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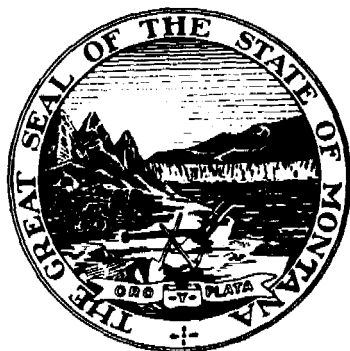
JUN 15 1990

OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

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JUN 15 1990

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. **OF MONTANA**

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of rules pertaining)
to the grain fee schedule)

NOTICE OF PROPOSED
AMENDMENT OF RULE
4.12.1012

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 16, 1990, the Department of Agriculture proposes to amend certain rules as above stated relating to the grain fee schedule for the State Grain Laboratory.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

4.12.1012 GRAIN FEE SCHEDULE (1) The department has adopted a revised schedule of fees to be charged by the State Grain Laboratories Laboratory at Great Falls, Montana.

(2) SCHEDULE OF FEES AND CHARGES

EFFECTIVE DATE: August 1, 1990.

(K) Official Lot Inspection - bulk, boxcar, hopper car, or truck/trailer (all grains), per request, sampling and grade only.....\$15.00

Submitted Sample Inspection, per sample, grade only.....5.50

Submitted Sample Inspection With Sprout Damaged Kernels, Sprout Damage Automatically Shown with Grade, per sample..8.00

Ineffectual Factor, factor only determinations-(per factor)2.50

Sampling only - all lots, bulk, boxcar or truck/trailer, per request, (all grains)13.00
.....7.00

Protein Tests, NIR per sample.....5.00
.....4.50

Dry Basis.....5.50

Protein Test, Kjeldahl method (malting barley) per sample.....5.50

Moisture Tests - (oven), per sample.....4.00

*Malting Barley Analysis, per request.....4.00

Copies of Certificates2.50

~~Special Service Fee (immediate handling per sample,
telephone reports, etc.)2.50~~

(H) LEVEL ONE SERVICE: Submitted samples done within 48 hours or less, on a first arrival basis, includes telephone report, fees listed below plus \$2.50 per request.

(I) Level One Service will be automatically suspended if back log of Level Two samples exceeds two (2) weeks.

(J) LEVEL TWO SERVICE: Submitted samples done on a first arrival basis after Level One samples, fees listed below.

(K) Mailing of Samples - (per sample --- plus postage) ---2.50 postage only charged.....

Inspector --- Sampler (per man-hour, straight time) -----20.00
(overtime) -----30.00

(A) REGULAR HOURS AND HOURLY RATE: 8:00 a.m. to 5:00 p.m. Monday through Friday at \$15.00 per hour per individual assessed in half-hour intervals, EXCEPT for holidays. All other hours and holidays will be considered overtime. Minimum 2 hour charge.

(B) OVERTIME HOURLY RATE: \$22.50 per hour per individual assessed in half-hour intervals with a minimum 2 hour charge except before or a continuation of a regular work day.

(C) OVERTIME HOURLY RATE IN CONJUNCTION WITH OFFICIAL SAMPLING OF UNIT TRAINS CONSISTING OF 20 OR MORE CARS: \$10.00 per hour per individual, assessed in half-hour intervals with a minimum 2 hour charge except before or a continuation of a regular work day.

(F) Stowage Storage Examination (minimum 1 hour), per hour.....20.00
.....15.00

FBIS-Survey-Minimum (dockage, moisture, etc.)200.00

(L) * Includes actual percent of plump barley, skinned and broken kernels, and thin barley.

Special inspection of grain --- charged by hourly rates and mileage.

(N) Requests for services not covered by the above schedule of fees and charges will be performed at the applicable hourly rate stated herein plus mileage and travel time, if applicable.

(K) Re-inspection (original grade sustained) - regular fee during routine inspection: assessed.

Re-inspection (original grade changed) - regular sampling fee during routine inspection tour: no fee will be assessed.

Protein Retest - (original protein test sustained) - regular protein fee assessed, plus sampling fee during regular inspection tour.

Protein Retest - (original protein test changed) - differences of more than 0.2% 0.3% - regular sampling fee during routine inspection tour: no fee will be assessed.

(M) In case of a material error in grade or protein, a corrected certificate will be issued without a fee.

REGULAR HOURS: 8:00 a.m. to 5:00 p.m. Monday through Friday
EXCEPT holidays.

OVERTIME HOURLY RATE: \$30.00 per hour per individual assessed in half-hour intervals with a minimum 1-hour charge. The overtime hourly rate will be assessed for sampling and for inspectors when requested to work other than regular weekly hours.

(D) HOLIDAYS: Regular State Holidays: New Years Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day and Heritage Day (floating).

(E) MILEAGE, TRAVEL TIME AND TRAVEL EXPENSES:

1. Mileage charges based on current Montana State Schedule. Mileage will not be charged within the Great Falls metropolitan area.

A. Local Trips: The regular fees apply for one trip per day to each railroad yard or elevator. When a second trip in a day is requested, the applicant will be assessed \$20.00 per trip.

B. Out-of-Town Trips: There will be a \$30.00 assessment for all out-of-town trips.

2. Travel Time (Out of Town Trips): For each trip requested, the applicant will be assessed \$30.00.

--2-- When additional 3. Travel expenses are when incurred, i.e. mileage, meals or lodging, those expenses in

addition to other fees and charges will be assessed the applicant.

(F) PAYMENT TERMS: Net 30 days with a One and One/Half Percent (1 1/2)% interest charge on past due balances.

(G) OFFICIAL SERVICES: Fees include FGIS supervision fees.

REASON: This change conforms this rule to meet requirements of the Federal Grain Inspection Service over the past numerous years to clarify and standardize fee schedules nationwide and reduce or eliminate fees to meet the requirement of 80-4-721 (3). All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of grain, shall reflect as nearly as possible the actual cost of the services. Automatically show sprout damage in conjunction with grade at the request of the grain industry on submitted samples.

For purpose of section 80-4-402 (9) MCA Definitions the term grain shall include beans, peas, lentils, buckwheat, hullless barley, safflower, rapeseed, canary seed and alfalfa.

(3) SERVICES FOR AMA

OFFICIAL SERVICES UNDER THE AGRICULTURAL MARKETING ACT OF 1946. AMENDED

SCHEDULE OF
FEES AND CHARGES

(A) MILEAGE, TRAVEL TIME AND TRAVEL EXPENSES:

1. Mileage charges: based on current Montana State Schedule...

A. Mileage: round trip charged from origin to sampling location.

2. Travel time: regular hourly rate, round trip, from origin to sampling location.

3. Travel expenses: when additional expenses are incurred, I.E., mileage or lodging those expenses in addition to other fees and charges will be assessed the applicant.

(B) SERVICES:

BEANS, PEAS AND LENTILS

Field run (per lot or sample) - grade only.....\$12.00

Other than field run (per lot or sample) - grade only....

.....10.00

Ineffectual factor, factor only determination, per

factor2.50

Sampling Bulk; boxcar, hopper car, truck/trailer, all
.....8.00

Sampling Bagged;.....Hourly Rate

(C) In case of material error in grade, a corrected
certificate will be issued without a fee.

(D) Requests for services not covered by the above
schedule of fees and charges will be performed at the
applicable hourly rate stated herein plus mileage and travel
time if applicable.

(4) NONOFFICIAL SERVICES NOT PERFORMED UNDER THE USGSA
OR AMA:

Malting Barley Germination, 48 hour hydrogen peroxide or
72 hour blotter test per determination.....5.00

Malting Barley Chit Determination, per determination....
.....5.00

Malting Barley, Variety Identification, per sample...4.00

Falling Numbers Determination, per determination....7.50

FAX Charge, of grade certificate per transmission...3.00

Auth: 80-4-721 MCA

Imp: 80-4-721 MCA

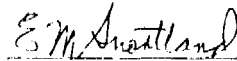
REASON: This change adds fees for added services being provided by the State Grain Laboratory under the Agricultural Marketing Act and for Nonofficial Services Not Performed Under the United States Grain Standards Act or the Agricultural Marketing Act. These fees were developed after comparison with the USDA/FGIS and the State of Washington. Both the USDA/FGIS and the State of Washington perform inspection services under the AMA (Graded Commodities). These fees meet the requirement of 80-4-721 (3). All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of grain, shall reflect as nearly as possible the actual cost of the services.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Department of Agriculture, Capitol Station, Helena, Montana, 59620-0201, no later than July 14, 1990.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written

request for a hearing and submit this request along with any comments he has to the Department of Agriculture, no later than July 14, 1990.

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



E. M. Snortland, Director
Department of Agriculture

Certified to the Secretary of State June 4, 1990.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.24.409 FEE SCHEDULE
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 14, 1990, the Board of Landscape Architects proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.24.409 FEE SCHEDULE (1) and (2) will remain the same.

- (3) Landscape architects fee schedule:
- | | |
|--|--------------|
| (a) Application | \$ 75.00 |
| (b) Certificate | 35.00 |
| (c) Examination (full) | 380.00 |
| (d) Examination - Section 1 | 45.00 |
| Section 2 | 45.00 |
| Section 3 | 120.00 |
| Section 4 | 90.00 |
| Section 5 | 80.00 |
| (e) UNE Re-evaluation, per sheet
for performance problems | 35.00 |
| (f) License renewal | 90-00 110.00 |
| (g) Duplicate certificate | 35.00 |
| (h) Stamps - seals | 25.00 |
| (i) Reexamination registration fee | 25.00 |
| (4) will remain the same." | |

Auth: Sec. 37-1-134, 37-66-202, MCA; IMP, Sec. 37-1-134, 37-66-305, 37-66-307, MCA

REASON: This amendment is needed because the number of licensees has been decreasing and costs remain the same, making it necessary to raise renewal fees to a level commensurate with the costs of the licensing program. The amendment is also needed to impose a registration fee for applications for reexamination to cover costs associated with administration of the examination and ordering of examination supplies.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Landscape Architects, 1424 - 9th Avenue, Helena, Montana 59620, no later than July 12, 1990.

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

comments he has to the Board of Landscape Architects, 1424 - 9th Avenue, Helena, Montana 59620, no later than July 12, 1990.

5. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 31 based on the 310 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS
SANDRA FISCHER, CHAIRPERSON

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF RECONSIDERATION BY THE
reconsideration of the) BOARD OF PUBLIC EDUCATION ACCREDI-
amendment of Endorse-) TATION COMMITTEE OF THE PROPOSED
ment Information and) AMENDMENT OF ARM 10.57.301,
Endorsement Information) ENDORSEMENT INFORMATION AND NEW RULE
of Computer Science) I, ENDORSEMENT OF COMPUTER SCIENCE
Teachers) TEACHERS

TO: All Interested Persons

1. On December 21, 1989, the Board of Public Education published notice of the proposed amendment concerning Endorsement Information and New Rule I concerning Endorsement of Computer Science Teachers, on page 2116 of the 1989 Montana Administrative Register, issue number 24.

2. Due to extensive comments received at the February 2, 1990 hearing in the matter of the amendment of ARM 10.57.301, Endorsement Information and New Rule I, Endorsement of Computer Science Teachers, the Board of Public Education has referred the matter to its Accreditation Committee for further review and recommendations for adoption to the full Board of Public Education.

Bill Thomas
BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:

Barbara L. Smith

Certified to the Secretary of State June 4, 1990.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE PROPOSED
amendment of rules	)	AMENDMENT OF RULES
24.9.225, Procedure on	)	24.9.225, PROCEDURE ON FINDING
Finding of Lack of	)	OF LACK OF REASONABLE CAUSE,
Reasonable Cause, 24.9.262A,	)	24.9.262A, ISSUANCE OF RIGHT TO
Issuance of Right to Sue	)	SUE LETTER WHEN REQUESTED BY A
Letter When Requested by a	)	PARTY, AND 24.9.264, EFFECT OF
Party, and 24.9.264, Effect	)	ISSUANCE OF RIGHT TO SUE LETTER
of Issuance of Right to Sue)	
Letter)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 14, 1990, the Human Rights Commission proposes to amend ARM 24.9.225, 24.9.262A and 24.9.264. ARM 24.9.225 relates to the procedures to be followed by the commission staff and the parties in a case when the commission staff's investigation of the case concludes that there is a lack of reasonable cause to believe unlawful discrimination occurred. ARM 24.9.262A relates to the procedures to be followed by the commission staff and the parties in a case when a party requests that the commission staff administrator issue a right to sue letter allowing the charging party to file the complaint in district court. ARM 24.9.264 relates to the effect of issuance of a right to sue letter and the procedures to be followed by the parties in a case and the commission when a party objects to issuance of a right to sue letter.

