policy - Definitions - Application for License - Licensee Qualifications - Denial - Judicial

- Review - Quarterly Reporting Requirements -
- Record Retention Requirements - General
- Specifications for Machines - Software
- Specifications - Restrictions - Prohibited
- Machines - Possession of Unlicensed Machines -
- Location - Approval by Department - Repairing
- Machines - Inspection and Seizure -
- Transportation - Registration of Manufacturers,
- Suppliers or Distributors, p. 1258, 1972
- (Montana State Lottery Commission)
- 8.127.610 License Renewal Fee, p. 2330, 274
- 8.127.1201 Prizes, p. 1279, 51

# EDUCATION, Title 10

- (Superintendent of Public Instruction)
- I-III Special Education Transportation, p. 1003, 1383
- I-IV Definitions and Tuition Rates for Special
- Education, p. 221, 714
- I-IX Establishment of Clearing Accounts for Use in
- School Districts, p. 1745, 2375
- 10.6.101 and other rules - School Controversies, p. 2331
- 10.43.101 and other rules - Operation of Postsecondary
- Vocational-Technical Centers, p. 1743, 2377
- (Board of Public Education)
- I Student Assessment, p. 340
- I Student Transportation for the Montana School for
- the Deaf and Blind, p. 1372, 2146
- 10.57.301 and other rule - Endorsement Information - Class
- 3 Administrative Certificate, p. 2131, 52
- 10.57.601 and other rules - Request to Suspend or Revoke a
- Teacher or Specialist Certificate: Preliminary
- Action - Notice and Opportunity for Hearing Upon
- Determination that Substantial Reason Exists to
- Suspend or Revoke Teacher or Specialist
- Certificate - Hearing in Contested Cases - After
- Hearing by Member of Board/Hearing Examiner/Board
- of Public Education - Appeal from Denial of a
- Teacher or Specialist Certificate -
- Considerations Governing Acceptance of Appeal -
- Hearing on Appeal, p. 515, 1211
- 10.58.101 Advisory Group, p. 11, 637
- 10.65.201 and other rule - Policy Statement on Kindergarten
- Accreditation and Schedule Variances - Local
- District Participation, p. 639
- 10.66.104 Fees for GED Test Battery, p. 637
- (Montana State Library Commission)
- 10.101.101 and other rules - Montana Library Services
- Advisory Council - Library Services and
- Construction Act (LSCA) Grants, p. 302, 1622
- 10.101.203 and other rules - Organizational and Procedural
- Rules - General Policy and Public Library
- Development, p. 283, 741, 1624

FAMILY SERVICES, Department of, Title 11

- I-II and other rule - Recovery of Foster Care or Day Care Overpayments, p. 457
- I-III Designation of Local Services Areas and Local Youth Services Advisory Councils, p. 1382, 1784
- I-VIII Confidentiality of Case Records Containing Reports of Child Abuse and Neglect, p. 949, 1980, 2378
- I-VIII Temporary Rules - Youth Placement Committees, p. 1163, 1556
- I-VIII Youth Placement Committees, p. 1169, 1625
- I-XIII Procedures for Rulemaking - Declaratory Rulings - Contested Case Hearings, p. 1374, 1782, 2378
- I-XXVI Licensing Requirements for Youth Detention Facilities, p. 2037, 2379
- 11.5.407 and other rule - Defining Supplemental Payment Eligibility Based on Living Arrangement - Setting Standards for Supplemental Payments, p. 642
- 11.6.104 Eligibility Requirements for Adoptive Applicants, p. 644
- 11.7.501 Foster Care Review Committees, p. 1879
- 11.12.101 and other rule - Substitute Care Placement Budgets, p. 2133, 172
- 11.12.104 Youth Care Facility Licensing Criteria, p. 646
- 11.14.102 Defining Group Facilities Established Chiefly for Educational Purposes, p. 342
- 46.5.922 Child Day Care Centers, p. 1175

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Prerequisites for Special Elk Permit, p. 225
- I-V Administration of the Pheasant Enhancement Program, p. 16, 720
- I-VI Guidelines for the Sale of Excess Fish Eggs, p. 19, 497, 575
- I-VII Establishing Procedures for Wildlife Habitat Acquisition, p. 13
- I-VIII Rules Regulating Fishing Contests, p. 959, 1627
- 12.3.101 and other rules - Licenses and License Agents, p. 227, 716
- 12.6.201 and other rules - Field Trial Regulations, p. 28, 496
- 12.6.701 Personal Flotation Devices and Life Preservers, p. 308, 1072
- 12.6.703 Limit the Requirements For Fire Extinguishers on Small Motorboats and Vessels, p. 363, 1073
- 12.6.901 Establishing a No Wake Speed on Portions of Harrison Lake, p. 242, 1557
- 12.6.901 Prohibiting Motor or Engine Operated Vessels on the Bighorn River from Afterbay Dam to the Bighorn Access Area, p. 244, 1480
- 12.6.901 Water Safety Regulations - Closing Crystal Lake



