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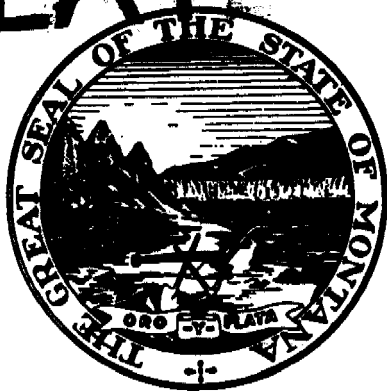
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OF MONTANA

# MONTANA ADMINISTRATIVE REGISTER

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1988 ISSUE NO. 9  
MAY 12, 1988  
PAGES 846-915



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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

In the matter of proposed ) NOTICE OF PUBLIC HEARING OF  
amendments of rule 8.86.301 ) PROPOSED AMENDMENTS OF RULE  
(6)(j),(k) and (l) as it ) 8.86.301 (6)(j),(k) and (l)  
relates to the class I price )  
formula ) PRICING RULES  
)  
) DOCKET # 83-88

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

1. On Monday, June 13, 1988 at 9:00 a.m., or as soon  
thereafter as interested persons can be heard, a public  
hearing will be held in Johnson Hall, room 346, at Montana  
State University, Bozeman, Montana.

The hearing will continue at said place from day to day  
thereafter, until all interested persons have had a fair  
opportunity to be heard and to submit data, views or  
arguments.

2. The hearing will be held in response to a petition  
filed on behalf of Mr. Martin W. Geiger, d/b/a Black Bear  
Dairy; Mr. Stacy Auch, d/b/a Misty Vale Dairy; and Mr. Dale  
Johnson, d/b/a Dale's Dairy Farm.

3. The petition proposes amending ARM 8.86.301(6)(j),  
(k) and (l) as follows: (full text of the rule is located at  
pages 8-2539 through 8-2549, administrative rules of  
Montana)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

(j) Off-the-farm wholesale and retail pricing for raw  
milk:

(i) the minimum off-the farm wholesale price for raw  
milk sold in one-half (1/2) gallon containers is eleven cents  
(\$0.11) less than the lowest calculated and established  
wholesale fluid milk price for pasteurized milk in such  
containers.

(ii) the minimum off-the-farm wholesale price for raw  
milk sold in one (1) gallon containers is twenty-two (\$0.22)  
less than the lowest calculated and established wholesale  
fluid milk price for pasteurized milk in such containers.

(iii) the minimum off-the-farm retail price for raw  
milk sold in one-half (1/2) gallon containers is eleven cents  
(\$0.11) less than the lowest calculated and established  
retail fluid milk price for pasteurized milk in such  
containers.

(iv) the minimum off-the-farm retail price for raw milk sold in one (1) gallon containers is twenty-two cents (\$0.22) less than the lowest calculated and established retail fluid milk price for pasteurized milk in such containers.

4)(k) Low fat chocolate two percent milk will be priced by adding the difference between whole white milk and whole chocolate milk to the price of white low fat two percent milk. Monthly price announcements will be amended accordingly.

4)(l) A special price on low fat milk and low fat chocolate milk in half (1/2) pints purchased by elementary and high schools is hereby established by applying the same differential that is used for pricing whole, homogenized milk to schools and monthly price announcements amended accordingly.

(7) . . ."

4. The reasons given for the proposed action is to permit the petitioners to sell raw milk, either wholesale or retail at price levels which do not reflect costs associated with, and allocated to, the pasteurization process, a process that is not involved in the handling of raw milk.

5. The petition was submitted pursuant to section 81-23-302 and 2-4-315, MCA.

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

- a. the ability and willingness of consumers and retailers to purchase raw milk;
- b. cost factors in producing raw milk;
- c. cost factors in processing, packaging, transporting, distributing and jobbing raw milk;
- d. current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;
- e. the alternative opportunities, open to milk producers.

f. applicability of health or sanitary statutes and regulations.

7. Petitioners have the burden of proving that a differential price structure for raw milk products is justified, that the actual differences in cost support the differential price levels requested and that such relief is in the public interest.

8. Interested persons may participate and present data, views or arguments on the proposed amendment either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East 6th Avenue, Helena, Montana, 59620 no later than June 10, 1988.

9. Mr. Geoffrey L. Brazier, Esq., 1424 9th Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing. However, the Montana Board of Milk Control will sit in convened session at the hearing.

10. The authority for the board to take the action and adopt rules as proposed is in sections 81-23-103, 81-23-104 and 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

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

Certified to the Secretary of State May 2, 1988.

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

In the matter of proposed ) NOTICE OF PUBLIC HEARING OF  
amendments of rule 8.86.301 ) PROPOSED AMENDMENTS OF RULE  
(6)(g)(i)(B)(I), (III),(IV) ) 8.86.301 (6)(g)(i)(B)(I),  
and (C)(I) as it relates to ) (III),(IV) and (C)(I)  
the class I price formula )  
) PRICING RULES  
)  
) DOCKET # 84-88

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

1. On Monday, June 13, 1988 at 11:00 a.m., or as soon  
thereafter as interested persons can be heard, a public  
hearing will be held in Johnson Hall, room 346, at Montana  
State University, Bozeman, Montana.

The hearing will continue at said place from day to day  
thereafter, until all interested persons have had a fair  
opportunity to be heard and to submit data, views or  
arguments.

2. The hearing will be held in response to a petition  
filed on behalf of Mr. Dave Simon, d/b/a Rocky Mountain Dairy  
and Mr. Joe McKernan, d/b/a Joe's Dairy Products.

3. The petition proposes amending ARM 8.86.301  
(6)(g)(i)(B)(I),(III),(IV) and (C)(I) as follows: (full text  
of the rule is located at pages 8-2539 through 8-2549,  
administrative rules of Montana)(new matter underlined,  
deleted matter interlined)

"8.86.301 Pricing Rules

(1) . . .

(6)(g)(i)(B) . . .

~~++--Distributor--delivery--shall--be--limited--to--the  
service-door-or-refrigerator-storage-box~~

~~++(I)~~ Deliveries shall be limited to a maximum of  
four (4) times per week, with a one hundred fifty dollar  
(\$150.00) minimum sale.

~~+++--The-retail-store-shall-assume-all--responsibility  
for--servicing-the-dairy-case-and-rotating-the-stock-of-fluid  
milk-products--in-stores-service-by-the-distributor--is--not  
permitted~~

~~++V--The-retail-store-shall-assume--all--responsibility  
for--loss-of-occasional-expiration-of-product-code-dates~~

~~V+(II)~~ The minimum retail price will be marked down by  
sixteen percent (16%) to arrive at a minimum wholesale drop  
service price.

(C) Wholesale dock pickup or delivery price:

(I) Delivery shall be FOB the distributor's processing plant's dock or FOB the wholesale grocer's dock.

(II) . . ."

4. The reasons given for the proposed action is to change the rule to make the rule enforceable and to permit petitioners to effectively compete so they may stay in business.

5. The petition was submitted pursuant to section 81-23-302, and 2-4-315, MCA.

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

a. costs of stocking store coolers and shelves;  
b. cost factors in distributing milk, which shall include, among other things, prices paid by distributors for equipment of all types required in processing and marketing milk, and prevailing wage rates in the state.

7. The board takes official notice that processors were accused of being in violation forty-seven (47) separate times in complaints filed with the Milk Control Bureau office between February 18, 1987 and October 19, 1987. Processors were fined on a total of thirty-four (34) violations. For administrative purposes each account was treated as one violation, whereas, under the Milk Control Act, each day that each account was in violation could have been treated as a separate offense.

Based on information provided and on ongoing investigations, there appears to be numerous continuing violations of the above noted rule.

8. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally at the hearing or in writing by mailing the same to the Milk Control Bureau, 1520 E. 6th Avenue, Helena, Montana, 59620, no later than June 10, 1988.

9. Geoffrey L. Brazier, Esq., 1424 9th Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full board will sit in convened session at the hearing.

10. Authority for the board to take the action and adopt the rules as proposed is in sections 81-23-103, 81-23-104 and 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

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

Certified to the Secretary of State May 2, 1988.



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

In the matter of proposed ) NOTICE OF PUBLIC HEARING OF  
amendments of rule 8.86.301 ) PROPOSED AMENDMENTS OF RULE  
(9)(a) as it relates to the ) 8.86.301 (9)(a)  
transportation of class I )  
bulk milk between plants ) PRICING RULES  
)  
) DOCKET # 85-88

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

1. On Monday, June 13, 1988 at 1:00 p.m., or as soon  
thereafter as interested persons can be heard, a public  
hearing will be held in Johnson Hall, room 346, at Montana  
State University, Bozeman, Montana.

The hearing will continue at said place from day to day  
thereafter, until all interested persons have had a fair  
opportunity to be heard and to submit data, views or  
arguments.

2. The hearing will be held in response to a petition  
filed on behalf of Mr. Edward P. McHugh, d/b/a Clover Leaf  
Dairy.