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

24.9.225 PROCEDURE ON FINDING OF LACK OF REASONABLE CAUSE

(1) If the staff finds lack of reasonable cause to believe discrimination occurred in regard to any complaint, the staff shall serve notice of the finding on all parties. The notice shall include a statement of the reasons for the finding. The notice shall be accompanied either by a dismissal order and right to sue letter in accordance with ARM 24.9.263 or by a statement allowing the charging party or aggrieved person to request a hearing before the commission.

(2) The determination to dismiss the complaint and issue a right to sue letter or to allow the charging party or aggrieved person an opportunity for hearing before the commission shall be within the sound discretion of the administrator. If the administrator elects to allow the charging party or aggrieved person an opportunity for hearing before the commission, the notice shall specify the time within which the charging party or aggrieved person must file a written request for hearing which in no case shall be less than 14 days from the date the notice of the finding is mailed to the parties.

(3) Upon a finding of lack of reasonable cause to believe discrimination occurred and the administrator's grant of an opportunity for a hearing, if the charging party or aggrieved person makes a timely written request for hearing the administrator shall certify the case for hearing in accordance with ARM 24.9.230. If no timely written request for hearing is made the staff shall issue a dismissal order and right to sue letter in accordance with ARM 24.9.263.

(4) Upon request of a party made within a reasonable time, the commission may vacate an order of dismissal issued pursuant to subsection (3), if vacating the order is justified for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) fraud (whether intrinsic or extrinsic), misrepresentation, other misconduct of an adverse party, or gross error by the staff; or

(c) any other reason justifying relief from the operation of the dismissal order.

(5) A motion under subsection (4) does not affect the finality of a dismissal order or suspend its operation.

(6) The commission may correct errors on its own motion. The commission may vacate an order on its own motion where there is a lack of jurisdiction or where there has been fraud upon the commission.

(7) Any objection to a dismissal order and right to sue letter issued under subsection (1) shall be filed in accordance with the provisions of ARM 24.9.264.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, 49-3-312, MCA.

24.9.262A ISSUANCE OF RIGHT TO SUE LETTER WHEN REQUESTED

BY A PARTY (1) Any party to a case before the commission may request that the administrator issue a right to sue letter if the commission has not yet held a contested case hearing and 12 months have elapsed since the complaint was filed.

(2) The administrator may refuse to issue a right to sue letter if:

(a) The party requesting the issuance of the right to sue letter has failed to comply with the terms of a lawful subpoena issued during investigation;

(b) The party requesting the issuance of the right to sue letter has waived the right to request removal either by specific written waiver or by conduct constituting an implied waiver;

(c) The commission or its hearing examiner has scheduled a hearing to be held within 90 days of service of the notice of certification for hearing, unless the request is made within 30 days of service of the notice of certification for hearing; or

(d) The party requesting the issuance of a right to sue letter has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) A party who requests issuance of a right to sue letter and is dissatisfied with a decision of the administrator to refuse to issue a right to sue letter may seek commission review of the decision by filing a written objections within 14

days after the decision is served. The date of service is the date the administrator's decision is mailed. Briefs are not required. A party who files such an objection and wishes to file a supporting brief must file and serve the brief within five days of filing the objection. Any opposing party who wishes to file an answer brief must file and serve the brief within ten days of service of the initial brief. The party making the objection who wishes to file a reply brief must file and serve the brief within ten days of service of an answer brief. If the party filing an objection does not file a supporting brief, any opposing party may request permission from the commission to file a brief in opposition to the objection. The objections will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objections will be based upon the written record unless oral argument is requested and authorized by the commission.

(4) After receipt of written objections to a decision to refuse to issue a right to sue letter, the commission will set a time for consideration of the objections. Section 2-4-604, MCA, governs the commission's consideration of the objections.

(5) If the commission sustains the objections to the refusal to issue a right to sue letter, it will direct the administrator to issue a right to sue letter.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-509, 49-3-312, MCA.

24.9.264 EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER

(1) The issuance of a right to sue letter pursuant to ARM 24.9.222, 24.9.225, or 24.9.262A shall constitute the completion of the administrative process with regard to any complaint of discrimination in which a right to sue letter is issued.

(2) A party who is dissatisfied with a decision to issue a right to sue letter may seek commission review of the decision by filing a written objections within 14 days after the decision is served. The date of service is the date the decision is mailed. Briefs are not required. A party who files such an objection and wishes to file a supporting brief must file and serve the brief within five days of filing the objection. Any opposing party who wishes to file an answer brief must file and serve the brief within ten days of service of the initial brief. The party making the objection who wishes to file a reply brief must file and serve the brief within ten days of service of an answer brief. If the party filing an objection does not file a supporting brief, any opposing party may request permission from the commission to file a brief in opposition to the objection. The objections will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objections will be based upon the written record unless oral argument is requested and authorized by the commission.

(3) After receipt of written objections to a decision to issue a right to sue letter, the commission will set a time for consideration of the objections. Section 2-4-604, MCA, governs the commission's consideration of the objections.

(4) If the commission sustains the objections to the issuance of a right to sue letter, it will reopen the case before the commission by remanding the case to the division for further investigation or to be certified for hearing.

(5) If the commission affirms the issuance of the right to sue letter, it will notify the parties of its decision in writing. The complainant will have 90 days after receipt of the commission's order affirming the issuance of the right to sue letter to petition the district court for appropriate relief.

(6) If the court later finds that it does not have jurisdiction over the case in which the right to sue letter was issued because of the improper issuance of the letter, then the charging party may apply to reopen the complaint before the commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-509, 49-3-312, MCA.

3. The commission proposes to add new subsection (7) to ARM 24.9.225 to make it clear that parties filing objections to the administrator's decision to dismiss a case and issue a right to sue letter upon a lack of reasonable cause finding must follow the procedures specified in ARM 24.9.264. The commission proposes to amend ARM 24.9.262A by adding timelines for filing briefs in support of or in opposition to an objection to the administrator's refusal to issue a right to sue letter requested by a party. The amendment is necessary to provide timelines for filing and serving such briefs to ensure that briefs are filed in time for adequate review by the commission and to avoid prejudice to a party from receiving a brief without adequate time to respond. The commission proposes to amend ARM 24.9.264 by adding timelines for filing briefs in support of or in opposition to an objection to the administrator's decision to issue a right to sue letter. The amendment is necessary to provide timelines for filing and serving such briefs to ensure that briefs are filed in time for adequate review by the commission and to avoid prejudice to a party from receiving a brief without adequate time to respond.

4. The authority of the commission to make the proposed amendments is based on sections 49-2-204 and 49-3-106, MCA.

5. Interested parties may submit their data, views or argument on the proposed amendments in writing to the Montana Human Rights Commission, P.O. Box 1728, Helena, Montana 59624 no later than July 12, 1990.

6. If a person who is directly affected by the proposed amendments wishes to express his views orally or in writing at a public hearing, he must submit a written request for a hearing along with any written comments to the Montana Human Rights Commission, P.O. Box 1728, Helena, Montana 59624 no later than July 12, 1990.

7. An opportunity for oral argument at a later date will be granted if the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendments, by a governmental subdivision or agency, from the administrative code committee of the legislature, or by an association having not less than 25 members who will be

directly affected. Based upon the number of potential parties to cases, 10% of those persons directly affected is more than 25 persons.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIR

By:

Anne L. MacIntyre
ANNE L. MACINTYRE
ADMINISTRATOR
HUMAN RIGHTS COMMISSION STAFF

Certified to the Secretary of State June 4, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF REPEAL	)	NOTICE OF PROPOSED REPEAL
of ARM 42.19.301 relating to)	)	of ARM 42.19.301 relating to
Clarification of Exception	)	Clarification of Exception
to Tax Levy Limit	)	to Tax Levy Limit

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Department of Revenue proposes to repeal ARM 42.19.301 relating to clarification of exception to tax levy limit.

2. The rule as proposed to be repealed is on page 42-1921 of the Administrative Rules of Montana.

42.19.301 CLARIFICATION OF EXCEPTION TO TAX LEVY LIMIT
(AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-10-401, 15-10-402, 15-10-411 and 15-10-412 MCA).

3. ARM 42.19.301 is proposed to be repealed because of the adoption of SB 65 during the 1989 Legislature.

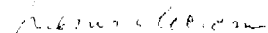
4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to:

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

no later than July 13, 1990.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 13, 1990.

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


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 4, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF THE PROPOSED ADOPT-
of Rule I, Relating to) TION of Rule I, Relating to
Gasoline from Refineries) Gasoline from Refineries

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Department proposes to adopt rule I relating to gasoline from refineries.
2. The rule as proposed to be adopted provides as follows:

RULE I EXEMPTION - U.S. AND OTHER STATES (1) Licensed gasoline distributors making sales of gasoline, including aviation fuel, to the United States or another State FOB rack for use by the purchaser out of the State of Montana shall report such sale as a credit to the amount of gasoline distributed on the distributor's monthly statement required by 15-70-205, MCA.

3. Authority to adopt this rule is found at 15-70-104, MCA and the rule implements 15-70-205, MCA.

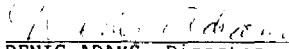
4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

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

no later than July 13, 1990.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 13, 1990.

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


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 4, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.27.604	)	of ARM 42.27.604 relating to
relating to Payment of	)	Payment of Alcohol Tax
Alcohol Tax Incentive	)	Incentive

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Department of Revenue proposes to amend ARM 42.27.604 relating to payment of alcohol tax incentive.

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

42.27.604 PAYMENT OF ALCOHOL TAX INCENTIVE (1) Except as provided for in 15-70-522(3), MCA, the net alcohol tax incentive payment on each gallon of alcohol distilled under 15-70-522(1), MCA, is:

<u>Date</u>	<u>Tax Incentive Payment per Gallon</u>
After July 1, 1983	70¢
After April 1, 1985	50¢
After April 1, 1987	30¢
After April 1, 1989	--No-payment
<u>Beginning July 1, 1993</u>	<u>No payment</u>

(2) through (6) remain the same.

3. Authority to amend the rule is found at 15-70-104 MCA and implements 15-70-522 MCA.

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


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

no later than July 13, 1990.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 13, 1990.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed

adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 4, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-) NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.22.1311) of ARM 42.22.1311 relating to
relating to Updating Trend) Updating Trend Factors for
Factors for Industrial) Industrial Machinery and
Machinery and Equipment) Equipment

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Department of Revenue proposes to amend ARM 42.22.1311 relating to updating trend factors for industrial machinery and equipment.

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

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) The department of revenue will utilize the machinery and equipment trend factors which are set forth on the following tables. The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Industries with similar trending factors are grouped. The schedules in the rule reflect an average of trend factors for each industry group. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.

INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS
1988 1989 = 100%

YEAR---TABLE-1---TABLE-2---TABLE-3---TABLE-4---TABLE-5-TABLE-6

1988	1:000	1:000	1:000	1:000	1:000	1:000
1987	1:036	1:020	1:037	1:033	1:036	1:033
1986	1:044	1:035	1:049	1:042	1:044	1:043
1985	1:052	1:041	1:066	1:050	1:051	1:053
1984	1:060	1:056	1:086	1:069	1:067	1:068
1983	1:095	1:082	1:112	1:102	1:097	1:096
1982	1:110	1:100	1:128	1:124	1:113	1:120
1981	1:163	1:159	1:182	1:180	1:165	1:168
1980	1:208	1:209	1:300	1:310	1:280	1:283
1979	1:427	1:420	1:447	1:450	1:426	1:406
1978	1:557	1:549	1:502	1:509	1:551	1:541
1977	1:674	1:667	1:700	1:713	1:665	1:670
1976	1:758	1:762	1:806	1:803	1:749	1:764
1975	1:861	1:868	1:918	1:916	1:851	1:900
1974	2:093	2:125	2:141	2:168	2:083	2:072

1973	2-455	2-492	2-481	2-528	2-445	2-346
1972	2-538	2-581	2-571	2-628	2-537	2-420
1971	2-622	2-672	2-673	2-727	2-637	2-499
1970	2-788	2-842	2-857	2-880	2-817	2-648
1969	2-959	3-026	3-059	3-090	3-016	2-819

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5	TABLE 6
1989	1.000	1.000	1.000	1.000	1.000	1.000
1988	1.055	1.052	1.050	1.056	1.053	1.058
1987	1.102	1.087	1.092	1.110	1.095	1.107
1986	1.120	1.097	1.108	1.123	1.110	1.122
1985	1.137	1.104	1.117	1.129	1.118	1.135
1984	1.158	1.118	1.132	1.144	1.135	1.152
1983	1.188	1.143	1.162	1.176	1.165	1.180
1982	1.208	1.166	1.184	1.194	1.188	1.196
1981	1.265	1.230	1.242	1.243	1.248	1.250
1980	1.399	1.366	1.374	1.367	1.382	1.381
1979	1.545	1.501	1.508	1.518	1.526	1.531
1978	1.692	1.641	1.641	1.664	1.666	1.671
1977	1.822	1.769	1.767	1.776	1.794	1.795
1976	1.933	1.872	1.860	1.866	1.906	1.876
1975	2.053	1.995	1.977	1.981	2.031	1.988
1974	2.303	2.280	2.192	2.215	2.306	2.239
1973	2.659	2.645	2.537	2.635	2.696	2.626
1972	2.756	2.736	2.622		2.805	
1971	2.865	2.830	2.709		2.907	
1970	3.062	3.007	2.875		3.061	