- in Fergus County to Motor-Propelled Water Craft and to Establish a No-Wake Speed Limit on Portions of Lake Kookanusa on Cripple Horse Bay, p. 955, 2242
- 12.6.1406 Allowing for the Sale of the Progeny of Raptors Under Certain Conditions, p. 344, 718
- 12.8.202 and other rules - Public Use Regulations for Department's Designated Recreation Areas, p. 21, 498
- 12.8.504 Cultural Resource Coordinator, p. 29, 499

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I Licensing and Certification of Hospitals - Hospital Protocols for Organ Procurement, p. 1384, 1786
- I-XII Procedures for Administration of the WIC Supplemental Food Program, p. 346
- I-XLIX and other rules - Control Measures to Prevent the Spread of Communicable Diseases, p. 816, 964, 2147
- 16.6.301 and other rules - Records and Statistics - Birth Certificates - Marriage Applications - Death and Fetal Death Certificates, p. 997, 1481
- 16.8.701 and other rules - Air Quality - Definitions of PM-10 - PM-10 Emissions and Total Suspended Particulate - High-Volume Measurement Method for Lead - Ambient Air Quality Standards for PM-10 - Significant Emission Rates for PM-10 - Ambient Air Increments for Total Suspended Particulate, p. 463
- 16.8.820 Air Quality Standards for Sulfur Dioxide, p. 742, 815, 1482
- 16.8.937 and other rules - Air Quality Models - Fuel Burning Equipment - New Source Performance Standards - Emission Standards for Hazardous Air Pollutants - Lewis & Clark County Clean Air Ordinance, p. 2135, 500
- 16.20.603 and other rules - Surface Water Quality Standards - Classification of Surface Waters in the State, p. 651
- 16.29.101 and other rules - Dead Human Bodies - Embalming and Transporting Dead Human Bodies, p. 648
- 16.32.101 and other rules - Review of Certificates of Need for Health Care Facilities, p. 641, 1074, 725
- 16.32.501 Reportable Tumors, p. 358, 726
- 16.35.102 and other rules - End-stage Renal Disease - Application Procedures - Benefit Periods - Non-financial Eligibility Requirements - Eligible Services and Supplies - Non-eligible Services - Conditions on Paying Claims, p. 1387, 1790
- 16.44.102 and other rules - Hazardous Waste Management - Federal Regulatory Changes Pertaining to Closure

- and Post-closure Requirements - Access to Public Records - Transfer Facilities - Commercial Transfer Facilities Holding Hazardous Wastes for Ten Days or Less, p. 1881, 53
- 16.44.303 and other rules - Hazardous Wastes - Definition of Hazardous Wastes - Requirements for Recyclable Materials - Reclassification as a Boiler - Regulation of Certain Recycling Activities - Information Statement Pertaining to ARM Title 16, Chapter 10, Regarding the Availability of Information, p. 459

HIGHWAYS, Department of, Title 18

- I Certifying Drivers of Special Vehicle Combinations, p. 31, 386
- I Special Vehicle Combinations, p. 747, 1484
- I Display of Monthly or Quarterly GVW Fee Receipts, p. 1000, 1483

INSTITUTIONS, Department of, Title 20

- 20.2.201 Contested Cases, General Authority, p. 2341, 387
- 20.3.202 and other rules - Certification and Evaluation of Alcohol Programs, p. 1906, 2383
- 20.3.401 Certification of Chemical Dependency Counselor, Costs of Re-examination, p. 156, 576

JUSTICE, Department of, Title 23

- I-II Exemption from the Seatbelt Use Act, p. 2058, 173
- I-XIX Implementation of the Victims Compensation Act by the Crime Victims Unit and Division of Crime Control, p. 1391, 1793
- 23.3.118 and other rule - Vision Tests - Vision Standards for Driver Licenses, p. 1002, 1611, 503
- 23.3.133 and other rules - Licensing of Commercial Motor Vehicle Operators, p. 1399, 62
- 23.3.301 and other rules - Highway Patrol Qualifications and Procedures, p. 1748, 72
- 23.4.101 and other rules - Alcohol Analysis, p. 2138, 275