3. The petition proposes amending ARM 8.86.301(9)(a) as  
follows: (full text of the rule is located at pages 8-2539  
through 8-2549, administrative rules of Montana)(new matter  
underlined, deleted matter interlined)

8.86.301 PRICING RULES

(1) . . .

(9) . . .

(a) The following maximum freight allowance be charged  
producers of a licensed distributor or dealer, whose plant is  
located within Montana, on transfers of bulk milk, a major  
portion of which is used in class I, between distributors  
situated more than twenty-five (25) road miles apart,  
regardless of the state where the receiving plant:

<u>DISTANCE</u>	<u>MAXIMUM FREIGHT ALLOWANCE</u>
25 to 50 miles	\$--r25 \$ .36
51 to 75 miles	r40 .51
76 to 100 miles	r50 .61
101 to 150 miles	r64 .75
151 to 200 miles	r85 .96
201 to 250 miles	r06 1.17
251 to 300 miles	r28 1.39
301 to 350 miles	r49 1.60

(b) . . ."

4. The reasons given for the proposed action is to recover costs of hauling class I bulk milk between plants.

5. Specific factors which the board will take into consideration in this proceeding will include, but not be limited to, the following:

a. current and prospective supplies of milk in adjacent and surrounding areas;

b. the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

c. prices of producer milk in adjacent and surrounding areas;

d. actual costs of hauling milk.

6. In its consideration on the merits of the petition, the board takes official notice as facts within its own knowledge of the following:

**TABLE I**

Producer prices in adjacent and surrounding areas--March 1988

	<u>CL I</u>	<u>CL II</u>	<u>CL III</u>	<u>BLEND</u>
Western Colorado	12.91	10.43	10.43	11.59
Great Basin	12.81	10.43	10.43	12.22
Eastern Colorado	13.64	10.43	10.43	12.47
North Dakota	12.11	10.43	10.18	*10.91
Oregon-Washington	12.86	10.58	10.43	11.40
Puget-Inland	12.76	10.58	10.43	11.32
S.W. Idaho	12.41	10.43	10.43	10.82
Montana	13.91	10.66	9.05	12.11

\*previous month blend price

**TABLE II**

Supplies of milk in adjacent & surrounding areas--March 1988

East & West Colorado	66,576,794	18,585,895	20,472,383
Great Basin	55,998,151	7,545,408	65,773,206
Oregon-Washington	77,772,062	15,285,678	97,657,004
Puget-Inland	90,475,508	21,880,125	128,120,284
S.W. Idaho	10,955,075	7,585,852	48,216,814
Western N. Dakota	7,617,597	379,185	2,594,982

7. The petitioner has the burden of proving that the proposed rates are cost justified and the proposed change is in the public interest.

8. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally at the hearing or in writing by mailing the same to the Milk Control Bureau, 1520 E. 6th Avenue, Helena, Montana, 59620, no later than June 10, 1988.

9. Geoffrey L. Brazier, Esq., 1424 9th Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full board will sit in convened session at the hearing.

10. Authority for the board to take the action and adopt the rules as proposed is in sections 81-23-103, 81-23-104 and 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-203, MCA.

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

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

Certified to the Secretary of State May 2, 1988.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rules 11.7.306,	)	AMENDMENT OF RULES
11.7.617 and 11.16.139	)	11.7.306, 11.7.617 and
pertaining to requests for	)	11.16.139 PERTAINING TO
fair hearings	)	REQUESTS FOR FAIR HEARINGS.
	)	NO PUBLIC HEARING
	)	CONTEMPLATED.

TO: All Interested Persons

1. On June 24, 1988, the Department of Family Services proposes to amend Rules 11.7.306, 11.7.617 and 11.16.139 which pertain to requests for fair hearings.

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

11.7.306 RIGHT TO FAIR HEARING (1) Any person denied substitute care placement or foster care maintenance payments by the department may request a hearing as provided in ARM ~~46-2-203 within 90 days of the notice of denial~~ 11.2.203.

AUTH: Sec. 2-4-201 and 41-3-1103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87  
IMP: Sec. 41-3-302 and 41-3-1103, MCA

11.7.617 FOSTER CARE SUPPORT SERVICES, HEARING Any person dissatisfied because of actions by the department or its representatives regarding foster care support services may request a hearing as provided in ARM ~~46-2-202 within 90 days of the notice of adverse action~~ 11.2.203.

AUTH: Sec. 2-4-201 and 41-3-1103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87  
IMP: Sec. 41-3-1103 and 53-4-111, MCA

11.16.139 ADULT FOSTER HOME, FAIR HEARING (1) Any person dissatisfied because of denial, revocation or suspension of a license may request a fair hearing in accordance with ARM ~~46-2-203 through 46-2-214 within 90 days of the notice of adverse action~~ 11.2.203.

Subsection 2 remains the same.

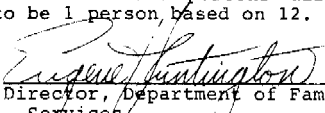
AUTH: 2-4-201 and 53-5-304, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87  
IMP: Sec. 53-5-303, MCA

3. Rationale: These rules were transferred from the department of social and rehabilitation services to the department of family services effective July 1, 1987. These rule amendments are now necessary to reference in the rules the department of family services' fair hearing rules rather than those of the department of social and rehabilitation services. Additionally, all references to time limits for requesting a fair hearing are deleted. The department's fair hearing rules specify the time in which a fair hearing request must be made. By referencing these rules, the time limits will be consistent throughout the department rules.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than June 9, 1988.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request along with any written comments he has to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than June 9, 1988.

6. If the Department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the Hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1 person, based on 12.

  
Director, Department of Family  
Services

Certified to the Secretary of State May 2, 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 46.12.1401	)	THE PROPOSED AMENDMENT OF
through 46.12.1405,	)	RULES 46.12.1401 THROUGH
46.12.1408 through	)	46.12.1405, 46.12.1408
46.12.1411, 46.12.1413,	)	THROUGH 46.12.1411,
46.12.1425, 46.12.1428	)	46.12.1413, 46.12.1425,
through 46.12.1430,	)	46.12.1428 THROUGH
46.12.1433, 46.12.1435	)	46.12.1430, 46.12.1433,
through 46.12.1439,	)	46.12.1435 THROUGH
46.12.1441, 46.12.1442,	)	46.12.1439, 46.12.1441,
46.12.1444, 46.12.1445,	)	46.12.1442, 46.12.1444,
46.12.1447, 46.12.1448,	)	46.12.1445, 46.12.1447,
46.12.1450 through	)	46.12.1448, 46.12.1450
46.12.1455, 46.12.1462,	)	THROUGH 46.12.1455,
46.12.1475, 46.12.1480 and	)	46.12.1462, 46.12.1475,
46.12.1481 pertaining to the	)	46.12.1480 AND 46.12.1481
Home and Community Services	)	PERTAINING TO THE HOME AND
Program	)	COMMUNITY SERVICES PROGRAM

TO: All Interested Persons

1. On June 2, 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 as listed above pertaining to the Home and Community Services Program.

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

46.12.1401 HOME AND COMMUNITY SERVICES PROGRAM, AUTHORITY (1) The United States department of health and human services (HHS) has granted the department the authority to provide medicaid home and community services to persons who would otherwise have to reside in and receive medicaid reimbursed care in an hospital or institutional setting.

Subsection (2) remains the same.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1402 LIMITING ENROLLMENT ON BASIS OF AVAILABLE FUNDS (1) Enrollment in the home and community services program is limited based on federal restrictions and state appropriations. Enrollment will be on a first-come-first-served basis for elderly and physically disabled persons. For

~~physically--disabled--persons--and--developmentally--disabled--persons--priority--for--enrollment--will--be--given--to--those--persons--determined--by--the--department--or--its--designee--to--be--most--in--need--of--services.~~

(2) When all slots are filled, a waiting list will be established to select those persons determined by the department or its designee to be most in need of services. Priority for placement will be established according to the following criteria:

(a) the amount of other community services available to meet the person's needs;

(b) the ability of the case management team to provide services that meet the person's health and safety needs; and

(c) the person's risk of institutionalization or death.

Subsections (2) through (3)(c) remain the same but will be recategorized as (3) through (4)(c).

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

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

#### 46.12.1403 INDIVIDUALS PERSONS WHO MAY BE SERVED

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

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

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

#### 46.12.1404 HOME AND COMMUNITY SERVICES, DEFINITION

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

(c) personal care attendant services, as defined in ARM 46.12.1428;

(d) adult day care services, as defined in ARM 46.12.1431;

Subsections (1)(e) through (1)(i) remain the same.

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

Subsections (1)(k) through (1)(q) remain the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1405 GENERAL REQUIREMENTS Subsections (1) through (5) remain the same.

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

Subsections (6)(a) through (6)(p) remain the same.

(7) Pre-vocational, educational and supported employment services are ~~not reimbursable only when a person is enrolled in the home and community services program immediately upon discharge from a hospital, SNF, ICF or ICF/MR.~~ under the home and community services program.