TABLE-1:

Chemical-Mfg--(12)
Fertilizer-Mfg--(12)
Oxygen-Generation-Plant-(20)
Sulfur-Mfg--(12)
Flour-Cereal-Feed-(16)
Seed-Plant-(16)
Grain-Elevator-(16)
Wood-Pellet-Plant-(16)
Printing-(12)

TABLE-2:

Industrial-Shop-(10)
Cement-Manufacturing-(20)---Hydraulic-Generation-(20)
Stationary-Asphalt-Plant-(15)
Bentonite-(20)
Concrete-Products-(20)
Concrete-Ready-Mix-Plant-(18)
Gypsum-Products-Mfg--(20)
lime-&-Calcium
Benefication-(20)
Talc-Benefication-(20)
Sugar-Refinery-(20)
Petroleum-Refinery-(16)
Natural-Gas-Refinery-(16)

TABLE-4:

Vulcanizing-(15)
Pondry-(15)
Metal-Machining-&-Milling-(15)
Metal-Fabrication-(20)
Plastic-Products-Mfg--(20)
Polystyrene-(20)
Rifle-Manufacturing-(15)

TABLE-5:

Refrigeration-Equip--Mfg--(12)
Paint-Manufacturing-(12)
Steam-Power-(16)
Brewing-&-Distilling-(20)
Alcohol-Plant-(15)
Gasohol-Plant-(15)
Vegetable-Oil-Extraction-(20)

TABLE-6:

Fruit-Packing-(12)
Egg-Packing-(20)
Sawmill-Equipment-(10)
Wood-Furniture-Mfg--(20)

TABLE-3-

Creamery-6-Dairy-(12)
Meat-Packing-(12)
Fruit-Cannery-(12)
Honey-Processing-(12)
Candy-6-Confectionary-(20)
Bakery-(12)

TABLE 1

BAKING (12)
FISH CANNING (12)
MEAT PACKING (12)
HONEY PROCESSING (12)
CANDY & CONFECTIONARY (20)
FRUIT CANNING (12)
RUBBER (15)

TABLE 2

CEMENT MANUFACTURING (20)
ORE MILLING & CONCRETING (15)
CONCRETE READY MIX (18)
BENTONITE (20)
VERMICULITE (15)
STONE PRODUCTS (20)
CONCRETE PRODUCTS (20)
GYPSUM (20)
TALC BENEFICATION (20)
LIME & CALCIUM BENEFICATION (20)
COAL CRUSHING & HANDLING (20)
GRAPHITE PRODUCTS (20)
HEAP LEACH PADS (5)
HEAP LEACH MECHANICAL (20)
NONFERROUS SMELTING (15)
UNDERGROUND MINING (10)
OPEN PIT MINING & QUARRYING (15)
PHOSPHATE BENEFICATION (20)

TABLE 3

TEXTILE FABRICATION (10)
LEATHER FABRICATION (20)
PULP & PAPER MANUFACTURING (13)
CARDBOARD CONTAINER FABRICATION (20)

TABLE 4

ELECTRICAL EQUIPMENT MFG (10)
ELECTRIC POWER EQUIPMENT (16)
HYDRO GENERATION (20)
STEAM POWER (16)
LAUNDRY (10)
ELECTRONIC COMPONENT MFG. (10)

TABLE 5

CHEMICAL MANUFACTURING (12)
CLAY PRODUCTS (15)
CONTRACTOR EQUIPMENT (10)
SULPHUR MANUFACTURING (12)
OXYGEN GENERATION (20)
WOOD PELLET PLANT (16)
REFRIGERATION (12)
FRUIT PACKING (12)
PAINT MANUFACTURING (12)
EGG PACKING (20)
INDUSTRIAL SHOP EQUIPMENT (10)
METAL MACHINE & MILLING (15)
FOUNDRY (15)
RIFLE MANUFACTURING (15)
PLASTIC PRODUCTS MFG (20)
POLYSTYRENE (20)
PRINTING (12)
FERTILIZING MANUFACTURING (12)
METAL FABRICATION (20)

TABLE 6

BOTTLING (12)
CREAMERY & DAIRY (12)
FLOUR MILLING (16)
FEED MILLING (16)
SEED TREATING & CLEANING (16)
CEREAL PRODUCTS (16)
GRAIN HANDLING FACILITIES (16)

YEAR--TABLE-7---TABLE-8---TABLE-9---TABLE-10---TABLE-11

1988	1:000	1:000	1:000	1:000	1:000
1987	1:024	1:027	1:043	1:033	1:036
1986	1:031	1:036	1:049	1:042	1:047
1985	1:037	1:044	1:056	1:049	1:059

1984	1-050	1-056	1-069	1-061	1-074
1983	1-070	1-000	1-090	1-091	1-105
1982	1-095	1-092	1-115	1-110	1-124
1981	1-155	1-141	1-159	1-162	1-177
1980	1-202	1-263	1-272	1-282	1-290
1979	1-400	1-375	1-413	1-408	1-422
1978	1-540	1-499	1-546	1-534	1-546
1977	1-665	1-614	1-651	1-656	1-662
1976	1-764	1-703	1-722	1-746	1-746
1975	1-807	1-842	1-827	1-857	1-860
1974	2-150	2-006	2-045	2-093	2-063
1973	2-400	2-267	2-448	2-432	2-307
1972	2-563	2-322	-000	2-514	2-467
1971	2-640	2-409	-000	2-590	2-550
1970	2-810	2-566	-000	2-757	2-705
1969	2-909	2-710	-000	2-932	2-870

TABLE-7:

Clay-Products-(15)
 Nonferrous-Smelting-(15)
 Coal-Brushing-&-Handling-(20)
 Graphite-Products-(20)
 Heap-leach:--Pads-(5);-Mech:-(20)
 Open-Pit-Mining-&-Quarrying-(15)
 Ore-Milling-&-Concentrating-(15)
 Phosphate-Benefication-(20)
 Stone-Products-(15)
 Underground-Mining-(10)
 Vermiculite-Benefication-(15)

-TABLE-9-

Electrical-Equip-Mfg:-(16)
 Electronic-Component-Mfg:-(10)
 Laundry-&-Cleaning-(10)

TABLE-10-

--Pulp-&-Paper-Mfg:-(13)
 --Cardboard-Container
 --Fabrication-(20)

-TABLE-11-

--Textile-Fabrication-(10)
 Leather-Fabrication-(20)

----TABLE-8-

Warehousing-(10)
 Peat-Moss-Bagging-Plant-(20)
 Fertilizer-Distribution-(10)

YEAR	TABLE 7	TABLE 8
1988	1.000	1.000
1987	1.050	1.055
1986	1.088	1.101
1985	1.103	1.109
1984	1.110	1.115
1983	1.124	1.129
1982	1.152	1.153
1981	1.173	1.167
1980	1.224	1.233
1979	1.348	1.372
1978	1.474	1.523
1977	1.637	1.660
1976	1.775	1.788
1975	1.878	1.886
1974	2.017	1.994
1973	2.208	2.245
1972	2.507	2.634
1971	2.589	2.720

1970	2.673	2.828
1969	2.828	3.021

TABLE 7

WOODWORKING	(20)
WAREHOUSING	(10)
PEAT MOSS BAGGING PLANT	(20)
FERTILIZER DISTRIBUTION	(10)
FURNITURE MANUFACTURING	(20)
SAWMILL EQUIPMENT	(10)

TABLE 8

BREWING & DISTILLING	(20)
PETROLEUM	(16)
VEGETABLE OIL EXTRACTION	(20)
GASOHOL PLANT	(15)
ALCOHOL PLANT	(15)
NATURAL GAS PROCESSING	(16)
STATIONARY ASPHALT PLANT	(15)
SUGAR REFINERY	(18)

Note: 1. The number in each parenthesis above indicates assigned economic expectancies.

Note: 2. Lab equipment is to be included in its related industry's table at 10-year life expectancy.

(2) The application of the trend factors set forth in subsection (1) will be as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed:

1. Determine the economic life of the subject industry.
2. Acquire a set of reasonable trends for that economic life.
3. Acquire the original installed cost (direct and indirect) for the subject equipment.
4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).
5. Depreciate the RCN on the basis of age to arrive at sound value.

3. The authority for the department to amend this rule is found at 15-1-201 MCA and implements 15-6-138 and 15-8-111 MCA.

4. ARM 42.22.1311 is proposed to be amended to update the tables as required annually.

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

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

no later than July 13, 1990.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 13, 1990.

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

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 4, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF REPEAL OF	)	NOTICE OF THE PROPOSED REPEAL
ARM 42.5.101; 42.5.102;	)	OF ARM 42.5.101; 42.5.102;
42.5.103; 42.5.104;	)	42.5.103; 42.5.104; 42.5.105;
42.5.105; and 42.5.106	)	and 42.5.106 relating to
relating to Bad Debt	)	Bad Debt Collection
Collection)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Department of Revenue proposes to repeal ARM 42.5.101; 42.5.102; 42.5.103; 42.5.104; 42.5.105; and 42.5.106 relating to bad debt collection.

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

42.5.101 PRECERTIFICATION REQUEST FOR ASSISTANCE (AUTH: Sec. 17-4-110 MCA; IMP, Sec. 17-4-104 MCA).

42.5.102 CERTIFICATION TO DEPARTMENT (AUTH: Sec. 17-4-110 MCA; IMP, Sec. 17-4-104 MCA).

42.5.103 REVIEW BY DEPARTMENT (AUTH: Sec. 17-4-110 MCA; IMP, Sec. 17-4-104 MCA).

42.5.104 WRITE OFF BY AGENCY - ASSIGNMENT TO DEPARTMENT (AUTH: Sec. 17-4-110 MCA; IMP, Sec. 17-4-104 MCA).

42.5.105 OFFSET OF TAX REFUNDS (AUTH: Sec. 17-4-110 MCA; IMP, Sec. 17-4-104 MCA).

42.5.106 WRITE OFF OF BAD DEBT BY DEPARTMENT (AUTH: Sec. 17-4-110 MCA; IMP, Sec. 17-4-104 MCA).

3. ARM 42.5.101; 42.5.102; 42.5.103; 42.5.104; 42.5.105; and 42.5.106 are proposed to be repealed because the bad debt collection unit was transferred to the State Auditor's Office.

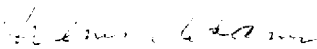
4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to:

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

no later than July 13, 1990.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 13, 1990.

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


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 4, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.24.101;	)	of ARM 42.24.101; 42.24.102;
42.24.102; 42.24.103; and	)	42.24.103; and 42.24.107; and
42.24.107; and REPEAL of	)	REPEAL of 42.24.104 relating to
42.24.104 relating to Sub-	)	Subchapter S Elections for
Chapter S Elections for Corp-	)	Corporations.
orations.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Department of Revenue proposes to AMEND ARM 42.24.101; 42.24.102; 42.24.103; and 42.24.107; and REPEAL 42.24.104 relating to Subchapter S Elections for Corporations.

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

42.24.101 DEFINITIONS QUALIFICATION TO BE A SMALL BUSINESS CORPORATION (1) An electing To qualify as a small business corporation means, with respect to any taxable year, a the corporation which has must have a valid election under subchapter S of chapter 1 of the Internal Revenue Code of 1954, as amended, and has filed a copy of such election with the department on or before the 15th day of the third month of the first taxable year for which the election is to become effective.

42.24.102 ELECTION AS TO TAX TREATMENT (1) A qualified small business corporation may elect not to be subject to the tax imposed by 15-31-202 Title 15, chapter 31, part 1, MCA, as amended; provided, the stockholders of such corporation include the corporate net income or loss in their adjusted gross income as such is defined in 15-30-111, MCA, as amended. If a corporation elects not to be subject to Title 15, chapter 31, part 1, MCA, the stockholders of the corporation must include the corporate net income or loss in their Montana adjusted individual gross income.

(2) An election is effective for the entire taxable year of the corporation for which it is made and for all succeeding taxable years, unless it is terminated with respect to any taxable year. The election has a continuing effect and it does not need to be renewed annually.