LABOR AND INDUSTRY, Department of, Title 24

- I-VIII New Horizons Program, p. 1005, 1486
- 24.9.214 and other rules - Procedures for Contested Case Hearings, p. 669
- 24.12.204 Establishing Qualifications of Daycare Providers for the New Horizons Program, p. 33, 388
- 24.16.9007 Annual Adoption of Prevailing Rate of Wages, p. 1177, 1633

(Human Rights Commission)

- Notice of Hearing and Petition for Declaratory Ruling - In the Matter of Application of the Missoula Community Hospital, as to Whether it May Employ Only Males as Orderlies, p. 2060
- 24.9.210 and other rules - Procedures for Investigation and Conciliation of Complaints Filed with the Commission - Pre-hearing Procedures, p. 431, 1088
- 24.9.214 and other rules - Procedures for Contested Case Hearings, p. 669
- 24.9.1107 Age Discrimination in Housing, p. 1094
- (Workers' Compensation Division)
- I Temporary Rule - Impairment Rating Panel, p. 660, 1084
- I Temporary Rule - Distribution of Benefits from the Uninsured Employers Fund, p. 662, 1083
- I Distribution of Benefits from the Uninsured Employers Fund, p. 1532, 1991
- I Impairment Rating Dispute Procedure, p. 1534, 1985
- I Security Deposits of Plan Number Two Insurers, p. 1549, 1992
- I Time Limits for Administrative Review and Contested Case Hearings, p. 668, 1212
- I Rates for Hospital Services, p. 1918, 2388
- I-II Temporary Rules - Rehabilitation, p. 664, 1086
- I-IV Rehabilitation, p. 1536, 1988
- 24.29.702A and other rules - Self-Insurers, p. 1549, 1920, 2385

STATE LANDS, Department of, Title 26

- I and other rules - Federal Farm Compliance Program - Fee Schedule - Definitions - Rental Rates - Lease and License Reports and Renewal - Assignments - Subleasing - Pasturing Agreements - Cancellation of Lease or License - Mortgages and Pledges, p. 1281, 73
- I-X and other rule - Remining Under the Montana Strip and Underground Mine Reclamation Act, p. 2063

LIEUTENANT GOVERNOR, Title 30

(Statehood Centennial Office)

- 30.3.102 and other rule - Changing of Royalties for Exclusive Licenses - Fees for Project Licenses, p. 2222

LIVESTOCK, Department of, Title 32

- I Establishment of a State Meat and Poultry Inspection Program, p. 2342, 390
- 32.3.104 Subject Diseases or Conditions, p. 1293, 83

- 32.3.216 Equine Quarantine Stations, p. 1288, 84
- 32.3.219 Protecting Montana Swine Industry Against Importation of Disease, p. 1291, 1994
- 32.3.220 Importation of Bovine Semen, p. 2345, 389
- 32.3.401 and other rules - Clarifying Authority for Control of Brucellosis - Affected Herd Owner Rights and Obligations, p. 1295, 85
- 32.3.1203 and other rules - Updating Rabies Procedures, p. 1930, 86

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- (Board of Natural Resources and Conservation)
- I-XXII Procedures and Policy for the Reclamation and Development Grants Program, p. 2347, 727
- 36.12.101 and other rules - Definitions - Forms - Application and Special Fees - Issuance of Interim Permits, p. 857, 1560
- 36.15.216 Minimum Standards for Granting a Permit for the Establishment or Alteration of an Artificial Obstruction or Nonconforming Use in a Designated Floodway, p. 691
- 36.20.101 and other rules - Weather Modification Regulation, p. 863, 1561
- (Board of Water Well Contractors)
- 36.21.415 and other rules - Fee Schedule - Monitoring Well Constructor Licenses, p. 1180, 1635
- (Board of Oil and Gas Conservation)
- 36.22.501 and other rule - Location Limitations - Plugging and Abandonment Procedures of Seismic Shot Holes, p. 520, 1095

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Allowing All Motor Carriers Registered with the Montana Public Service Commission to Purchase a Temporary Vehicle Trip Permit in Lieu of a Vehicle Identification Stamp, p. 2224, 276
- I-IV Ratemaking Treatment of Contribution in Aid of Construction, p. 2356, 731
- 38.3.704 and other rule - Filing by Motor Carriers of Proof of Insurance, p. 874, 1345
- 38.5.1801 and other rules - Prohibiting the Nonessential Use of Natural Gas for Outdoor Lighting, p. 1616, 2161
- 38.5.2502 Responsibility for the Expense of Maintaining Water Utility Service Pipes from the Water Main to the Consumer's Property Line, p. 1614, 2162