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

Subsections (8) through (9) remain the same.

(10) Home and community services will not be provided when services are or could be funded through either the adult or children's foster care program or the developmental disabilities program. The department may, within its discretion, authorize exceptions to this rule. All exceptions must be prior authorized by the department.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1408 CASE MANAGEMENT SERVICES, REIMBURSEMENT

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

(2) For elderly persons and physically disabled persons, case management services provided by a case management team under contract with the department shall be reimbursed based on a negotiated per diem rate, ~~not to exceed 10 percent of the~~



statewide-average-per-diem-rate-for-skilled-nursing-and-intermediate-care-facilities.

(a)--An--incentive-payment-may-be--allowed-in--accordance-with-the-following:

(i)--To-be-eligible-for-the--incentive-payment,--the-case-management--team-must-contain-costs,--through-prudent-development-of-plans-of-care,--within-the-following-limits:

(A)--total--payments--under--subcontracts--for--home--and-community-services--shall-not-exceed-50-percent-of-the-average-statewide--per--diem-rate--for--nursing-home--care--for--those-recipients-had--they-been--served-in-skilled-nursing-or-intermediate-care-facilities;

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

(b)--Contracts-shall-be-issued-on-the-basis-of-submitted-bids-that-do-not-exceed-the-reimbursement-limits-specified-in-this--rule--and--that-meet-all--other--applicable--state-and-federal-statutes-and-regulations:

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1409 INDIVIDUAL PLANS OF CARE FOR ELDERLY AND PHYSICALLY DISABLED PERSONS Subsections (1) through (3) remain the same.

(4) The case management team in developing the plan of care shall consult with the recipient person or the recipient's person's legal representative and with the recipient's person's attending physician. The case management team may also consult family members, relatives, psychologists, medical personnel and others consultants who have knowledge of the person's needs.

Subsections (5) through (7)(a) remain the same.

(b) consistency of plan with preadmission screening data; criteria; and

Subsection (7)(c) remains the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1410 INDIVIDUAL PLANS OF CARE FOR DEVELOPMENTALLY  
DISABLED PERSONS Subsections (1) through (2)(a) remain  
the same.

(b) consistency of plan with preadmission screening  
data; criteria; and

Subsection (2)(c) remains the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH  
Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2,  
Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff.  
10/1/87

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

46.12.1411 COST OF PLAN OF CARE AS REASON FOR DENYING  
SERVICES (1) Home and community services ~~will be denied  
to a person when the cost to the medicaid program of the per-  
son's services, are limited to persons whose home and com-  
munity service costs, as determined in accordance with sub-  
section (1)(a) of this rule, is projected to exceed the cost  
of~~ are no more than what medicaid would pay for the person's  
institutional care, as determined in accordance with  
subsection (1)(b) of this rule. The department may, within  
its discretion, authorize exceptions to this limit. Any  
services exceeding this limit must be prior authorized by the  
department. ~~This~~ Cost determinations will be made ~~by the  
department before the implementation of the proposed plan of  
care has been approved by the department.~~

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

(i) For ICF and SNF levels of care, payment rates  
projected in accordance with ARM 46.12.1204 are based on the  
statewide weighted average medicaid nursing home per diem  
rate. ~~The per payment standard less forty (40) dollars  
for personal needs is considered to be the equivalent of  
room and board costs. This amount is subtracted from the  
statewide average nursing home rate to arrive at the  
ceiling against which projected annualized costs under  
the plan of care are compared.~~

Subsection (1)(b)(ii) remains the same.

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

Subsection (1)(d) remains the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH  
Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2,

Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

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

Subsections (1)(a) through (5) remain the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1425 HOMEMAKER SERVICES, DEFINITIONS Subsections (1) and (1)(a) remain the same.

~~(b) health supportive services consisting of assistance with those activities necessary to meet a person's health care needs;~~

~~(eb) social restorative services consisting of assistance which will further a person's involvement with activities and other persons; and~~

~~(dc) teaching services consisting of activities which will improve a person's or family's skills in household management, self-care, and social functioning, and child care activities;~~

(2) ~~Homemaker services will be provided only in a person's place of residence. shall not include the provision of personal care services as defined in ARM 46.12.555 through 46.12.557.~~

~~(a) Place of residence includes an individual's own home or a foster home. Place of residence does not include a hospital or a long-term care facility as defined in 59-5-101, MCA. A long-term care facility is defined as a skilled or intermediate nursing facility, ICF/MR or licensed personal care facility.~~

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1428 PERSONAL CARE ATTENDANT SERVICES, DEFINITIONS

(1) ~~Personal care attendant services mean--medically oriented--tasks--provided--in--a--person's--place--of--residence--which include--basic--personal--hygiene--and--grooming--(bathing,--dressing,--showering),--assistance--with--toileting,--assistance--with self--administered--medications,--assistance--with--food,--nutrition,--diet--(including--the--preparation--of--meals--if--incidental to--medical--need),--and--accompanying--the--recipient--to--obtain medical--diagnosis--or--treatment~~ are defined as provided in ARM 46.12.555, except that under the home and community services program:

(2a) ~~Personal care attendant services in--a--recipient's place--of--residence~~ may include homemaker services as defined in ARM 46.12.1425.

(3) ~~Place--of--residence--includes--a--person's--own--home, foster--home--or--a--community--home--for--the--developmentally--disabled--except--that--personal--care--attendant--services--may--not include--homemaker--services--when--the--person--resides--in--a--community--home--for--the--developmentally--disabled.~~ Place of residence does not include a hospital, skilled or intermediate nursing facility, JCF/MR or licensed personal care facility.

(b) Personal care services may include supervision for health and safety reasons, and escort and transportation for non-medical reasons.

(c) Personal care services shall not include the specialized services outlined in ARM subsections 46.12.555(4)(a) through (f).

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1429 PERSONAL CARE ATTENDANT SERVICES, REQUIREMENTS

(1) ~~The requirements for personal care attendant services are found in ARM 46.12.556, except that when a personal care attendant also provides homemaker services, the attendant must meet the requirements in ARM 46.12.1426.~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1430 PERSONAL CARE ATTENDANT SERVICES, REIMBURSEMENT

(1) Reimbursement for personal care attendant services shall will be as provided in ARM 46.12.557, even

~~when personal care attendant services include the provision of homemaker services:~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

#### 46.12.1433 ADULT DAY CARE SERVICES, REIMBURSEMENT

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

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

#### 46.12.1435 HABILITATION SERVICES, DEFINITION

(1) ~~Habilitation is defined as intervention designed to for assisting in the development of a person's skills or the reduction of behavior which interferes with the person's development.~~ persons to acquire, retain and improve the self-help, socialization and adaptive skills necessary to reside successfully in home and community settings. Services include the provision of social training and/or health related skills to ensure optimal functioning of persons. These skills must be identified in the individual plan of care as appropriate in relation to the person's current developmental level and needs in accordance with the principle of normalization.

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

(3) Habilitation services for elderly and physically disabled persons may be delivered in ~~natural~~ their own homes, foster and group homes.

(4) Prevocational, educational or supported employment are not reimbursable under the home and community services program.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1436 HABILITATION SERVICES, REQUIREMENTS

Subsection (1) remains the same.

(2) A provider of habilitation services for the physically disabled and elderly persons may be any of the following:

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

(3) All professional providers of rehabilitation services must meet all professional and other licensing and certification requirements otherwise provided in ~~this subchapter~~.  
ARM 46.12.1401 through 46.12.1482.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1437 HABILITATION SERVICES, REIMBURSEMENT

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

(2) Reimbursement for habilitation services not paid through other federal, state or locally funded programs will be the lower of the following:

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

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1438 RESPITE CARE, DEFINITION Subsections (1) and (2) remain the same.

(3) Respite care may be provided in a ~~recipient's person's~~ place of residence or through placement ~~of the recipient~~ in another private residence, ~~a foster home~~ or other related community setting, a hospital, a skilled nursing facility, an intermediate care facility or an intermediate care facility for the mentally retarded.

(4) Payment for respite care provided in a hospital must be prior authorized by the department.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1439 RESPITE CARE, REQUIREMENTS Subsections (1) through (4) remain the same.

(5) Approval for additional respite will be based on the following criteria:

(a) the provision of excess respite can be made while staying within plan of care cost limits; and

(b) the need for excess respite is caused by:

(i) an unexpected family emergency requiring the normal caregiver to be away;

(ii) unusually high stress in the normal caregiver; or

(iii) other unusual or unexpected circumstances which make excess respite more reasonable than alternative placements such as an institution.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1441 OUTPATIENT OCCUPATIONAL THERAPY SERVICES, DEFINITION Subsection (1) remains the same.

(a) Occupational therapy services may be provided for rehabilitative or maintenance purposes. ~~to disabled persons.~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1442 OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REQUIREMENTS (1) Requirements for outpatient occupational therapy services are as provided in ARM 46.12.546- except that under the home and community services program:

(a) maintenance therapy can be reimbursed; and

(b) no visit limitation exists for maintenance therapy.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1444 OUTPATIENT PHYSICAL THERAPY SERVICES, DEFINITION Subsection (1) remains the same.