(3) A qualified corporation elects to be taxed as a Montana small business corporation if it does either of the following:

(a) files a copy of the approved federal election with the department on or before the 15th day of the third month of the tax year for which the election becomes effective. A statement that the election is requested for state tax purposes and the year the election is to become effective must be attached. This statement is to be signed by an officer of the corporation; or,

(b) attaches to the Montana corporate tax return a copy of the federal tax return filed in compliance with the provisions of Subchapter S, Chapter 1, Internal Revenue Code. This election method applies for years ending after July 1, 1989.

42.24.103 PROCEDURE TO MAKE ELECTION NOTIFICATION TO DEPARTMENT THAT THE FILING OF A FEDERAL RETURN DOES NOT CONSTITUTE AN ELECTION UNDER 42.24.102 (3)(b) ~~{1}--The election must be made by filing a copy of the federal small business election form containing the information required by that form. In addition, a statement must be attached stating that the election is requested for state purposes and the year for which the election is to become effective. This statement is to be signed by an officer of the corporation. (1) A corporation may choose to be a small business corporation for federal tax purposes but not a small business corporation for Montana tax purposes. The attachment of a copy of the federal small business corporation tax return will not be an election to be taxed as a Montana small business corporation if a statement is included with the Montana return stating that the corporation is not electing to be a small business corporation. This statement must be included every year the corporation attaches a Federal Subchapter S return but chooses not to be a small business corporation for state tax purposes. If a corporation revokes its Montana small business election, the provisions of ARM 42.24.107 will apply and a corporation may not reelect for 5 years regardless of whether a statement is attached to the return.~~

42.24.107 REVOCATION OF ELECTION (1) If a corporation elects to revoke its ~~subchapter-S~~ small business corporation election for federal purposes, such revocation shall be effective for state purposes. The corporation must notify the department within 30 days after such revocation as required under section 15-31-209, MCA.

(2) If a corporation elects to revoke its small business election for Montana purposes, a new election cannot be made for 5 years unless the department consents to an earlier election. The department can also waive inadvertent terminations if certain conditions are met as covered under 1362(f) and (g) IRC (1986).

3. The rule to be repealed is as follows:

42.24.104 TIME OF MAKING ELECTION (AUTH: Sec. 15-31-501 MCA; IMP, Sec. 15-31-202 MCA).

4. The authority to amend these rules is found at 15-31-501 MCA, and the rules implement 15-30-111; 15-31-201; 15-31-202; and 15-31-208 MCA.

5. The department has determined amendments are necessary for the following reasons:

42.24.101 is being amended to simplify how a corporation may qualify to elect small business status for state tax purposes. Section 15-31-201 requires a corporation to have a valid federal small business election before it can elect small business status with the state. This rule defines a qualifying

corporation. How a qualifying corporation may actually elect small business status is explained in 42.24.102.

42.24.102 is being amended for two reasons. First, the existing rule states that a company may elect not to be subject to the tax imposed by 15-31-202. That section does not impose a tax. If a small business election is filed, the election would exempt the corporation from the tax imposed by Title 15, Chapter 31, Part 1. The second amendment was necessary because of legislation passed during the 1989 legislative session. During that session, HB 607 gave corporations an additional method in which to make a small business election. HB 607 provided taxpayers the option of either filing a copy of their federal small business election within the first 75 days of the taxable year for which they wanted the election to be effective or attaching a copy of their federal small business return to their state return. The regulation needed to be amended to conform to the statute change.

42.24.103 is being amended to further clarify the election process established in HB 607. As previously stated, HB 607 allows a corporation to elect small business status with the state by merely attaching a copy of the federal small business return to their state return. However, a corporation could elect small business status for federal purposes but not wish to elect that status for state purposes. HB 607 does not require that a taxpayer make the same election for both federal and state purposes. Therefore, this regulation needed to be amended to address the situation where a corporation elected to be a small business corporation for federal purposes and a C corporation for state purposes. This rule now provides a corporation the opportunity to attach a statement to their Montana return stating that even though they are a small business for federal purposes, they do not wish to be a small business for state purposes. Subpart 2 of this rule is merely language that was previously in 42.24.102 requiring that income of an electing small business corporation must be reported on the stockholders personal income tax return.

42.24.104 has been deleted because the time frame and procedure for making a small business election is now adequately addressed in the amended version of 42.24.102.

42.24.107 is being amended to address the situation of when a corporation that revokes its small business election may be able to re-elect. Prior to HB 607, a corporation was tied to the federal treatment of small business re-elections. In other words, a corporation could only re-elect a small business status by filing a copy of their federal small business election. Therefore, corporations were bound by the federal re-election provisions at the state level. However, under the current law, a copy of the federal small business election does not necessarily have to be filed. Therefore, a corporation could conceivably elect, revoke and re-elect small business status in three consecutive years. The proposed amendment requires that if a corporation revokes its election, it cannot re-elect for five years. This amendment is identical to the federal treatment.

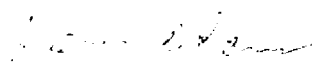
6. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

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

no later than July 13, 1990.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 13, 1990.

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


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 4, 1990.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I, II	)	THE PROPOSED ADOPTION OF
and III pertaining to	)	RULES I, II AND III
freestanding dialysis	)	PERTAINING TO FREESTANDING
clinics	)	DIALYSIS CLINICS

TO: All Interested Persons

1. On July 11, 1990, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I, II and III pertaining to freestanding dialysis clinics.

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

[RULE I] FREESTANDING DIALYSIS CLINICS FOR END STAGE RENAL DISEASE. DEFINITIONS (1) "Freestanding dialysis clinics (FDC)" are facilities licensed by the officially designated authority in the state where the institution is located and certified by the health care financing administration (HCFA) to:

(a) furnish outpatient maintenance dialysis directly to end stage renal disease (ESRD) patients; and

(b) provide training for self-dialysis and home dialysis.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

[RULE II] FREESTANDING DIALYSIS CLINICS FOR END STAGE RENAL DISEASE. REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.314.

(2) The provision of outpatient maintenance dialysis and related services by the medicaid program shall be coordinated with the medicare renal disease program as provided in Title XVIII of the Social Security Act and any other program providing the same or similar service.

(3) Outpatient maintenance dialysis and related services in a FDC shall be provided only to a person who has been diagnosed as suffering from chronic ESRD by a physician.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

[RULE III] FREESTANDING DIALYSIS CLINICS FOR END STAGE RENAL DISEASE. REIMBURSEMENT

(1) Reimbursement for outpatient maintenance dialysis and other related services provided in a FDC shall be as follows:

(a) FDCs will be reimbursed under the composite rate reimbursement system for independent facilities in accordance with 42 CFR 413, subpart H and as detailed in the HIM-15, chapter 27. The department hereby adopts and incorporates by reference 42 CFR 413, subpart H (1989 edition) and the HIM-15, chapter 27 (1983 edition). Copies may be obtained from the Medicaid Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210.

(b) The reimbursement period will be the FDC's fiscal year.

(c) These reimbursement rules are in addition to those contained in ARM 46.12.509(2) through (6).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA


3. The Montana Medicaid program currently provides coverage for dialysis treatment in an outpatient hospital or, where appropriate, in-home setting. Freestanding dialysis centers (FDCs) are now being established in Montana. The adoption of this rule will provide payment for dialysis at FDCs. This alternative delivery system is beneficial to Medicaid because of reduced transportation costs (\$10,000 estimate). It will also improve recipient access to dialysis services.

The Medicare program is the primary payor for dialysis treatment. Medicaid's portion of the cost is normally limited to the deductible and coinsurance required by Medicare.

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, MT 59604-4210, no later than July 18, 1990.

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

6. These rules will be applied retroactively to October 1, 1989.


Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

11-6/14/90

MAR Notice No. 46-2-611

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule	)	THE PROPOSED AMENDMENT OF
46.12.3206 and the repeal	)	RULE 46.12.3206 AND THE
of 46.12.305 pertaining to	)	REPEAL OF 46.12.305
third party attorney fees	)	PERTAINING TO THIRD PARTY
and assignment of benefits	)	ATTORNEY FEES AND
	)	ASSIGNMENT OF BENEFITS

TO: All Interested Persons

1. On July 11, 1990, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.3206 and the repeal of 46.12.305 pertaining to third party attorney fees and assignment of benefits.

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

46.12.3206 ASSIGNMENT OF RIGHTS TO BENEFITS Subsections (1) through (2) remain the same.

(a) Under section 53-2-612, MCA, the department ~~is subrogated to the rights of a~~ has a lien upon all money paid by a third party or his insurer in satisfaction of a judgement or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability of medicaid to medical support or other third party payments. Under 53-2-613, MCA, by signing the department-prescribed application form for medicaid, an applicant for or recipient of medicaid assigns to the department:

Subsections (2)(a)(i) through (4)(b) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-2-612, 53-2-613 and 53-6-131 MCA

3. The rule 46.12.305 as proposed to be repealed is on pages 46-1164 and 46-1165 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201 MCA

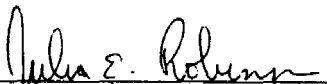
IMP: Sec. 53-2-612 MCA

4. Section 53-2-612, MCA (as amended effective April, 1989) changes the department's right of subrogation to settlements and awards to that of a lien upon settlements and awards. The proposed change to ARM 46.12.3206 reflects this change. Since Section 53-2-612, MCA also now defines accept-

able attorney's fees for reduction of the department's claims, there is no need to define fees in an administrative rule. Therefore ARM 46.12.305 is proposed to be repealed.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than July 19, 1990.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I, II,	)	THE PROPOSED ADOPTION OF
and III, the amendment of	)	RULES I, II, AND III, THE
Rules 46.12.1401 through	)	AMENDMENT OF RULES
46.12.1409, 46.12.1411,	)	46.12.1401 THROUGH
46.12.1412, 46.12.1425,	)	46.12.1409, 46.12.1411,
46.12.1431, 46.12.1432,	)	46.12.1412, 46.12.1425,
46.12.1435 through	)	46.12.1431, 46.12.1432,
46.12.1440, 46.12.1450	)	46.12.1435 THROUGH
through 46.12.1455,	)	46.12.1440, 46.12.1450
46.12.1469, 46.12.1475,	)	THROUGH 46.12.1455,
46.12.1476, 46.12.1480	)	46.12.1469, 46.12.1475,
through 46.12.1482, and	)	46.12.1476, 46.12.1480
the repeal of 46.12.1410	)	THROUGH 46.12.1482, AND THE
pertaining to medicaid	)	REPEAL OF 46.12.1410
home and community based	)	PERTAINING TO MEDICAID HOME
program for elderly and	)	AND COMMUNITY BASED PROGRAM
physically disabled	)	FOR ELDERLY AND PHYSICALLY
persons	)	DISABLED PERSONS

TO: All Interested Persons

1. On July 11, 1990, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I, II, and III, the amendment of Rules 46.12.1401 through 46.12.1409, 46.12.1411, 46.12.1412, 46.12.1425, 46.12.1431, 46.12.1432, 46.12.1435 through 46.12.1440, 46.12.1450 through 46.12.1455, 46.12.1469, 46.12.1475, 46.12.1476, 46.12.1480 through 46.12.1482, and the repeal of 46.12.1410 pertaining to medicaid home and community based program for elderly and physically disabled persons.

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

[RULE I] ENVIRONMENTAL MODIFICATIONS/ADAPTIVE EQUIPMENT, DEFINITION (1) Environmental modifications are changes to the recipient's home designed to maintain or improve the recipient's ability to remain at home.

(2) Adaptive equipment is designed to assist the recipient to function as independently as possible in the home.

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

[RULE III] ENVIRONMENTAL MODIFICATIONS/ADAPTIVE EQUIPMENT, REQUIREMENTS (1) All environmental modifications and adaptive equipment must:

- (a) be medically necessary and relate specifically to the recipient's disability;
- (b) have a specific adaptive purpose;
- (c) be ordered by a physician;
- (d) provide for the recipient's accessibility and safety in the home;
- (e) assist the recipient to remain at home;
- (f) be cost effective;
- (g) not constitute:
 - (i) general housing maintenance, including but not limited to plumbing, heating systems, or appliance repair;
 - (ii) ineligible room and board;
 - (iii) additions which increase the square footage of existing structures; and
 - (iv) items of clothing.
- (2) Environmental modifications must meet the specifications set by the American national standards institute of 1980.
- (3) The cost of environmental modifications cannot exceed \$4,000 per modification, however, the department may, within its discretion, authorize an exception to this limit. Any exception must be prior authorized by the department.

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

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

[RULE III] ENVIRONMENTAL MODIFICATIONS/ADAPTIVE EQUIPMENT, REIMBURSEMENT (1) Reimbursement for environmental modifications and adaptive equipment not provided by other federal, state, and local programs will be the lower of the following:

- (a) the provider's usual and customary billed charges;
- or
- (b) rates negotiated with providers by the department.

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

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

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, through 42 CFR 441.300 through 441.310, the authority to provide medicaid home and community services to persons who would otherwise have to reside in and receive medicaid reimbursed care in a hospital or institutional setting.