REVENUE, Department of, Title 42

- I Partial Payment of Taxes - Rules on Waiver of Penalty and Interest, p. 565

- I Clarification of Exception to Tax Levy Limit for the Property Assessment Division, p. 2071, 396
- I Motor Fuel Tax - Cardtrol Compliance and Administration, p. 1008, 1565
- I Exempt Retirement Limitation, p. 1186, 1801
- I Income Tax Deduction for Household and Dependent Care Expenses, p. 1188, 1642
- I Capital Gain Exclusion, p. 1190, 1640
- I 10% Income Tax Surtax, p. 1192, 1639
- I Motor Fuel Tax Bonds - Problem Accounts, p. 1196, 1651
- I Severance Tax - Stripper Exemptions, p. 1198, 1650
- I Temporary Rule - Severance Tax - Stripper Exemption in Excess of Actual Production, p. 1200, 1563
- I Small Business Liability Funds, p. 1750, 2390
- I Definition of Earned Income, p. 1943, 2243
- I Surtax on Corporations, p. 1951, 277
- I and other rule - Residences of Disabled Veterans, p. 243, 737
- I-II Low Income Residential Property Tax Benefit, p. 238, 734
- I-II New and Expanding Industry and Class Twenty Property, p. 264, 742
- I-III Withholding Tax-Lien-Affidavit, p. 1194, 1643
- I-IV Operating Liquor Stores, p. 1183, 1798
- I-V Corporation License Tax Exemption for Research and Development Firms, p. 1450, 1802
- I-VI Sales Assessment Ratio Studies to Adjust Real Property Values, p. 158, 577
- I-VII Airline Regulations for Corporation License Tax, p. 2073, 401
- I-VIII Purchasing and Distribution of Liquor and Table Wine Products, p. 1932, 87
- I-X Tertiary Production for Natural Resource and Corporations Tax, p. 1422, 2091
- I-X Dangerous Drug Tax Act, p. 1433, 2093
- I-XI Temporary Rules - Accommodation Tax, p. 674, 1097
- I-XI Temporary Rules - Light Vehicle and Motorcycle Tax, p. 678, 1106
- I-XI Accommodations Tax for Lodging, p. 1020, 1637
- I-XI Water's Edge Election for Multinational Corporations for Corporation Taxes, p. 1945, 2226, 278
- I-XIII Light Vehicle and Motorcycle Tax - Personal Property Tax, p. 1014, 1646
- 42.6.101 and other rules - Scale of Suggested Minimum Contributions for Child Support, p. 1941, 2391
- 42.6.121 and other rule - Child Support Collection Fees, p. 360, 733
- 42.11.201 and other rule - Montana Liquor Vendors and Representatives, p. 1441, 1795

- 42.12.128 and other rule - Catering Endorsements - Permissible and Prohibited Activities Regarding Selling Beer in Grandstands, p. 876, 1491
- 42.13.222 Beer Wholesaler and Table Wine Distributor Recordkeeping Requirements, p. 754, 1213
- 42.15.311 and other rule - Withholding from Retirement Plan Benefits, p. 1430, 1752, 392
- 42.17.105 Temporary Amendment - Computation of Withholding, p. 672, 1112
- 42.17.105 Computation of Withholding - Income Tax, p. 1029, 1564
- 42.17.105 Computation of Withholding - Income Tax, p. 1953, 2244
- 42.17.131 Withholding Allowance Review Procedures, p. 683, 1113
- 42.21.101 and other rule - Aircraft and Watercraft Taxation, p. 236, 746
- 42.21.106 and other rules - Trending and Depreciation for Personal Property for Taxation Purposes, p. 249, 747
- 42.21.114 Abstract Record Valuation, p. 247, 748
- 42.21.120 and other rules - Taxation of Livestock, p. 232, 751
- 42.21.201 and other rules - Classification of Nonproductive Patented Mining Claims and Nonproductive Real Property, p. 758, 1214
- 42.22.101 and other rule - Taxation of Airlines, p. 229, 752
- 42.25.1001 and other rules - Net Proceeds Rules for the Natural Resource and Corporation Tax Division, p. 361
- 42.25.1005 and other rules - Temporary Rules - Severance Tax - Stripper Well and New Well Incentives, p. 1010, 1489
- 42.25.1005 and other rules - Severance Tax - Stripper Well and New Well Incentives, p. 1031, 1647
- 42.31.2141 Personal Property Tax and Overpayment Refunds for Public Contractors, p. 1438, 1803