(a) Outpatient physical therapy services may be provided for rehabilitative or maintenance purposes. ~~to disabled persons.~~

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

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402  
MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87;  
Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L.  
1987, Eff. 10/1/87

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

46.12.1445 OUTPATIENT PHYSICAL THERAPY SERVICES, RE-  
QUIREMENTS (1) Requirements for outpatient physical  
therapy services are as provided for in ARM 46.12.526- except  
that under the home and community services program:

(a) maintenance therapy can be reimbursed; and

(b) no visit limitation exists for maintenance therapy.

~~(2) A physical therapy assistant, student or aide may  
assist in the practice of physical therapy under direct super-  
vision of the licensed physical therapist who is responsible  
for and participates in the patient's treatment program.~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402  
MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87;  
Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L.  
1987, Eff. 10/1/87

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

46.12.1447 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES,  
DEFINITION Subsection (1) remains the same.

(a) Speech pathology services may be provided to dis-  
abled recipients for habilitative or maintenance purposes.

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

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402  
MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87;  
Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L.  
1987, Eff. 10/1/87

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

46.12.1448 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES,  
REQUIREMENTS (1) Requirements for speech pathology and  
audiology services are as provided in ARM 46.12.531 and ARM  
46.12.536- except that under the home and community services  
program:

(a) maintenance therapy can be reimbursed; and

(b) no visit limitation exists for maintenance therapy.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402  
MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87;



Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1450 MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, DEFINITIONS (1) Medical alert and ~~monitoring~~ environmental modifications services are designed to provide the recipient with accessibility and safety in the home environment so as to maintain or improve the ability of the recipient to remain in the home.

(2) Services may include installation of wheelchair ramps, grab-bars and ~~medical-alert systems~~ other adaptive equipment.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1451 MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, REQUIREMENTS (1) All environmental modifications and adaptive equipment must:

(a) be medically necessary and relate specifically to the person's disability;

(b) provide for the person's accessibility and safety in the home;

(c) have a specific adaptive purpose;

(d) be essential to prevent institutionalization; and

(e) not constitute ineligible room and board or general housing maintenance.

~~(12) Any medical alert device systems must be~~  
~~connected to a local emergency response system with the capacity to activate emergency medical personnel.~~

~~(23) All environmental modifications must meet the specifications set by the American national standards institute in 1980.~~

Subsections (3) and (4) remain the same in text but will be renumbered as (4) and (5).

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1452 MEDICAL ALERT AND ~~MONITORING~~ ENVIRONMENTAL MODIFICATIONS, REIMBURSEMENT

(1) Reimbursement for medical alert and ~~monitoring~~ environmental modifications not provided by other federal, state or locally funded programs ~~shall~~ will be the lower of the following:

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

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1453 TRANSPORTATION SERVICES, DEFINITION

(1) Transportation means travel furnished by common carrier or private vehicles ~~to persons~~ for social, medical and or other non-medical reasons. ~~defined as necessary in the individual plan of care.~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1454 TRANSPORTATION SERVICES, REQUIREMENTS

(1) Transportation services will be provided only after volunteer transportation services, or transportation services funded by public programs other than medicaid, have been exhausted.

(2) ~~A common carrier~~ Transportation providers must provide proof of:

(a) a valid Montana driver's license;

(b) adequate automobile insurance; and

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

(3) Transportation must be provided by the most cost effective mode.

(4) Transportation must be provided only when necessary to transport recipients to and from activities that are included in the individual plan of care.

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1455 TRANSPORTATION SERVICES, REIMBURSEMENT

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

(a) the amount ~~department's~~ fee schedule as specified in ARM 46.12.1005;

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

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87

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

46.12.1462 PSYCHOLOGICAL SERVICES, DEFINITION

(1) Psychological services are defined as provided in ARM 46.12.580 ~~with the following additions:~~ except that under the home and community services program:

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

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

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

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

46.12.1475 RESPIRATORY THERAPY SERVICES, REQUIREMENTS

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

(3) Respiratory therapy services are must be furnished in the person's home and be limited to recipients ~~persons~~ who would ~~be institutionalized~~ require care as an inpatient in a hospital, SNF or ICF without respiratory care.

(4) Respiratory therapy services may be provided only to persons who have adequate support services to be cared for at home and who wish to be cared for at home.

Subsection (4) remains the same in text but will be renumbered as subsection (5).

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

46.12.1480 DIETITIAN SERVICES, DEFINITION

(1) Dietitian services mean services related to the nutritional needs of and management for--the--recipient of a person's nutritional needs.

(2) Dietitian services include evaluation and monitoring of nutritional status, nutrition counseling, therapy, education and research.

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

46.12.1481 DIETITIAN SERVICES, REQUIREMENTS

(1) Dietitian services must be provided by a registered dietitian or a licensed nutritionist. Registered dietitians must meet the qualifications in 37-21-302 MCA and licensed nutritionists must meet the licensing requirements in 37-25-302 MCA.

Subsection (2) remains the same.

(3) Dietitian services are limited to a maximum of 12 hours per fiscal year; however, the department may, within its discretion, authorize further specified hours of dietitian services in excess of this limit. Any services exceeding this limit must be prior authorized by the department.

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. Since the inception of the Home and Community Services Program, case management teams have been paid quarterly incentive payments. During the last legislative session, there were many questions about the amount and cost-effectiveness of incentive payments. The proposal to remove incentive payments and apply the savings to an increase in case management per diem payments is anticipated to be more cost effective. This proposal will require a corresponding change regarding the methodology for calculating per diem payments. The increase will cause case management per diem to be more than 10% of the statewide average Medicaid rate for nursing home care.

The maximum plan of care limit will be increased from 80% to 100% of the statewide average Medicaid rate for nursing home care. Increasing the maximum plan of care limit will result in increased program costs by allowing more individuals to be served under the waiver. However, average waiver costs will still be significantly less (53%) than nursing home costs.

Proposed for adoption is a waiting list for services with persons ranked by the specified criteria. This listing will provide a uniform basis for the provision of services.

Duplication of resources with certain other programs would be generally limited by the proposed amendment. This would assure efficient utilization of programs.

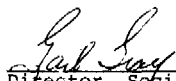
Changes to service definitions and requirements in the following service areas were made to comply with federal requirements and state practice: homemaker, personal care, habilitation, adaptive equipment, medical alert, environmental modification, respite, therapies, transportation, respiratory therapy and dietitian services.

Copies of this rule are available at local county welfare and human services 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. This rule will be effective July 1, 1988.

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

Certified to the Secretary of State May 2, 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 46.12.555,	)	THE PROPOSED AMENDMENT OF
46.12.556 and 46.12.557	)	RULES 46.12.555, 46.12.556
pertaining to personal care	)	AND 46.12.557 PERTAINING TO
services	)	PERSONAL CARE SERVICES

TO: All Interested Persons

1. On June 2, 1988, at 1:00 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 46.12.555, 46.12.556 and 46.12.557 pertaining to personal care services.

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

46.12.555 PERSONAL CARE SERVICES, DEFINITION

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

(b) Escort services are limited to trips to obtain medical diagnosis or treatment or to shop for items specifically required for the recipient's health and maintenance.

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

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, 53-6-131 and 53-6-141 MCA

46.12.556 PERSONAL CARE SERVICES, REQUIREMENTS

Subsection (1) remains the same.

(2) Personal care services are only available only to persons recipients who reside at home. or in a licensed foster home or a licensed group home. Persons residing in licensed foster or group homes must have personal care services prior authorized by the department.

(3) Personal care services will not be provided when services are or could be funded through either the adult or children's foster care program or the developmental disabilities program. The department may, within its discretion, authorize exceptions to this rule. All exceptions must be prior authorized by the department.

(4) Personal care services shall are not be provided to reimbursed by medicaid for persons who reside in a hospital or long-term care facility as defined in 50-5-101, MCA, and licensed under 50-5-201, MCA.

(5) Personal care services can be provided only if the recipient's health and safety in the home can be adequately assured by the provision of such services.

(a) The recipient's medical condition must be stable, which is defined as follows:

(i) the condition is not expected to exhibit sudden deterioration;

(ii) the condition does not require frequent medical or nursing judgement to determine changes in the recipient's plan of care; and

(iii) the condition is such that a physically disabled or elderly recipient does not need constant skilled professional care but does require routine supportive assistance in the home to prevent a health or safety crisis from developing.

(b) The recipient must be capable of making choices about activities of daily living, understanding the impact of these choices and assuming responsibility for the choices, or have someone residing within or outside the household willing to direct their activities.

(c) Recipients who have unstable medical conditions characterized by episodic events, rapid deterioration, frequent professional intervention or modification in the plan of care, or need for skilled treatment or rehabilitation activities, are not appropriate for personal care and should be referred for home health, nursing, rehabilitation or other long-term care services.

Subsections (4) through (6) remain the same in text but will be renumbered as (6) through (8).