Subsection (2) remains the same

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

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

46.12.1402 LIMITING ENROLLMENT ON BASIS OF AVAILABLE FUNDS Subsections (1) and (2) remain the same.

~~(3) Priority for receipt of services will be established according to the following criteria:~~

- ~~(a) the person's need for services;~~
 - ~~(b) the availability of other community services to meet the person's needs;~~
 - ~~(c) the ability of the case management team to provide services that meet the person's health and safety needs; and~~
 - ~~(d) the person's risk of institutionalization or death.~~
- Original subsections (4) through (5)(e) remain the same in text but will be recategorized as subsections (3) through (4)(e).

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

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

46.12.1403 PERSONS WHO MAY BE SERVED Subsection (1) remains the same.

~~(a) are elderly, or physically disabled or developmentally disabled;~~

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

(A) Some physically disabled persons are considered to require intensive ~~institutional care services~~. 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 or rehabilitation setting.

~~(iii) "Developmentally disabled" means a person who is suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded persons if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such persons.~~

Subsection (1)(b) remains the same.

~~(c) for skilled nursing facility (SNF) and intermediate care facility (ICF) levels of care, are under the direction and care of a physician, who has prescribed long term care for the person; for intermediate care facility for the mentally retarded (ICF/MR) level of care, are under the direction and care of an interdisciplinary team as defined in ARM 46-8-102-17;~~

~~(d) require the level of care of an SNF, ICF or ICF/MR a nursing facility, as determined by preadmission screening as provided for in ARM 46.12.1301, 46.12.1302, and 46.12.1303 46.12.1305, 46.12.1306 and 46.12.1308;~~

Original subsections (1)(e) and (1)(f) remain the same in text but will be recategorized as subsections (1)(d) and (1)(e).

(gf) have needs that can be met through the home and community services program at a cost not to exceed the maximum amount allowed in accordance with ARM 46.12.1411-; and
(g) are not receiving services from a certified hospice program.

(2) Priority for receipt of services will be established according to the following criteria:

- (a) the person's need for service;
- (b) the availability of other community services to meet the person's needs; and
- (c) the person's risk of institutionalization or death.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
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)(h) remain the same.

(i) environmental modifications/adaptive equipment, as defined in ARM 46.12.1450 [Rule 1];
Subsections (1)(j) through (1)(q) remain the same.

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

46.12.1405 GENERAL REQUIREMENTS Subsection (1) remains the same.

(2) 42 CFR 441.302 mandates that a recipient's health and safety needs will be met through requiring:

(a) all facilities providing services meet all applicable fire and safety standards in order to receive reimbursement under the home and community program; and

(2b) All providers of service shall meet the requirements contained in ARM 46.12.301 through 46.12.308.

Subsections (3) remains the same.

~~(4) All facilities providing services must meet all applicable fire and safety standards in order to receive reimbursement under the home and community services program.~~

Original subsections (5) through (9) remain the same in text but will be recategorized as subsections (4) through (8).

(9) Home and community services providers may, under certain circumstances, also provide assistance to other family members in the recipient's household during hours of program reimbursed service. The decision to allow this will:

- (a) be made by the case management team;
- (b) be based on whether the needs of the recipient can safely be met under this arrangement;
- (c) require the agreement of the service provider that they can and will safely extend services to the recipients and other family members; and
- (d) result in a reduction of medicaid's portion of the service rate by 20%.

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

46.12.1406 CASE MANAGEMENT SERVICES, DEFINITION

~~(1) For developmentally disabled persons, case management services consist of:~~

~~(a) developing individual plans of care as defined in ARM 46.12.1410;~~

~~(b) monitoring and managing such plans of care;~~

~~(c) establishing and arranging relationships with service providers under contract with the department;~~

~~(d) maximizing the recipient's efficient use of services and community resources, including mobilizing and using "natural helping networks" such as family members, church members and friends; and~~

~~(e) facilitating interaction among people working with the recipient.~~

~~(2) For elderly persons and physically disabled persons, case management services consist of:~~

Original subsections (2)(a) through (2)(e) remain the same in text but will be recategorized as subsections (1)(a) through (1)(e).

~~(f) acting as billing provider authorizing payment claims for all waiver subcontracted services.~~

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

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

46.12.1407 CASE MANAGEMENT SERVICES, REQUIREMENTS

~~(1) Case management services may be provided only by department personnel or by providers under contract with the department.~~

~~(2) For developmentally disabled persons, the case manager must:~~

~~(a) meet the requirements for certification as a qualified mental retardation professional as contained in ARM 46.12.1304;~~

~~(b) function in such manner as directed by the department to assure that the services provided are of appropriate quality and the least costly.~~

~~(3) For elderly and physically disabled persons, the case management team must:~~

Original subsections (3)(a) through (3)(c) remain the same in text but will be recategorized as subsections (2)(a) through (2)(c).

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

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

46.12.1408 CASE MANAGEMENT SERVICES, REIMBURSEMENT

~~(1) For developmentally disabled persons, case management services provided by department employees shall not be reimbursed; case management services provided by a case manager under contract with the department shall be reimbursed based on a negotiated rate. The negotiated rate shall be based on:~~

~~(a) historical costs in the service area for similar services for similar recipients; or~~

~~(b) reasonable costs based on specific recipient needs if no historical basis is available.~~

(21) For elderly 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.

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

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

46.12.1409 INDIVIDUAL PLANS OF CARE FOR ELDERLY AND PHYSICALLY DISABLED PERSONS

(1) An individual A plan of care for elderly or physically disabled persons is a written plan of treatment developed on the basis of an assessment and determination of the status and needs of a recipient.

(2) The individual plan of care shall be developed prior to the person's entry into home and community services and be formally reviewed and approved by the department. The plan must be reviewed and, if necessary, revised and approved no later than ninety (90) days from the initial plan of care approval and at intervals of at least six (6) months thereafter beginning with the initial plan of care approval.

(3) Each individual plan of care shall be developed by the case management team.

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

(5) Each individual plan of care shall include at least the following:

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

(g) names and signatures of all persons who have participated in developing the individual plan of care (including the recipient, unless the recipient's inability to participate is documented) which will verify participation, agreement with the individual plan of care, and acknowledgement of the confidential nature of the information presented and discussed.

(6) The case management team shall provide a copy of the individual plan to the recipient.

(7) Individual plan of care approval will be based on: Subsections (7)(a) through (7)(c) remain the same.

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

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 are limited to persons recipients whose home and community service costs, as determined in accordance with subsection (1)(a) of this rule, are no more than what medicaid would pay for the person's

recipient's care, as determined in accordance with subsections (1)(b) and (1)(c) 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.~~ Cost determinations will be made before implementation of the proposed plan of care has been approved by the department.

(a) The plan of care cost shall be the cost of all home and community services provided to the person recipient that are reimbursed by medicaid in accordance with these rules. ~~The costs of home and community services provided to the person but paid from sources other than medicaid (for example, from sources such as medicare, Title XX of the Social Security Act or Title III of the Older Americans Act) shall be recorded by case management teams and reported to the department for monitoring purposes.~~

Subsection (1)(b) remains the same.

(i) For ICF and SNF nursing facility 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.

~~(ii) For the ICF/MR level of care, a projected statewide average per diem will be derived, using the previous year's utilization rates for each ICF/MR facility. This weighted average will be adjusted by subtracting the amount for room and board which is the SSI payment standard less forty (40) dollars for personal needs. This adjusted figure is the ceiling against which annualized projected costs under the plan of care are compared.~~

(c) For persons recipients in need of intensive institutional care services, the home and community service costs shall not exceed what the medicaid payment for that person recipient would have been in an inpatient hospital or rehabilitation setting. Home and community services for persons recipients in need of intensive institutional care services must be prior authorized by the department.

Subsection (1)(d) remains the same.

(e) Exceptions to the plan of care cost limit may be authorized by the department at its discretion based on the following criteria:

(i) the service causing the recipient to exceed costs is a one time purchase; or

(ii) intensive services of 90 days or less result in a temporary increase of the cost limit necessary to:

(A) resolve a crisis situation which threatens the health and safety of the recipient;

(B) stabilize the recipient following hospitalization or acute medical episode; or

(C) prevent institutionalization during the absence of the normal caregiver.

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

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

46.12.1412 INFORMING BENEFICIARY FREEDOM OF CHOICE

(1) If a person is determined by the department to require the level of care provided in a ~~SNF, ICF or ICF/MR nursing facility~~, the person or his legal representative will be informed of the ~~feasible alternatives long term care services~~, if any, available under the ~~home and community services medicaid~~ program and will be permitted to choose among them. ~~An institutional alternative will be included as a choice.~~

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

46.12.1425 HOMEMAKER SERVICES, DEFINITIONS

(1) Homemaker services consist of general household activities performed by an individual or agency. Such services are provided to a ~~person~~ recipient who is unable to manage his home or care for himself or others in the home, or when another who is regularly responsible for these activities is absent. These services may include:

Subsection (1)(a) remains the same.

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

(c) teaching services consisting of activities which will improve a ~~person's~~ recipient's or family's skills in household management and social functioning.

Subsection (2) remains the same.

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

46.12.1431 ADULT DAY CARE SERVICES, DEFINITIONS

(1) Adult day care services include providing for the health, social and habilitation needs of a person in settings outside the person's place of residence ~~for periods of four or more hours daily. Adult day care services do not include residential overnight services.~~

~~(a) If the center provides personal care related to health needs such as bathing or nail cutting, these services must be supervised by a registered nurse.~~

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

46.12.1432 ADULT DAY CARE SERVICES, REQUIREMENTS

Subsection (1) remains the same.

(a) Adult day care providers ~~serving the elderly and physically disabled~~ must be licensed by the department of health and environmental sciences as provided in ARM 16.32.356 and 16.32.357.

~~(b) Adult day care providers serving developmentally disabled persons must meet the minimum standards as provided in ARM 46.8.901.~~

Subsection (2) remains the same.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
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 intervention designed for assisting persons recipients 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 recipients. These skills must be identified in the plan of care as appropriate in relation to the person's current developmental level and needs in accordance with the principle of normalization.~~

~~(2) Habilitation services for developmentally disabled persons will be delivered in the following settings:--~~

- ~~(a) adult community homes;~~
- ~~(b) children's community homes; and~~
- ~~(c) natural and foster homes.~~

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

Original subsection (4) remains the same in text but will be recategorized as subsection (3).

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

46.12.1436 HABILITATION SERVICES, REQUIREMENTS ~~(1) A provider of habilitation services for developmentally disabled persons will meet the requirements as provided for in ARM 46.8.991.~~

~~(2) A provider of habilitation services for physically disabled and elderly persons may be any of the following: person or agency qualified to meet the recipient's defined habilitation needs.~~

- ~~(a) trainer;~~
- ~~(b) physical therapist;~~
- ~~(c) occupational therapist;~~
- ~~(d) speech pathologist;~~
- ~~(e) audiologist; or~~
- ~~(f) psychologist.~~

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

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

46.12.1437 HABILITATION SERVICES, REIMBURSEMENT

~~(1) Reimbursement for habilitation services will be based upon a negotiated rate established through a contract. This rate will be based on:~~

~~(a) historical costs in the service area for similar services for similar clients; or~~

~~(b) reasonable costs based upon specific recipient needs if no historical basis is available.~~

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

Original subsections (2)(a) and (2)(b) remain the same in text but will be recategorized as subsections (1)(a) and (1)(b).

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
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 person's place of residence or through placement in another private residence or other related community setting, a hospital, ~~or 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, 53-6-101, 53-6-111 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1439 RESPITE CARE, REQUIREMENTS (1) ~~A skilled nursing facility, an intermediate care facility, or an intermediate care facility for the mentally retarded which provides respite care to a recipient of the home and community services program must meet the requirements of ARM 46.12.1101(1)(a) 46.12.1203.~~

(2) ~~Persons who provide respite care to a recipient of home and community services must be determined by the case manager management team to be:~~

Subsections (2)(a) and (2)(b) remain the same.

(3) ~~Persons who provide respite care to a recipient of home and community services may be required by the case manager management team to have the following when the recipient's needs so warrant:~~

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

(4) ~~Respite care available to a recipient is limited to 25 days in a fiscal year; however, the department may, within its discretion, authorize further specified hours of respite care in excess of this limit. Additional respite care must be authorized by the department.~~

Subsections (5) through (5)(b)(iii) remain the same.