SECRETARY OF STATE, Title 44

- I and other rules - Fees for Filing Federal Tax Liens - Fees for Filing Documents, p. 470
- I-II and other rule - Fees and Format for Filing Notice of Agricultural Lien and Certificate of Information Obtained by Public Access, p. 1553, 2163, 2392
- 1.2.204 and other rules - Temporary Rules - Rule Types and Their Location - Updating Procedures, p. 685, 1114
- 1.2.331 and other rule - Removal of Repealed Rules from ARM - Official Report of the Recodification of Title, p. 1299, 1652

- 1.2.419 1988 Scheduled Dates for Filing and Publication of the Montana Administrative Register, p. 2080, 2392
- 1.2.421 and other rules - Subscription to the ARM - Cost - Agency Filing Fees, p. 1956, 2357A, 282
- 44.9.202 and other rules - Procedures for Conducting Elections by Mail Ballot, p. 1753, 2394  
(Commissioner of Political Practices)
- 44.10.331 and other rules - Limitations on Receipts from Political Committees to Legislative Candidates - Uniform System of Accounts - Mass Collections at Fundraising Events, p. 161, 595

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I-II Inpatient Hospital Reimbursement System Based Upon Diagnosis Related Groups (DRGs) for Montana Medicaid Program, p. 1304, 1658, 1804
- I-IV Medicaid Reimbursement for Services of Nurse Specialists, p. 1331
- I-VII and other rule - Reporting and Handling of Incidents Relating to Recipients of Developmental Disability Services, p. 39, 381
- 46.2.210 and other rule - Administrative Fair Hearings, p. 2082, 2395
- 46.2.302 Civil Rights Complaints, p. 693
- 46.4.101 and other rules - Transfer of rules from the Community Services Division to the Department of Family Services, p. 1492, 1653
- 46.6.1501 and other rules - Program for Persons with Severe Disabilities, p. 524, 1115
- 46.8.102 and other rules - Individual Habilitation Plans for Developmentally Disabled Persons, p. 695
- 46.8.501 Quarterly Reports Required of the Developmental Disabilities Division, p. 2358, 285
- 46.10.321 and other rules - Medicaid Coverage of Pregnant Women - Medicaid Coverage of Eligible Individuals Under 21 Years of Age, p. 1300, 1655
- 46.10.403 AFDC Table of Assistance Standards, p. 760, 1215
- 46.12.102 Medicaid Reimbursement for Multi-source Drugs, p. 1958, 753
- 46.12.201 Eligibility Requirements for Medical Assistance, p. 35, 404
- 46.12.204 and other rules - Medicaid Optional Services, p. 377, 758
- 46.12.204 and other rule - Nurse Specialists Services Provided - Services Not Provided by Medicaid Program, p. 1331, 1688
- 46.12.204 and other rules - Medicaid Optional Services and Co-payments, p. 560, 895, 1334
- 46.12.302 and other rules - Inpatient Psychiatric Services, p. 554, 900, 1116
- 46.12.315 Prohibition of Certain Provider Fee Increases,

- p. 2142, 91
- 46.12.401 and other rules - Medicaid Sanctions, p. 1062, 2164
- 46.12.503 and other rule - Inpatient Hospital Services - Definitions - All Hospital Reimbursement - General, p. 1304, 1658, 1804
- 46.12.504 Inpatient Hospital Services, Requirements - Length of Stay - Authorization, p. 1762, 2168
- 46.12.526 Outpatient Physical Therapy Services, p. 1329, 2094
- 46.12.541 Hearing Aids, p. 36, 596
- 46.12.602 and other rule - Dental Services, p. 2359, 286
- 46.12.1204 Nursing Home Payment Rates, p. 164, 506
- 46.12.2003 and other rules - Reimbursement for Physician Services, p. 1035, 1496
- 46.12.3803 Cost of Living Increases in Medically Needy Income Standards, p. 2084, 2397
- 46.12.3803 Medically Needy Income Standards, p. 878, 1346
- 46.12.3803 Medically Needy Income Standards - Eligibility Requirements, p. 1764, 2172
- 46.13.301 and other rules - Establishment of a Percentage of Income Plan (PIP) In Ravalli County, p. 1757, 2245
- 46.13.302 Low Income Energy Assistance Program, p. 1454, 1805
- 46.14.301 and other rules - Low Income Weatherization Assistance Program, p. 2227, 289
- 46.25.728 Eligibility Determinations for General Relief Assistance, p. 527, 1117