(a) be enrolled as a medicaid qualified provider and agree to abide by all pertinent state medicaid regulations;

Subsections (6)(b) through (6)(j) remain the same in text but will be recategorized as (8)(b) through (8)(j).

(7) Reimbursement for personal care services shall not be provided by made to a member of the recipient's immediate family. A member of the recipient's immediate family includes the following:

Subsections (7)(a) through (7)(p) remain the same in text but will be renumbered as (9)(a) through (9)(p).

(10) Personal care services are not available to relieve a parent of their child caring or other legal responsibilities.

(a) Personal care for disabled children may be appropriate when the parent is unqualified or otherwise unable to provide the personal care or the child is at risk of institutionalization unless the services are provided.

(11) Personal care services may be terminated for any of the following reasons:

(a) the recipient becomes ineligible for medicaid;

(b) the recipient's physician requests termination of services;

(c) the recipient's health and safety needs in the home cannot be adequately met by the provision of personal care services;

(d) the recipient no longer has a medical need for personal care services;

(e) the recipient leaves the state;

(ef) the recipient dies;

(dg) the recipient is admitted to a skilled or intermediate nursing facility, intermediate care facility for the mentally retarded, hospital, licensed personal care facility or placement other than a full-time residence;

(eh) the recipient requests termination of services or refuses to accept help; or

~~(fi) the recipient's physician requests termination of services;~~

~~(gj) the recipient's health and safety needs in the home cannot be adequately met by the provision of personal care services; or~~

~~(h) the recipient no longer has a medical need for personal care services.~~

(i) the recipient refuses the services of the personal care attendant based solely or partly on the attendant's race, creed, religion, sex, marital status, color, age, handicap or national origin.

(912) The department may terminate or reduce personal care services when funding for services is unavailable.

(13) The department will provide at least 10 days advance notice when personal care services are terminated for any of the reasons listed in subsections (11)(a) through (d).

(14) The department will provide written notice to applicants when services are denied.

(15) A person may request a fair hearing for any determination made by the department with which he is dissatisfied. Fair hearings will be conducted as provided for in ARM 46.2.201 et seq.

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, 53-6-131 and 53-6-141 MCA

#### 46.12.557 PERSONAL CARE SERVICE, REIMBURSEMENT

(1) Personal care services are limited to ~~56~~ 40 units of attendant service per week per recipient. ~~The department may authorize units in excess of this limit. Units in excess of the limit must be prior authorized by the department. However, the department may, within its discretion, authorize additional hours in excess of this limit. Any services exceeding this limit must be prior authorized by the department. Prior authorization for excess hours will be based on a consideration of the following:~~

(a) Short term assistance is required as the result of an acute medical episode.

(b) Short term assistance is required to prevent institutionalization during the absence of the normal caregiver.

(c) More intensive service is required during a post-hospitalization period.



(d) All alternative arrangements for meeting the recipient's medical needs have been explored and are not feasible including, but not limited to, provision of personal care services in combination with other formal services or in combination with contributions of informal caregivers.

(2) Personal care services shall be delivered by providers contracting with the department.

(a) Under exigent circumstances, the department may negotiate directly with an attendant or nurse to deliver personal care services. Exigent circumstances may include, but are not limited to, services to persons living out of state who continue to be eligible for Montana medicaid.

(a3) Reimbursement for personal care services is based on contracted unit rates. The rates are for units of attendant, ~~service or units of nursing~~ nurse supervision, overtime and travel services.

(i) A unit of attendant service is one hour and means an on-site visit specific to a recipient.

(ii) A unit of ~~nursing~~ nurse supervision service is one hour and means an on-site recipient visit ~~plus~~ and related activity specific to that recipient.

(iii) A unit of overtime service is one hour and means services provided by an attendant in excess of 40 hours per week.

(iv) A unit of travel time is one hour and means time spent in travel by an attendant as part of his principal activity, such as travel time between recipient home visits. Travel time does not include time from the attendant's home to the first recipient or from the last recipient home visit back to the attendant's home.

(4) Reimbursement is not available to attendants for mileage to and from recipient homes.

Subsection (3) remains the same but will be renumbered (5).

~~(4)--Transportation-of--provider-personnel-to-and--from-a recipient's-home-is-not-a-reimbursable-service~~

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 Sec. 53-6-141 MCA


2. The current recipient limit of 56 hours per week is being reduced to 40 hours to keep personal care services a cost-effective alternative to nursing home care. Exceptions to the limit would be prior authorized by the Department according to the criteria outlined in the proposed rule. The proposed limitation on escort services is taken from the guidelines issued in the Federal Medical Assistance Manual. More efficient use of services will be provided for by the general limitation upon duplication of services. The specific criteria already relied upon in determining eligibility and

reimbursement for the service are being proposed for incorporation into the rules. The amendment allowing reimbursement for attendant travel time between recipient homes was made to implement a Department of Labor interpretation to the Department's personal care contractor. The proposed amendments would provide explicit notice to recipients of their rights relating to fair hearing and notice from adverse actions. The other changes proposed in this rule are included to clarify policy areas that have been confusing or inconsistently applied.

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 will be effective July 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1988.

In the matter of proposed ) NOTICE OF ADOPTION OF NEW  
rules pertaining to timeshare ) RULES I (8.58.102) and  
sales ) II (8.58.601) THROUGH XVI  
) (8.58.618) PERTAINING TO  
) THE LICENSURE OF TIME-  
) SHARE BROKERS AND SALES-  
) PERSONS AND THE  
) REGISTRATION OF TIME-  
) SHARE OFFERINGS

1. On February 25, 1988, the Board of Realty Regulation published notice of a proposed adoption of rules concerning licensure of timeshare brokers and salespersons and the registration of timeshare offerings at page 332 of the 1988 Montana Administrative Register, issue number 4.

3. Comments to the rules and the board's responses are as follows:

RESPONSE: The comments are appreciated. As indicated by Mr. St. Peter, the fee structure is statutory and a matter for legislation. Rule III is not intended to exceed any statutory requirement pertaining to each development having a broker, but to clarify that, a licensee designated to supervise must be a broker. The board believes that the rule adequately provides for this. Pertaining to campgrounds, particularly the described unique concept, the board must presently rely on the statutes to address the problem, but, if a definite problem arises that can be lawfully resolved by rule, the board will so act.

RESPONSE: The comments are appreciated. No response is required.

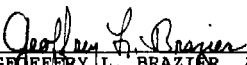
COMMENT: At the public hearing Don Swindle, developer, provided information on the unique campground concept described above and, also, commented that there is a problem with the definition of "timeshare" and that a definitive answer to what a "timeshare" is should be provided.

RESPONSE: The comments are appreciated. The board believes that an adequate definition of "timeshare" is obtainable from the Montana Timeshare Act and to further define "timeshare" by rule would be exceeding its authority.

4. No other comments or testimony were received.

JOHN DUDIS, CHAIRMAN  
BOARD OF REALTY REGULATION

BY:

  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State May 2, 1988.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION
of a new rule pertaining )	OF ARM 12.3.108
to elk permits )	(RULE I) ESTABLISHING
	PREREQUISITES FOR SPECIAL
	ELK PERMIT

TO: All Interested Persons

1. On February 11, 1988 the Montana Fish and Game Commission published notice of a proposed rule concerning prerequisites for acquiring elk permits at page 225 of the 1988 Montana Administrative Register, issue number 3.

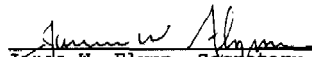
2. The Commission has adopted the rule as proposed with the following changes:

12.3.108 (RULE I) PREREQUISITES FOR SPECIAL ELK PERMIT  
(1) ~~Any person who is the holder of a valid A-5 resident elk~~  
~~license or a valid B-10 nonresident big game combination~~  
~~license may apply for a special elk permit.~~ APPLICANTS FOR  
SPECIAL ELK PERMITS MUST ACQUIRE AN A-5 RESIDENT ELK OR A B-10  
NONRESIDENT BIG GAME COMBINATION LICENSE PRIOR TO APPLYING FOR  
A SPECIAL PERMIT.

3. The Commission has considered the comments received:

COMMENT: The Administrative Code Committee staff recommended that the rule should be written in mandatory language.

RESPONSE: The Commission adopted the suggestion in the changes made in the proposed rule.

  
James W. Flynn, Secretary  
Montana Fish and Game  
Commission

Certified to the Secretary of State May 2, 1988.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION OF ARM
of rules establishing the )	12.9.501 THROUGH 12.9.507
procedures for wildlife habitat )	(RULES I THROUGH VII)
acquisition. )	ESTABLISHING WILDLIFE
	HABITAT ACQUISITION

TO: All Interested Persons:

1. On January 14, 1988 the Montana Fish and Game Commission published notice of the proposed adoption of ARM 12.9.501 through 12.9.507 (Rules I through VII) relating to the establishment of procedures for wildlife habitat acquisition at page 13 of the 1988 Montana Administrative Register, issue number 1.