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

46.12.1440 RESPITE CARE, REIMBURSEMENT (1) ~~Respite care provided by a skilled nursing facility, an intermediate~~

~~care facility or an intermediate care facility for the mentally retarded shall be reimbursed at the rate as established for that facility in accordance with ARM 46.12.1204.~~

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

~~(c) the facility per diem rate when respite care is provided by a skilled or intermediate nursing facility or an ICF/MR.~~

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

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

46.12.1450 MEDICAL ALERT AND ENVIRONMENTAL MODIFICATIONS, DEFINITIONS

~~(1) Medical alert and 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. The medical alert/monitoring system is an electronic, telephonic or mechanical system used to summon assistance in an emergency situation.~~

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

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

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

46.12.1451 MEDICAL ALERT AND 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.~~

~~(2) Medical alert systems must be connected to a local emergency response system with the capacity to activate emergency medical personnel.~~

~~(3) Environmental modifications must meet the specifications set by the American national standards institute in 1980.~~

~~(4) Reimbursement is not available for the purchase, installation or routine monthly charges of a telephone.~~

~~(5) The cost of environmental modifications cannot exceed \$4,000; however, the department may, within its discretion, authorize an exception to this limit. Any exception must be prior authorized by the department.~~

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

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

46.12.1452 MEDICAL ALERT AND ENVIRONMENTAL MODIFICATIONS, REIMBURSEMENT (1) Reimbursement for medical alert and environmental modifications not provided by other federal, state or locally funded programs will be the lower of the following:

- (a) the provider's usual and customary (billed) charges; or
- (b) rates negotiated with providers by the department or its designee.

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

46.12.1453 NON-MEDICAL TRANSPORTATION SERVICES, DEFINITION Subsection (1) remains the same.

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

46.12.1454 NON-MEDICAL TRANSPORTATION SERVICES, REQUIREMENTS Subsections (1) through (4) remain the same.

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

46.12.1455 NON-MEDICAL TRANSPORTATION SERVICES, REIMBURSEMENT Subsections (1) through (1)(c) remain the same.

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

46.12.1463 PSYCHOLOGICAL SERVICES, REQUIREMENT Subsection (1) remains the same.

(2) Psychological services as defined in ARM 46.12.1462 (1)(b) are limited to six hourly visits or the equivalent per fiscal year, ~~however,~~ ^{the} department may within its discretion authorize further specified hours of psychological services in excess of this limit. Any services in excess of this limit must be prior authorized by the department.

Subsection (3) remains the same.

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

46.12.1469 NURSING SERVICES, REQUIREMENTS Subsection (1) remains the same.

(2) Nursing services must be provided to a person recipient in his own home. Nursing services shall not be provided to a person recipient residing in a hospital, ~~skilled or intermediate nursing care facility or intermediate care facility for the mentally retarded~~, or licensed personal care facility.

Subsection (3) remains the same.

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

46.12.1475 RESPIRATORY THERAPY SERVICES, REQUIREMENTS

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

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

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

(5) Respiratory therapy services are limited to a maximum of 24 hours per fiscal year, ~~however,~~ ~~the~~ department may within its discretion authorize further specified hours of respiratory therapy services in excess of this limit. Any services exceeding this limit must be prior authorized by the department.

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

46.12.1476 RESPIRATORY THERAPY SERVICES, REIMBURSEMENT

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

(b) ~~\$25 per hour rates negotiated by the department or its designee.~~

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

46.12.1480 DIETITIAN SERVICES, DEFINITION

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

Subsection (2) remains the same.

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

46.12.1481 DIETITIAN SERVICES, REQUIREMENTS

Subsections (1) and (2) remain 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. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1482 DIETITIAN SERVICES, REIMBURSEMENT

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

(b) ~~\$25 per hour rates negotiated by the department or its designee.~~

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


3. The rule 46.12.1410 as proposed to be repealed is on page 46-1965 of the Administrative Rules of Montana.

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

4. These rules changes are necessary due to the separation between the waiver for the developmentally disabled persons and the waiver for the aged/disabled persons. The waivers are administered separately and are now two separate proposals to Health Care Financing Administration. Rules governing the DD waiver will be included in a separate subchapter. With this major rule change, it was timely to clarify language within the existing rule.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than July 19, 1990.

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


Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rules	)	THE PROPOSED AMENDMENT OF
46.12.4002, 46.12.4004 and	)	RULES 46.12.4002,
46.12.4006 pertaining to	)	46.12.4004 AND 46.12.4006
group eligibility	)	PERTAINING TO GROUP
requirements for inpatient	)	ELIGIBILITY REQUIREMENTS
psychiatric services	)	FOR INPATIENT PSYCHIATRIC
	)	SERVICES

TO: All Interested Persons

1. On July 11, 1990, 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 46.12.4002, 46.12.4004 and 46.12.4006 pertaining to group eligibility requirements for inpatient psychiatric services.

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

46.12.4002 GROUPS COVERED, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsections (1) through (1)(b) remain the same.

~~(c) Individuals under age 21 receiving active treatment as inpatients in psychiatric facilities or programs.~~

Subsection (2) remains the same.

(a) individuals described in subsections (1)(b) and ~~(1)(c)~~ who are ineligible for coverage as categorically needy because of excess income.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

46.12.4004 NON-FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, ~~or receiving treatment in psychiatric facilities or programs,~~ the nonfinancial requirements for medicaid under this subchapter, whether as categorically needy or medically needy, consist of the age requirement and applicable service requirements.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

46.12.4006 FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, ~~or receiving treatment in psychiatric facilities or programs~~, the financial requirements for medicaid under this subchapter as categorically needy are the AFDC financial requirements which are set forth in ARM 46.10.401 through 406 and 46.10.505 through 514. These will be used to determine whether:

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

(3) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, ~~or receiving treatment in psychiatric facilities or programs~~ who are ineligible under subsection (2) because of excess income, the financial requirements for medicaid under this subchapter as medically needy are the medically needy financial requirements for noninstitutionalized AFDC-related families and children which are set forth in subchapter 38. The financial provisions of this subchapter which apply to individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3) apply identically to the above described individuals under 21.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

3. These amendments are necessary to make the Medicaid eligibility rules for inpatient psychiatric services consistent with those applying to Medicaid eligibility generally. Current rules allow children under the age of 21, who have been admitted to an inpatient psychiatric facility, to establish Medicaid eligibility without consideration of the income or resources of household members, such as parents with whom they are living at the time of admission. The current rule is optional under federal law. The same option is available under federal law with respect to other groups of children, such as those in intermediate care facilities for the mentally retarded (e.g., Montana Developmental Center).

It may be appropriate to disregard the income and resources of household members, where the cost of providing care for the child's chronic condition is likely to devastate the household financially. However, inpatient psychiatric services are not available for treatment of chronic conditions. Under federal law inpatient psychiatric services may be provided only where the services will improve the patient's condition or prevent regression so that the services will no longer be necessary. The department does not believe that the household's income and resources should be disregarded under these circumstances.

Further, Medicaid inpatient psychiatric treatment costs for individuals under 21 have increased from \$910,388 for the period of March through June 1987 (an annualized cost of \$2,731,164) to an estimated \$9,000,000 in 1990. This rapid increase in cost requires that the department limit Medicaid eligibility for inpatient psychiatric services to those individuals who meet the general eligibility requirements.

The proposed amendments are necessary to require that inpatient psychiatric services are reimbursable only where the patient would otherwise qualify for medical assistance.

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, MT 59604-4210, no later than July 19, 1990.

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

6. These rules will be effective September 1, 1990.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rules	)	THE PROPOSED AMENDMENT OF
46.12.1201, 46.12.1202,	)	RULES 46.12.1201,
46.12.1203, 46.12.1204 and	)	46.12.1202, 46.12.1203,
46.12.1205 pertaining to	)	46.12.1204 AND 46.12.1205
the payment rate for	)	PERTAINING TO THE PAYMENT
skilled nursing and	)	RATE FOR SKILLED NURSING
intermediate care services	)	AND INTERMEDIATE CARE
	)	SERVICES

TO: All Interested Persons

1. On July 11, 1990 at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.1201, 46.12.1202, 46.12.1203, 46.12.1204 and 46.12.1205 pertaining to the payment rate for skilled nursing and intermediate care services.

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

46.12.1201 PAYMENT RATES FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES (1) These rules shall be effective for rate years beginning on or after July 1, 198990.
(2) Includable costs for periods prior to July 1, 198990 will be determined in accordance with rules for includable costs then in effect.

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

(e) $S(1) = [(V \times S) + (Y \times \text{8.39 } \underline{8.64})]$ divided by $(V + Y)$

where:

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

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

(f) $S(2) =$ the lower of ~~8.39~~ 8.64 or $S + ((F \times 12)$ divided by 365)

where:

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

D is the number of licensed beds in the facility.

B is the total allowable remodeling costs as defined in ARM 46.12.1202(2)(t).

Subsections (3)(g) through (3)(i) remain the same.

(j) $M_1 =$ the M calculated under ARM 46.12.1204(3) in effect on 6/30/85 times ~~1.1037~~ 1.1369.

Subsections (3)(k) through (3)(k)(iv) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.1202 PURPOSE AND DEFINITIONS (1) The purpose of ARM 46.12.1201 through 1210 is to define the basis and procedures the department will use to pay for nursing facility services provided to medicaid recipients from July 1, 1989990 forward and to specify other medicaid requirements applicable to nursing facilities.

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

(a) "Nursing facility services" means skilled nursing facility services provided in accordance with 42 CFR 405 Subpart K and, effective ~~August 1, 1989~~ October 1, 1990, 42 CFR 483, intermediate care facility services provided in accordance with 42 CFR 442 Subpart F, and effective ~~August 1, 1989~~ October 1, 1990, 42 CFR 483, and intermediate care facility services for the mentally retarded provided in accordance with 42 CFR 483. The department hereby adopts and incorporates herein by reference 42 CFR 405 Subpart K, 42 CFR 442 Subparts F and G, and 42 CFR 483, which define the participation requirements for providers, copies of which may be obtained through the Department of Social and Rehabilitation Services, P. O. Box 4210, 111 Sanders, Helena, Montana 59604-4210. The term "nursing facility services" includes the term "long term care facility services". Nursing facility services include, but are not limited to, a medically necessary room, dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. The services and examples of services listed in this subsection are included in the rate determined by the department under ARM 46.12.1201 and ARM 46.12.1204 and no additional reimbursement is provided for such services. Examples of nursing facility services are:

Subsections (2)(a)(i) through (2)(y) remain the same.

(2) The laws and regulations and federal policies cited in this sub-chapter shall mean those laws and regulations which are in effect as of July 1, 1989990, unless otherwise specified.

Subsection (2)(aa) remains the same.

(ab) "Licensed to non-licensed ratio" means that ratio computed when the weighted sum of the hourly wages, including benefits for RN's and LPN's employed by providers, identified by the department in its ~~January 1989~~ March 1990 wage survey of providers, divided by the hours included in the survey is divided by the average nursing care hourly wage. This ratio is used to convert licensed hours into equivalent non-licensed hours for staffing and patient assessment computations provided for in ARM 46.12.1206(3). This factor is updated each time a wage survey is compiled by the department.

Subsection (2)(ac) remains the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.1203 PARTICIPATION REQUIREMENTS Subsections (1) through (1)(h) remain the same.

(i) comply with all applicable federal and state laws and regulations regarding nursing facilities at the times and in the manner required therein, including but not limited to 42 U.S.C. §1396r(b)(5) and 1396r(c), as amended by public law 101-239. The department hereby adopts and incorporates herein by reference 42 U.S.C. §1396r (b)(5) and 1396r(c), as amended by public law 101-239. A copy of these statutes may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.1204 PAYMENT RATE Subsection (1) remains the same.

(2) The calculated operating rate A, in dollars per patient day, is given by the following effective July 1, 1989:

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

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

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

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

where:

$A(1) = B$ times ((C times ((\$27.77 + (\$54,627 divided by D)) divided by .9)) + E) + the OBRA increment + the minimum wage rate adjustment (MWRA).

$A(2) = B$ times ((C times ((\$27.09 + (\$54,627 divided by D)) divided by .9)) + E) + the OBRA increment + the MWRA.

$A(3) = B$ times ((C times ((\$27.43 + (\$54,627 divided by D)) divided by .9)) + E) + the OBRA increment + the MWRA.

B is the area wage adjustment for a provider,

C is the inflation factor used to compute the per diem rates. The inflation factor is the factor necessary to calculate increases in $R(1)$ such that, effective July 1, 1989~~90~~, $R(2) = R(1) \times 1.03$.

D is the number of licensed beds for a provider times 366 days, or for facilities newly constructed after June 30, 1985 or not in the program on June 30, 1985 or participating in the program with more than 25 licensed beds on June 30, 1985, D is the number of licensed beds, but no less than 25 and no more than 120, for a provider times 366.

E is the patient care adjustment for a provider,

T_1 is C times the interim operating rate in effect on June 30, 1982, indexed to December 31, 1982.

$R(1)$ = The statewide weighted average per diem rate for R as of June 1, 1989~~90~~.

$R(2)$ = The statewide weighted average per diem rate for R indexed from $R(1)$ by 1.03 effective July 1, 1989~~90~~.