2. Written and oral comments were received at seven hearings held between February 10 and February 17, 1988. Other written comments were received through February 22, 1988.

3. As a result of the comments received, the rules have been adopted as proposed, except for the following change (new material capitalized and underlined, deleted material interlined):

12.9.501 (RULE I) PURPOSE (1) The fish and game commission and the department of fish, wildlife and parks have the mandate for the protection, preservation and propagation of the fish and wildlife resources of the state and for the promotion of state parks and outdoor recreation. The acquisition of lands, by lease, easement or purchase, for wildlife habitat ~~and recreational access are~~ IS an integral part of this mandate.

AUTH: 87-1-241, MCA      IMP: 87-1-241 and 87-1-242, MCA

4. The commission has considered the comments received:

**COMMENT:** The legislation was directed at wildlife habitat and not recreational access, as is implied in 12.9.501 (Rule I).

**RESPONSE:** The commission agrees that recreational access refers to the department's general mandate and not the specific legislation. The terminology will be deleted to eliminate the confusion. Although a number of people spoke on behalf of access options, the legislative intent of the bill is clear that habitat acquisition is to be the focus of the program.

**COMMENT:** Acquisition of access is a valid part of the program and should be part of the implementing rules.

**RESPONSE:** The commission interprets 87-1-241, MCA, as prohibiting purchases of land whose only purpose would be to provide access. However access could be acquired as an additional benefit of land acquired primarily for wildlife habitat.

**COMMENT:** The department should emphasize outright purchase rather than leases or easements.

**RESPONSE:** The legislative statement of intent clearly states that the department must use the management objectives for each proposal and the desires of the landowner to determine the method of acquiring an interest in land. Otherwise, the statement of intent requires a preference for leases or conservation easements.

**COMMENT:** How will the commission determine "reasonably distributed" throughout the seven regions?

**RESPONSE:** The rules do not specify how the commission must interpret the term "reasonable." However, important habitats are being identified in all seven regions as a part of developing a statewide acquisition plan. The plan will aid the commission in addressing the needs throughout the state. Simple criteria such as dollar amounts or acreages are inappropriate when considering the variety of possible acquisitions and types of interests that might be acquired.

**COMMENT:** The State Land Board should not be a part of the approval process.

**RESPONSE:** Section 87-1-209, MCA, requires approval under some circumstances; the rule is consistent with the statute.

**COMMENT:** The phrase "acquire habitat" should be substituted for "where important habitat is seriously threatened" in ARM 12.9.502 (Rule II).

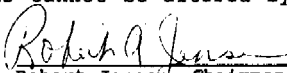
**RESPONSE:** Although the bill itself does not contain the terminology, the statement of intent used the language as proposed in providing direction to the department for its rules.

**COMMENT:** Several comments were received concerning specific parcels of land, operational aspects of the program, or aspects of the program to be covered in the Statewide Habitat Acquisition Plan.

**RESPONSE:** Although these comments were good and evidenced public concern, they were outside the scope of the proposed rules hearing. The public hearing requirements as a part of the rules will allow those concerns to be addressed at a later date.

**COMMENT:** Additional comments were received that were directed at statutory provisions.

**RESPONSE:** These provisions cannot be altered by the commission.

  
Robert Jensen, Chairman  
Fish and Game Commission

Certified to the Secretary of State May 2, 1988.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA


IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of Rule I (42.2.501) relating )	Rule I (42.2.501) relating
to Partial Payments of taxes -)	Partial Payment of taxes -
Rules on Waiver of Penalty )	Rules on Waiver of Penalty
and Interest. )	and Interest.

TO: All Interested Persons:

1. On March 24, 1988, the Department published notice of the proposed adoption of Rule I (42.2.501) relating to Partial Payment of taxes - Waiver of Penalty and Interest at pages 565 and 566 of the 1988 Montana Administrative Register, issue no. 6.
2. The Department has adopted this rule with the following change:

RULE I APPLICATION OF PARTIAL PAYMENTS (1) All partial payments ON ACCOUNTS RECEIVABLE BALANCE received by the Department for the payment of tax, penalty, and interest must be first applied to the amount of interest due, then to the amount of penalty due and then to the tax due.

3. The Department received one comment from the Administrative Code Committee indicating one correction on implementing sections. § 15-25-105 should be § 15-35-105.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 5-2-88

9-5/12/88

Montana Administrative Register



VOLUME NO. 42

OPINION NO. 78

CITIES AND TOWNS - Requirement of public hearing prior to issuance of industrial development revenue bonds;  
CITIES AND TOWNS - Sale of industrial development bonds for community college construction project;  
COMMUNITY COLLEGES - Authority to enter into loan agreements and lease-purchase contracts;  
COMMUNITY COLLEGES - Election requirements with regard to financing for construction project;  
COUNTIES - Inapplicability of election requirement for issuance of revenue bonds to finance community college construction project;  
ELECTIONS - Inapplicability of election requirement for issuance of revenue bonds to finance community college construction project;  
ELECTIONS - Requirements with regard to financing arrangements by a community college district;  
MUNICIPAL CORPORATIONS - Requirement of public hearing prior to issuance of industrial development revenue bonds;  
MUNICIPAL CORPORATIONS - Sale of industrial development bonds for community college construction project;  
REVENUE BONDS - Issuance by city or county for financing community college construction project;  
MONTANA CODE ANNOTATED - Title 90, chapter 5, part 1; sections 7-7-2205, 7-7-2501, 7-7-4423, 20-6-603, 20-9-451 to 20-9-456, 20-9-453, 20-15-301(2), 20-15-404(6), 90-5-101(8), 90-5-102(1)(c), 90-5-104;  
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 29 (1987), 41 Op. Att'y Gen. No. 72 (1986).

- HELD: 1. The election requirement in section 20-9-453, MCA, does not apply to a county's issuance of revenue bonds to finance a community college district's construction project. 42 Op. Att'y Gen. No. 29 (1987) is modified to the extent it suggests a contrary conclusion.
2. A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues.
3. A community college district may enter into a promissory note loan agreement with a private

lender whereby the district would repay the note from college revenues.

4. A community college district may enter into a lease-purchase contract with a private developer whereby the district would pay the lease from college revenues.
5. An election is not required to be held by the community college district to approve the foregoing arrangements for financing a community college construction project. However, a city is required to hold a public hearing prior to issuing an industrial development revenue bond under Title 90, chapter 5, part 1, MCA. Also, when acquiring or constructing sites or buildings, a community college district is subject to the election requirement in section 20-6-603, MCA.

25 April 1988

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

Dear Mr. Lympus:

You have requested my opinion on the following questions pertaining to the Flathead Valley Community College district:

1. May the community college district (the District) enter into a loan agreement with the City of Kalispell (the City) whereby the City would loan the District the proceeds of an industrial development revenue bond issued under Title 90, chapter 5, part 1, MCA, and which the District would repay from revenues of the District?
2. May the District enter into a promissory note loan agreement with a bank or other private lender whereby the District would

repay the note from the District's revenues?

3. May the District enter into a lease-purchase contract with a private developer for the construction of school buildings pledging the revenues of the district to the payment of the lease?
4. Would the utilization of any of the foregoing financing options require prior approval of the electorate of the District?

You have also requested a clarification of 42 Op. Att'y Gen. No. 29 (1987).

Your questions concern the authority of the District to obtain financing for the purpose of constructing campus facilities. The District is considering various alternatives to obtain such financing. One alternative involves an agreement whereby the City would issue an industrial development revenue bond (ID bond) and loan the proceeds from the bond sale to the District, and the District would repay the loan from college revenues. Another alternative involves a promissory note loan agreement between the District and a bank or other private lender, with the District repaying the loan from college revenues. A third alternative involves a private developer undertaking the construction project and leasing it to the District by means of a lease-purchase agreement, with the District paying the lease with college revenues.

In 42 Op. Att'y Gen. No. 29 (1987), I addressed the same types of proposed agreements between Flathead County and the District and held that such agreements were statutorily authorized. Your request for clarification of that opinion focuses on the statement that section 20-9-451, MCA, requiring an election for bonds issued by a county in connection with a county high school, applies to revenue bonds issued by the county for purposes of financing a construction project for the community college. Section 20-15-404(6), MCA, requires the trustees of a community college district to adhere to the school bond provisions of, inter alia, sections 20-9-451 to 456, MCA. Those sections pertain to the issuance of bonds by a county for purposes of a county

high school. Therefore, in accordance with section 20-15-404, MCA, the county is governed by those sections when it issues bonds for purposes of a community college district. Section 20-9-451, MCA, provides in pertinent part:

Sections 20-9-452 through 20-9-456 shall be used for the purposes of indebtedting a county for county high school facilities .... [Emphasis added.]

Section 20-9-453, MCA, provides in part:

Immediately upon the receipt of any bond proposition request from the trustees of the county high school, it shall be the duty of the board of county commissioners to submit such question to the qualified electors of the county .... [Emphasis added.]

Upon reviewing the rules of statutory construction and the statutes pertaining to the issuance of bonds, I conclude that the election requirement in section 20-9-453, MCA, does not apply to the county's issuance of revenue bonds because they do not indebt the county. Although section 20-9-453, MCA, facially applies to any proposed bond issue, it must be read together with section 20-9-451, MCA. See Corwin v. Bieswanger, 126 Mont. 337, 251 P.2d 252, 253 (1953) (statutory construction requires the entire act to be read together to give effect to all provisions therein, if possible). Section 20-9-451, MCA, prescribes the application of the succeeding sections when the county becomes indebted. Clearly, the issuance of general obligation bonds indebts the issuing authority. See § 7-7-2205, MCA. However, revenue bonds are not issued on the credit of, and do not indebt, the issuing authority. Revenue bonds are limited obligation rather than general obligation bonds; they are payable from a limited source, usually from the revenues earned by the facility for which the bonds were issued. See Lamb & Rappaport, Municipal Bonds at 14-15, 103 (1980).

The issuance of revenue bonds by a county is authorized by section 7-7-2501, MCA. Section 7-7-4423, MCA, provides:

(1) No holder or holders of any bonds issued under this part shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon.

(2) Each bond issued under this part shall recite in substance that:

(a) said bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and

(b) said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision. [Emphasis added.]

Thus, a revenue bond issued by the county does not constitute or create a county debt within the meaning of any statutory limitation or provision. Sections 7-7-4423 and 20-9-451, MCA, must be read together. See Rocky Mountain Elevator Co. v. Bammel, 106 Mont. 407, 81 P.2d 673, 676 (1938) (all pertinent provisions of law relating to one subject must be considered together). I therefore conclude that sections 20-9-451 to 456, MCA, do not apply to the issuance of revenue bonds. Thus, the election requirement in those sections does not apply to the county's issuance of revenue bonds to finance the District's construction project. 42 Op. Att'y Gen. No. 29 (1987) is modified to the extent that it is inconsistent with this opinion.

In your inquiry you do not describe the precise nature of the revenue source that would form the basis of the bondholder's security for the revenue bonds. It appears that the District anticipates pledging by contract specific sources of revenue from the college to secure the bonds. Of course, such a contractual pledge would not constitute a general obligation of the District, but would be an integral part of the limited obligation to the bondholders.

Your first question concerns the authority of the District to borrow money from the City through the sale of an ID bond by the City and repay the loan from college revenues. The District has statutory authority to borrow money for college construction projects and

repay the loan from college revenues. § 20-15-301(2), MCA; 42 Op. Att'y Gen. 29 (1987). In issuing ID bonds to finance such projects, the City is governed by Title 90, chapter 5, part 1, MCA, entitled "Industrial Development Projects." Section 90-5-101(8), MCA, includes higher education facilities as an authorized project for issuance of ID bonds. Section 90-5-102(1)(c), MCA, authorizes a city to issue ID bonds and loan the proceeds to others for the purpose of defraying the cost of acquiring or improving a higher education facility. Therefore, this proposed alternative is statutorily authorized. This discussion also answers your question concerning the authority of the District to borrow money from a bank or other private lender. Such authority exists under section 20-15-301, MCA.

Your next question concerns the authority of the district to enter into a lease-purchase agreement with a private developer. This question was answered in 41 Op. Att'y Gen. No. 72 (1986), which held: "A community college board of trustees has authority to lease and/or lease/purchase property for school purposes."

Your last question concerns the requirement of an election to approve any of the foregoing financing alternatives. There are no statutory requirements for such elections to approve the methods of financing discussed above. However, whenever the City issues revenue bonds under Title 90, chapter 5, part 1, MCA, it is required to hold a public hearing on the proposed project. The City may not issue the bonds unless it appears after the hearing that the project is in the City's public interest. § 90-5-104, MCA. Also, the district is subject to the election requirements in section 20-6-603, MCA, when it builds or acquires buildings and property for the college. See 41 Op. Att'y Gen. No. 72 (1986), which held that the statutes pertaining to school districts' acquisition and sale of property applies to community college districts.

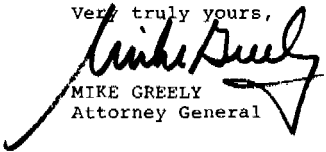
THEREFORE, IT IS MY OPINION:

1. The election requirement in section 20-9-453, MCA, does not apply to a county's issuance of revenue bonds to finance a community college district's construction project. 42 Op. Att'y

Gen. No. 29 (1987) is modified to the extent it suggests a contrary conclusion.

2. A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues.
3. A community college district may enter into a promissory note loan agreement with a private lender whereby the district would repay the note from college revenues.
4. A community college district may enter into a lease-purchase contract with a private developer whereby the district would pay the lease from college revenues.
5. An election is not required to be held by the community college district to approve the foregoing arrangements for financing a community college construction project. However, a city is required to hold a public hearing prior to issuing an industrial development revenue bond under Title 90, chapter 5, part 1, MCA. Also, when acquiring or constructing sites or buildings, a community college district is subject to the election requirement in section 20-6-603, MCA.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 42

OPINION NO. 79

POLICE - Allowance adjustment for retired police officers;  
RETIREMENT - Allowance adjustment for retired police officers;  
MONTANA CODE ANNOTATED - Sections 19-9-804, 19-9-903, 19-9-911, 19-9-1011;  
REVISED CODES OF MONTANA, 1947 - Section 11-1890(3).

HELD: Section 19-9-1011, MCA, provided for an adjustment of the monthly allowance of a police officer who retired on or after July 1, 1975, and before July 1, 1985, in order to bring the allowance up to one-half of a newly hired active police officer's salary as of July 1, 1985, in each city.

26 April 1988

Jim Nugent  
City Attorney  
201 West Spruce  
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion on the following question:

Does section 19-9-1011, MCA, provide for an annual cost-of-living increase in the allowances of police officers who retired between July 1, 1975, and July 1, 1985?

The statute under consideration was enacted in 1985 and amended in 1987. It now reads as follows:

Allowance adjustment. (1) A monthly allowance paid under section 31(3), Chapter 456, Laws of 1977 (formerly section 11-1890(3), R.C.M. 1947), 19-9-804, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, but before July 1, 1985, or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid on July 1, 1985, to a newly



confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city. [Emphasis added.]

§ 19-9-1011, MCA. It is unclear from the language above emphasized whether the allowance adjustment was intended to be a one-time payment to raise the allowance to one-half the 1985 newly confirmed police officer's salary or to be an annual adjustment based upon newly confirmed police officers' salaries in each city in successive years beginning in 1985.

When a statute is ambiguous, the intent of the Legislature is the controlling consideration in interpretation. McClanathan v. Smith, 186 Mont. 56, 606 P.2d 507 (1980). In determining the intent of the Legislature, one looks to the plain meaning of the words used in the statute, and if the intent cannot be discerned, one then examines the legislative history. Thiel v. Taurus Drilling Ltd., 42 St. Rprr. 1520, 710 P.2d 33 (1985); Missoula Co. v. American Asphalt, Inc., 42 St. Rprr. 920, 701 P.2d 990 (1985).

Section 19-9-1011, MCA, was enacted as a part of House Bill 754 in the 1985 legislative session under the following title:

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN ALLOWANCE ADJUSTMENT FOR MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM RETIRED ON OR AFTER JULY 1, 1975, OR THEIR BENEFICIARIES; PROVIDING FUNDING FOR THE ADJUSTMENT[.]"

As introduced, the bill clearly would have provided for an adjustment each year based upon a newly confirmed police officer's salary:

(1) Subject to the restriction contained in subsection (2), a monthly allowance paid under 19-9-804, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid to a newly confirmed, active police officer of the city that last employed the

member as a police officer, as provided each year in the budget of that city.

The bill was amended by the House to provide:

(1) ~~Subject-to-the-restriction-contained-in subsection-(2)-a~~ A monthly allowance paid under 19-9-804, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, BUT BEFORE JULY 1, 1985, or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid ON JULY 1, 1985, to a newly confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city.

Upon transmittal of the amended bill to the Senate, the sponsor of the bill, Representative Harry Fritz, explained the bill during a meeting of the Finance and Claims Committee on April 10, 1985, as reflected in the minutes:

It is a bill providing an allowance adjustment for members of the municipal police officers' retirement system for those retiring between July 1, 1975 and July 1, 1985. He said those police officers retiring before the first date have an automatic cost of living increase and retired at 1/2 of the entering salary of a police officer. Before July 1, 1975 there is no problem. Those who retired in 75, 76 and 77 had the inflation period in those years, had the inflation period in those years [sic]. It takes those officers between 75 and 85 and provides a cost of living increase based on the entering salary in 1985. It does not solve the problem permanently because this group will remain static. There is this inequity in the system.