~~The OBRA 87 cost increment effective July 1, 1989 is \$2.00. The department intends that providers use the OBRA 87 cost increment to meet the fiscal year 1990 costs of complying~~

with the requirements of the Omnibus Budget Reconciliation Act of 1987, public law 100-203, and all state and federal laws and regulations adopted thereunder, including but not limited to the costs of training for nurse aides other than the cost of actual testing required for nurse aides.

Subsections (2)(a) and (2)(b) remain the same.

(c) The OBRA cost increment effective July 1, 1990 through September 30, 1990 is \$2.24. This increment covers all nurse aide certification training costs incurred to meet the OBRA requirements during the period July 1 through September 30, 1990 and the medicaid share of other OBRA costs during this period. Effective October 1, 1990 through June 30, 1991, the OBRA cost increment is \$1.90. This reduction reflects that the department is no longer required to pay all OBRA training costs after October 1, 1990, but will pay only the medicaid share of OBRA costs incurred after October 1, 1990.

(i) The department intends that providers use the OBRA cost increment to meet the fiscal year 1991 costs of complying with the requirements of the Omnibus Budget Reconciliation Acts of 1987 and 1989, public laws 100-203 and 101-239, and all state and federal laws and regulations adopted thereunder, including but not limited to the costs of training for nurse aides other than the cost of actual testing required for nurse aides.

(ii) Each provider must document and submit to the department on a quarterly basis information on the nurse aide certification training costs incurred at the facility. The required information must be submitted quarterly on the nurse aide certification/training survey reporting form provided by the department and must include the total dollars incurred in each of the following three categories: facility personnel; supplies and equipment; and subcontracted services. The reporting form must include a brief description of the items included in each of the three categories.

(iii) Acceptable documentation will be any documentation that adequately supports the costs being claimed on the reporting form and includes all records and documentation as defined in ARM 46.12.1208(5), such as invoices, contracts, canceled checks and time cards. This documentation is subject to audit and evaluation in accordance with ARM 46.12.1208. This documentation must be maintained by the facility for 3 years from the date the form is filed with the department.

(iv) If, based on audit or review of facility training cost documentation, the department determines that the documentation does not adequately support the training costs claimed to the department on the quarterly nurse aide certification/training survey reporting form, the facility must reimburse the department in accordance with ARM 46.12.1209 the total dollar difference between the training costs claimed on the reporting form and the training costs supported by adequate documentation.

(v) If a provider fails to submit the quarterly reporting form within 30 calendar days following the end of

the quarter, the department may withhold the OBRA increment from the provider's reimbursement for the following month. If the report remains overdue for a second consecutive month, the department may withhold the provider's total reimbursement for the month. All amounts so withheld will be payable to the provider upon submission of a complete and accurate nurse aide certification/training survey reporting form.

(3) The calculated property rate is the result of computing the formula:

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

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

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

where:

M is the property rate per day of service,

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

N is \$7.60.

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

$N(1) = \text{the lower of } 8.39 \text{ } \underline{8.64} \text{ or } ((A \times D) + (B \times 7.60)) \text{ divided by } (A + B) \times 1.1037 \text{ } \underline{1.1369}$

$N(2) = \text{the lower of } 8.39 \text{ } \underline{8.64} \text{ or } D \times 1.1037 \text{ } \underline{1.1369} + ((F \times 12) \text{ divided by } 365).$

where:

A is the total square footage of the original nursing facility structure.

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

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

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

H is the total number of licensed beds in the nursing facility after extensive remodeling.

G is total allowable remodeling costs.

Z is $1.1037 \text{ } \underline{1.1369}.$

(4) ~~The payment rate to providers of intermediate care facility services for the mentally retarded is the actual includable cost incurred by the provider as determined in ARM 46-12.1207 divided by the total patient days of service during the provider's fiscal year. The payment rate will not exceed the final rate in effect on June 30, 1982, as indexed to the mid-point of the rate year by 9% per 12 month year for fiscal years ending on or before June 30, 1987, and 5.1% per year indexed to June 30 of the rate year for the fiscal years ending after July 1, 1987, and on or before June 30, 1988. The payment rate will not exceed total allowable costs per day for the 12 month period ended June 30, 1989, with increases in subsequent years indexed to June 30 of the rate year by an~~

index not to exceed the medicare market basket index beginning July 1, 1990. Providers having a 1989 cost reporting period ending on a date other than June 30, 1989, must submit detailed cost information supplemental to the cost report. This cost information must be for the period July 1, 1988 through June 30, 1989, and include, at a minimum, worksheet A and the medicaid long term care facility trial balance (form MFB-2), which are standard cost report forms. The payment rate to providers of intermediate care facility services for the mentally retarded is the actual includable cost incurred by the provider as determined in ARM 46.12.1207 divided by the total patient days of service during the provider's fiscal year.

(a) For fiscal years ending on or before June 30, 1987, the payment rate will not exceed the final rate in effect on June 30, 1982, as indexed to the mid-point of the rate year by 2% per 12 month year.

(b) For fiscal years ending after June 30, 1987 and on or before June 30, 1988, the payment rate will not exceed the final rate in effect on June 30, 1987 indexed by 5.1% to June 30 of the rate year.

(c) For fiscal years ending after June 30, 1988 and on or before June 30, 1989, the payment rate will not exceed total allowable costs per day for the 12 month period ended June 30, 1989, with increases in subsequent years indexed to June 30 of the rate year by an index not to exceed the final medicare market basket index applicable to the rate year.

(d) For fiscal years ending after June 30, 1990 and on or before June 30, 1991, the payment rate will not exceed total allowable costs per day for the 12 month period ended June 30, 1991, with increases in subsequent years indexed to June 30 of the rate year by an index not to exceed the final medicare market basket index applicable to the rate year.

(e) Providers having a 1989 or 1991 cost reporting period ending on a date other than June 30 must submit detailed cost information supplemental to the cost report within 90 days after June 30. This cost information must be for the period July 1 through June 30 of the respective reporting year and must include, at a minimum, worksheet A and the medicaid long term care facility trial balance (form MFB-2), which are standard cost report forms.

Original subsections (4)(a) through (4)(c) remain the same in text but will be recategorized as subsections (4)(f) through (4)(h).

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

(a) The payment for nurse aide wage increases for those nurse aides who have completed all training and competency evaluation requirements mandated under the Federal Omnibus Budget Reconciliation Acts of 1987 and 1989, public laws 100-203 and 101-239 respectively, may not be distributed as part of the reimbursement formula for routine operating and property costs. The payment is not available for increases paid to nurse aides for services performed prior to January 1, 1990.

(i) The payment for nurse aide wage increases will

include the portion of the wage increase paid to nurse aides which is directly related to successful completion of a training and competency evaluation program certified by the department of health and environmental sciences. Payment will not include wage increases tied to a cost of living adjustment, or a union scale increase or any other increase not pertaining to certification.

Subsection (7)(a)(ii) remains the same.

(iii) Payment is limited to the medicaid share of the nurse aide wage increase arising from certification and related employer contributions based on the percentage of medicaid utilization at each facility computed from form SRS-MA15 (monthly nursing home staffing report) for the three month period September, October and November 1989 January, February and March 1990.

Subsection (7)(b) remains the same.

(c) the formula for computing the payment attributable to nurse aide wage increases is as follows:

$I \times H = D$

where:

$(C - P) \times U = I$, such that

if I is less than .20, $I = I$

if I is greater than or equal to .20, $I = .20$

where:

I = Medicaid percentage of the increase in wages tied to certification;

P = Previous hourly rate of pay prior to certification;

C = Current hourly rate of pay after tied to certification;

H = Hours paid at increased hourly rate;

U = Medicaid utilization percentage (form SRS-MA15) which equals the sum of medicaid days for September, October and November 1989 January, February and March 1990 divided by the sum of the total days reported for September, October and November 1989 January, February and March 1990; and

D = Payment amount for the wage increase for each nurse

aide.

Subsections (7)(d) through (7)(g) remain the same.

(8) Effective July 1, 1990, the department will reimburse providers, in addition to other amounts payable under this section, an amount equal to each provider's minimum wage rate adjustment (MWRA) calculated in accordance with this subsection. The MWRA payment shall be payable only to those providers with employees paid at rates below the applicable federal minimum wage, as reflected in wage data submitted to the department for the month of January 1990.

(a) The per day amount of each facility's rate adjustment will equal medicaid's total fiscal year minimum wage share for each facility divided by the facility's estimated annualized medicaid bed days. Calculated amounts ending in fractions of cents will be rounded to the nearest cent, with amounts of .5 cent or higher being rounded up to the next cent.

(b) The MWRA equals T, rounded in accordance with subsection (a) and computed as follows:

$M = (((A \times .75) + ((A \times .75) \times E)) + ((B \times .25) + ((B \times .25) \times E))) \times U$, and

X = The total of M for all of a provider's employees, and

T = X divided by annualized medicaid days, or the provider's per diem MWRA

where:

(i) A (projected impact by employee of 12 months at \$3.80 minimum wage) = $((\$3.80 - Y) \times Z) \times 12$ months, for periods ending on or before April 1, 1991, and

B (projected impact by employee of 12 months at \$4.25 minimum wage) = $((\$4.25 - Y) \times Z) \times 12$ months, for periods beginning on or after April 1, 1991, where:

(A) E = total employer contribution percentage as defined at ARM 46.12.1204(7)(d);

(B) M = projected total fiscal year minimum wage impact for each employee below federal minimum wage;

(C) U = medicaid utilization percentage (form SRS-MA15) which equals the sum of medicaid days for January, February, and March 1990 divided by the sum of the total days reported for January, February and March 1990;

(D) Y = the current rate of pay in January for each person employed below the minimum wage; and

(E) Z = Hours paid in January, average of 96 used if no hours reported in the survey.

(c) Employer contribution percentage is defined in ARM 46.12.1204(7)(d) and is applied to all employees that are below the minimum wage requirements.

(d) Payment is limited to the medicaid share of the minimum wage increase and related employer contributions based on the percentage of medicaid utilization at each facility computed from SRS-MA15 (monthly nursing home staffing report) for the three month period January, February and March 1990.

(e) The amount of the minimum wage per diem rate adjustment for each facility impacted is fixed and not subject to adjustment based on changes in the provider's salary schedule and/or staffing patterns.

(f) The estimated annualized medicaid days for each provider are identified in the department's medicaid bed day report for fiscal year 1990.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.1205. PAYMENT PROCEDURES Subsections (1) through (2)(a) (cx) (A) (IV) remain the same.

(i) Providers may bill the department separately for nurse aide wage increases in accordance with ARM 46.12.1204 (7).

Subsections (2)(b) through (8) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

3. The proposed rule change is necessary to provide for an aggregate increase in total reimbursement to nursing facilities of 3% effective July 1, 1990 as mandated by the 1989 legislature. Included in the 3% increase will be a 3% increase in property reimbursement. In addition to the general 3% rate increase, the rule contains the following adjustments to nursing facility reimbursement.


An adjustment to the nursing facility reimbursement rate is necessary to address the costs of complying with OBRA 1987 and 1989 requirements and will be added to the facility operating rate. For the period July 1, 1990 through September 30, 1990, the federal government has mandated that the Medicaid program reimburse both the Medicaid and non-Medicaid shares of nurse aide training costs. Effective October 1, 1990 through June 30, 1991, the Medicaid agency will only be required to reimburse the Medicaid share of the costs of implementing the OBRA requirements. Effective April 1, 1990 and April 1, 1991, the federal minimum wage requirements will increase to \$3.80 and \$4.25 respectively. This rule change is necessary to meet federal law requirements that Medicaid rates take into account the costs of the minimum wage increase. This rule change provides for a rate adjustment to cover the direct impact of the increase in minimum wages at only those facilities that are directly affected by the new requirements. The employer's contribution increase tied to this increase in minimum wage will be included in the rate adjustment. Payment will be limited to the percentage of Medicaid utilization at each facility.

The proposed rule would establish FY91 as a base year for reimbursing ICF/MR facilities. The change will allow the Medicaid program to reimburse increased ICF/MR allowable costs. This change is necessary to allow federal financial participation in the necessary costs incurred to provide ICF/MR services.

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, MT 59604-4210, no later than July 19, 1990.

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

6. These rules will be applied retroactively to July 1, 1990.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of Rule	)	ON THE PROPOSED AMENDMENT
46.12.590, 46.12.591,	)	OF RULE 46.12.590,
46.12.592 and 46.12.599	)	46.12.591, 46.12.592 AND
pertaining to inpatient	)	46.12.599 PERTAINING TO
psychiatric services	)	INPATIENT PSYCHIATRIC
	)	SERVICES

TO: All Interested Persons

1. On July 11, 1990, at 2:00 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 Rule 46.12.590, 46.12.591, 46.12.592 and 46.12.599 pertaining to inpatient psychiatric services.