Larry Conner of the Montana Police Protective Association, speaking as a proponent, noted the bill proposed "a one time cost of living increase." Bill Steele, then president of the Retired Police Officers' Association, supported the bill, stating it was "a one time shot" which would bring the group of retirees up to the minimum in 1985, but that the next year they would

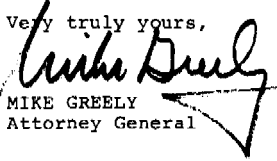
start falling behind again, and that it would be necessary "to come back and address this again down the line." Minutes, Senate Finance and Claims Committee, April 10, 1985, at 8-9.

The affirmative act of amending the bill to add the words "on July 1, 1985," expressed the intent to limit the allowance adjustment to a one-time adjustment based on 1985 active police salaries. Due to an oversight, the language "as provided each year" was not deleted, leaving an ambiguity in the statute. A statute should be construed to give effect to the object intended to be achieved.

THEREFORE, IT IS MY OPINION:

Section 19-9-1011, MCA, provided for an adjustment of the monthly allowance of a police officer who retired on or after July 1, 1975, and before July 1, 1985, in order to bring the allowance up to one-half of a newly hired active police officer's salary as of July 1, 1985, in each city.

Very truly yours,



MIKE GREELY  
Attorney General

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

IN THE MATTER of the Petition of )  
Marvin Schock, d/b/a Homes of the )  
Future, for a Declaratory Ruling ) TRANSPORTATION DIVISION  
that Certain Transportation of )  
Mobile Homes is not Transportation ) DOCKET NO. T-9157  
for Hire Under Title 69, Chapter )  
12, MCA. )

DECLARATORY RULING

On December 1, 1987, the Public Service Commission (Commission) received a Petition for Declaratory Ruling from Marvin Schock, d/b/a Homes of the Future. The question raised by Mr. Schock for ruling is as follows:

Whether the transportation by mobile home dealers of mobile homes to dealers' sales lots, for the purpose of selling the mobile homes on consignment, or for the purpose of selling mobile homes that have been repossessed by financial institutions, is subject to regulation by the Commission pursuant to Title 69, Chapter 12, MCA.

It is Mr. Schock's position that such transportation should not be regulated by the Commission.

On January 6, 1988, the Commission issued a notice of the Petition to all regulated carriers in Montana as well as to others who may have an interest in the ruling. Comments and/or requests for hearing were to be submitted by February 1, 1988. Comments in opposition to regulation of the transportation in question were received from:

Fergus County Federal Credit Union

Bill Pierce, President, Geo. R. Pierce, Inc.

Comments in support of regulation of the transportation in question were received from:

Wendell L. Keller, President, Montana Mobile Home Transport

A.E. Bonnarens, PSC Enforcement Officer

Larry Kling, President, Transit Homes of America, Inc.

Robert L. Fritz, President, Bill's Mobile Home Transport, Inc.

Calvin Bauer, Master Movers, Inc.

An explanation of the position of the Motor Vehicle Division, Montana Department of Justice, was provided by Larry Majerus, Administrator of the Motor Vehicle Division. Daryll Schoen submitted a statement of the position of the Registrar's Bureau of the Motor Vehicle Division. Mr. Calvin Bauer requested a hearing on the Petition but did not provide good cause why a hearing should be held. The Commission finds that the Petition requires a legal conclusion on certain of its powers and obligations under Title 69, Chapter 12, MCA. The Commission

sion finds that no factual issues are present; therefore, the request for a hearing is denied.

#### DISCUSSION

With certain exceptions discussed below, the Public Service Commission regulates motor carriers who transport for hire on the public highways of the State of Montana. The pertinent statutory definitions are as follows:

"For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

69-12-101(5), MCA.

"Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

69-12-101(6), MCA.

The Commission does not regulate motor carrier transportation that has been made exempt pursuant to 69-12-102, MCA, nor does it regulate private motor carriage. No exemption applies to the transportation of mobile homes. The question, therefore, is whether the transportation contemplated by this Petition should be considered private carriage.

The Montana Supreme Court considered private as distinguished from "for-hire" carriage in Board of Railroad Commissioners v. Gamble-Robinson Co., 111 Mont. 441, 111 P.2d 306 (1941). In Gamble-Robinson the Commission attempted to enjoin three Billings wholesale grocers from operating motor carriers on the public highways of Montana without certificates of public convenience and necessity. Each grocer maintained a truck for the delivery of its own merchandise to customers in Billings and the outlying area. These deliveries were found to be incidental to the wholesale business of the grocers; and it was found that the grocers were not engaged in the business of hauling property for others, nor did they compete with those who were so engaged. The Supreme Court upheld the ruling of the lower court which refused to enjoin the transportation activity of the grocers. In the process the Court stated the question as follows: "... the question here is whether a business man, a farmer, or anyone else comes within the statute who operates a motor vehicle for the delivery of his own

merchandise or produce purely as an incident to his regular business and does not compete for the transportation of the persons and property of others, with those engaged in the transportation business." Gamble-Robinson, 111 Mont. at 448. In the course of a lengthy discussion of this question the Court concluded that only those persons engaged in the business of transportation for others are properly subject to regulation under Montana law. Persons engaged in a business other than transportation, but who transport as an incident to that business, are not subject to regulation.

The conclusion of the Montana Supreme Court in Gamble-Robinson, is an expression of what has come to be known as the "primary business doctrine." The "primary business doctrine" has been addressed numerous times by the Interstate Commerce Commission. See, e.g., Woitishek Common Carrier Application, 42 MCC (Motor Carrier Cases) 193, 205-206 (1943). The Commission acknowledges that there is a good argument for considering dealer transportation of mobile homes on consignment as transportation incidental to a primary business. A consignment, as used here, is an agreement whereby one person (the dealer) agrees to make a sale for another (the seller) in return for a percentage of the sale price. The object of a consignment for a mobile home dealer is to make a sale. There is no question that transportation of the mobile home can be considered incidental to that object. For the following reasons, however, the Commission finds that despite the plausible incidental nature of the transportation in question, such transportation should be regulated pursuant to Title 69, Chapter 12, MCA.

First, while dealer transportation of mobile homes on consignment may in theory be incidental to a primary business, in practice it is very difficult to verify that it is incidental. Some transportation is conspicuously incidental to a primary business, e.g., the delivery of food from a grocery store, or the delivery of furniture from a furniture store. In the case of mobile home transportation, however, it would be easy for dealers to get into the transportation business under the guise of consignment agreements. It might be possible to determine the real nature of such transportation on a case-by-case basis, but this agency does not have the enforcement resources for such a task.

Second, a person engaged in incidental transportation should not compete with those engaged in the transportation

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But for the expense of publishing Declaratory Rulings in the Montana Administrative Register the Commission would reproduce the entire discussion of private vs. "for-hire" carriage contained in Gamble-Robinson. Interested persons are urged to read the entire case which is the most thorough, and still current, exposition of this question in Montana law.

business. See discussion of Gamble-Robinson, supra. There is a sense in which all private or incidental carriage competes with those in the transportation business. (Someone who needs groceries or furniture delivered would have to hire a common carrier in the absence of other alternatives.) However, in this case, a common carrier industry has grown up around the transportation of mobile homes. There is no question, as several comments in response to this Petition indicated, that the transportation of mobile homes to be sold on consignment is a significant part of that business. The Commission is obligated by statute to encourage common carrier motor transportation. Section 69-12-202, MCA, reads as follows:

69-12-202. Encouragement of common carrier motor transportation. To fully secure adequate motor transportation facilities for all users of such service and to secure the public advantages thereof, the commission shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose.

The Commission finds that allowing dealer transportation of mobile homes on consignment would be detrimental to those engaged in the business of transporting mobile homes. As such, allowing dealer transportation of mobile homes on consignment would discourage a sound system of common carrier motor transportation and would therefore be in violation of the Commission's statutory obligation.

With respect to the question of whether a mobile home dealer can transport to his sales lot for sale a mobile home that has been repossessed by a financial institution, the analysis is the same. A mobile home dealer can enter into a consignment agreement with a financial institution, just as he can with any other entity or person. But the dealer may not, absent the requisite authority, transport mobile homes to be sold on consignment.

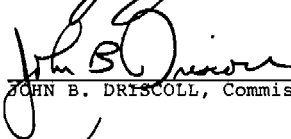
#### Ruling

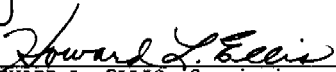
The transportation of a mobile home by a mobile home dealer to that dealer's sales lot for sale on consignment is common carriage, regulated by the Public Service Commission. The stay of enforcement of such regulation, entered by the Commission on November 9, 1987, will be lifted one week following the publication of this ruling in the Montana Administrative Register.

Done and Dated this 2nd day of May, 1988 by a vote of  
5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

  
CLYDE JARVIS, Chairman

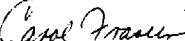
  
JOHN B. DRISCOLL, Commissioner

  
HOWARD L. ELLIS, Commissioner

  
TOM MONAHAN, Commissioner

  
DANNY OBERG, Commissioner

ATTEST:

  
Carol Frasier  
Secretary

(SEAL)

9-5/12/88

Montana Administrative Register



NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter            1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department       2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through 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.

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