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

46.12.590 INPATIENT PSYCHIATRIC SERVICES, PURPOSE AND DEFINITIONS Subsection (1) remains the same.

(a) These rules implement Title XIX of the Social Security Act including applicable section of Title and 42 CFR, ~~part 447 sections 447.1 through 447.45, 447.300 through 447.304, and 447.325,~~ and allow the department to pay for inpatient psychiatric hospital services for persons under the age of 21 through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with applicable Montana and federal laws, regulations, and quality and safety standards. The department hereby adopts and incorporates by reference 42 CFR sections 447.1 through 447.45, 447.300 through 447.304, and 447.325. Copies of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604-4210.

Subsection (2) remains the same.

(a) "Inpatient psychiatric services" means services that are provided in accordance with Title 42 CFR, ~~part 447, subpart A and sections 447.300 through 447.304 and section 447.325~~ sections 440.160 and 441.150 through 441.156, which provide definitions and program requirements and ~~which are federal regulations~~ which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604-4210. Inpatient psychiatric services are services that meet those provisions and are provided in an inpatient hospital

facility or residential treatment facility that is devoted to the provision of psychiatric services for persons under the age of 21.

(b) "Devoted to the provision of psychiatric services for persons under the age of 21" means a hospital facility or residential treatment facility whose goals, purpose and care are designed for and devoted exclusively to persons under the age of 21.

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

(k) "Acute psychiatric inpatient care" means hospital based active treatment provided under the direction of a physician for a psychiatric episode which has a relatively sudden onset and a short severe course. The psychiatric episode must be of such a nature as to pose a significant and immediate danger to self, others, or the public safety or one which has resulted in marked psychosocial dysfunction or grave mental disability of the patient. The therapeutic intervention must be aggressive and designed to achieve the patient's discharge from inpatient status or to a less restrictive environment at the earliest possible time.

(l) "Residential psychiatric care" means comprehensive, active psychiatric treatment under the supervision of a physician in a facility designed and organized to provide twenty-four hour residential care. Recipients must have been diagnosed or evaluated as being psychiatrically impaired and have emotional, psychological or behavioral dysfunctions. The therapeutic intervention must be aggressive and designed to achieve the patient's discharge from inpatient status or to a less restrictive environment at the earliest possible time.

(m) "Inpatient hospital facility" means a hospital facility whose goals, purpose and care are designed for and devoted exclusively to persons under the age of 21.

(n) "Residential treatment facility" means a facility of not less than 30 beds that is accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), and is operated by a nonprofit corporation or association for the primary purpose of providing active treatment services for mental illness in a non-hospital based residential setting to persons under 21 years of age.

(o) "Active treatment" means implementation of a professionally developed and supervised individual plan of care that is:

(i) developed and implemented no later than 14 days after admission;

(ii) designed to achieve the recipient's discharge from inpatient status at the earliest possible time; and

(iii) meets the requirements of 42 CFR 441.155.

(p) "Emergency admission" means an admission for treatment of a sudden onset of a psychiatric condition manifesting itself by acute symptoms of such severity that the absence of immediate medical attention could reasonably be expected to result in serious dysfunction of a bodily organ or part or in

the death of the individual or in harm to another person by the individual.

(g) "Working day" means any day Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays.

(3) Medicaid payment is not allowable for services provided in an inpatient psychiatric hospital that do not meet the definition of acute psychiatric inpatient care set forth in ARM 46.12.590(2)(k) or for services provided in a residential treatment facility that do not meet the definition of residential psychiatric care set forth in ARM 46.12.590(2)(l).

(4) Medicaid reimbursement is not available for services until and unless a certification of need for services, as defined in 42 CFR 441.152(a) and 153, has been completed:

(a) prior to admission, for an individual who is a recipient of medicaid when admitted to the facility;

(b) within 14 days after an emergency admission; or

(c) for individuals applying for medicaid while in the facility, within 14 days after an eligibility determination and covering the entire stay in the facility.

(5) The provider must notify the department's designated review organization within three working days of an emergency admission so that a certification can be completed within 14 days of admission. If the provider fails to timely notify the review organizations, the department shall deny reimbursement for the period from admission and the actual date of notification.

(6) The provisions of ARM 46.12.590 and 591 which provide medicaid coverage of and payment for residential treatment facility services terminate on July 1, 1991.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-139 MCA

46.12.591 INPATIENT PSYCHIATRIC SERVICES, PARTICIPATION REQUIREMENTS Subsection (1) remains the same.

(a) maintain a current license as a hospital or a residential treatment facility under the rules of the department of health and environmental sciences to provide inpatient psychiatric services;

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

(g) for hospital providers, comply with+

(i) Title 42 CFR sections 482.1 through 482.62 and meet the requirements of section 1861(f) of the Social Security Act, or which are federal regulations and statutes setting forth requirements for psychiatric hospitals. The department hereby adopts and incorporates by reference the above-cited regulations and statutes. Copies of these regulations and statutes may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604-4210.

(ii) be accredited by the Joint Commission on Accreditation of Hospitals Health Care Organizations (JCAHO).

~~(A) The federal regulations cited above in subsection (1)(g)(i) define requirements for psychiatric facilities which the department hereby adopts and incorporates herein by reference. A copy of the regulations cited above may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604;~~

~~(hi) for hospital providers, participate in medicare or reimburse the department an amount adequate to cover the increased administrative and audit functions normally performed by the medicare intermediary. These funds shall be deposited with the state either upon entering a provider agreement or at the beginning of the applicable state fiscal year, whichever is earlier. The amount of funds per facility shall not be less than twenty five thousand dollars (\$25,000) per state fiscal year;~~

Original subsections (1)(i) and (1)(j) remain the same but are recategorized as subsections (1)(j) and (1)(k).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-139 MCA

46.12.592 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

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

(d) The cost per day ceiling established under this section applies to operating costs incurred by a provider in furnishing inpatient services. These operating costs exclude the costs of malpractice insurance and capital-related costs described in 42 CFR ~~405.414~~ 413.130, which is a federal regulation which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604.

Subsections (5)(e) through (8)(a) remain the same.

(b) Exceptions to the ceiling on the rate of cost increases may be allowed as described in 42 CFR ~~405.463~~ 413.40 (g) which is a federal regulation which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.599 INPATIENT PSYCHIATRIC SERVICES, UTILIZATION REVIEW AND CONTROL

(1) Prior to admission and as frequently as the department may deem necessary, the department will evaluate the necessity and quality of services for each medicaid patient, in accordance with Title 42 CFR, sections ~~441.150 through 441.156, 441.152, 441.153, 456.3, 456.22, 456.150 through 456.245 and 456.600 through 456.614,~~ which are federal regulations which set forth utilization review and control criteria and which the department hereby

adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604-4210.

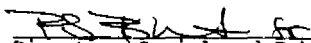
AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The proposed amendments to ARM 46.12.590 and 591 which provide Medicaid coverage of and payment for residential treatment facility services will be applied retroactively to July 19, 1990.

4. This amendment is necessary to implement Medicaid coverage of inpatient psychiatric services for persons under the age of 21 provided in residential treatment facilities, as allowed under House Bill (HB)304, 1989 Legislature. See Section 53-6-139, MCA. This coverage will commence July 1, 1990 and terminates July 1, 1991, as required by HB304. This amendment is also necessary to more specifically define services covered under the inpatient psychiatric program. More specific definitions will facilitate mandatory prescreening and utilization review procedures, which are designed to assure that Medicaid pays only for medically necessary services delivered in the least restrictive setting and the most cost-effective manner. Finally, this amendment is necessary to update and correct references to federal regulations incorporated into the department's rules.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than July 19, 1990.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I	)	THE PROPOSED ADOPTION OF
through XXIV, the	)	RULES I THROUGH XXIV, THE
amendment of Rules	)	AMENDMENT OF RULES
46.10.701, 46.10.702,	)	46.10.701, 46.10.702,
46.10.704, 46.10.705,	)	46.10.704, 46.10.705,
46.10.707, 46.10.708 and	)	46.10.707, 46.10.708, AND
46.10.710, and the repeal	)	46.10.710, AND THE REPEAL
of rules 46.10.308,	)	OF RULES 46.10.308,
46.10.309, 46.10.310,	)	46.10.309, 46.10.310,
46.10.311, 46.10.312,	)	46.10.311, 46.10.312;
46.10.313, 46.10.601	)	46.10.313, 46.10.601
through 46.10.608 and	)	THROUGH 46.10.608 AND
46.10.713 pertaining to	)	46.10.713 PERTAINING TO THE
the Montana JOBS program	)	MONTANA JOBS PROGRAM

TO: All Interested Persons

1. On July 10, 1990, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through XXIV, the amendment of Rules 46.10.701, 46.10.702, 46.10.704, 46.10.705, 46.10.707, 46.10.708 and 46.10.710, and the repeal of rules 46.10.308, 46.10.309, 46.10.310, 46.10.311, 46.10.312, 46.10.313, 46.10.601 through 46.10.608 and 46.10.713 pertaining to the Montana JOBS program.

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

[RULE I] PURPOSE (1) These rules implement the JOBS program for persons who are recipients of aid to families with dependent children (AFDC) authorized by the federal Family Support Act of 1988, Public Law 100-485, codified at 42 CFR section 681 et seq., and by 53-4-701 et seq. MCA. The JOBS program is to provide education, training, and work activities and support services to assist participants in becoming economically self-sufficient.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101,
53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106,
53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE III] DEFINITIONS (1) "Adult recipient" means a person other than a dependent child who is included in the

AFDC assistance unit. A child who is the caretaker relative of another dependent child whose needs are met with payments of aid to families with dependent children is for the purposes of the JOBS program considered to be an adult recipient.

(2) "Basic and remedial education" means training in basic reading, writing, and arithmetic skills necessary to bring the participant to the level of competence required in the participant's employability plan.

(3) "Caretaker parent" means the natural or adoptive parent in an assistance unit who functions as a provider of maintenance, physical care and guidance for the children.

(4) "Case file" means the record maintained for a participant during the course of participation in the program.

(5) "Case management" means the process for formulating and developing an employability plan for a participant.

(6) "Case manager" means the person who provides case management for a participant in the JOBS program.

(7) "Community work experience" means a program to improve the employability of a participant through the development in nonprofit employment of the person's skills, experience and confidence.

(8) "Conciliation" means the informal process provided for in [Rule XXI], for resolving a participant's complaint, grievance, or dispute.

(9) "Department" means the department of social and rehabilitation services.

(10) "Educational activities" means high school education or the equivalent thereof, basic and remedial education, and English as a second language.

(11) "Employability plan" means a written plan developed with the participant that sets forth services and activities that are intended to assist the participant in obtaining and retaining employment.

(12) "English as a second language (ESL)" means classroom training for persons with limited or no skills in English, that provides them with sufficient command of the English language to compete in the labor market or to participate in training.

(13) "Exempt" means an AFDC recipient or applicant who is not required by the Act to participate in JOBS.

(14) "General education development (GED)" means training provided to persons who need a high school education or its equivalent in order to obtain appropriate employment.

(15) "Good cause" means an acceptable reason as determined by the department excusing a participant's failure to comply with a program requirement applicable to the participant.

(16) "Group job search" means the provision to a group of counseling, training, information dissemination, and peer support activities which are for the purpose of providing guidance and support in obtaining employment.

(17) "Incapacity or incapacitated" means a physical or mental defect, illness or impairment diagnosed by a licensed physician or psychologist which is sufficiently serious as to

eliminate or substantially reduce the parent's ability to obtain and retain employment for a period expected to last at least thirty (30) days.

(18) "Individual job search" means the provision on a one-to-one basis of employment counseling and information dissemination which is for the purpose of providing guidance and support in obtaining employment.

(19) "Initial assessment" means a process to determine a person's employment potential and service needs.

(20) "JOBS" means the job opportunities and basic skills training program required by section 402(a)(19) of the Social Security Act, as amended by section 201(a) of the Family Support Act of 1988 (Public Law 100-485); 53-4-701 et seq. MCA and these rules.

(21) "JOBS contract" means an agreement or contract entered into with the department or its agent by the JOBS participant describing the participant's obligations, length of participation, and activities to be provided.

(22) "Job development and placement" means developing or finding job openings and assisting participants in obtaining those openings.

(23) "Job readiness activities" means instruction in job seeking and job retention skills.

(24) "Job skills training" means vocational training for a specific occupational area conducted by an instructor in a non-work site or a classroom setting.

(25) "Lead agency" means an entity the department contracts with to conduct a JOBS program in a county.

(26) "Mandatory or non-exempt" means an AFDC applicant or recipient who is required by the Act to participate in JOBS.

(27) "On-the-job training (OJT)" means training in the private or public sector given to a participant, occurring while the participant is engaged in productive work and providing knowledge or skills essential to the full and adequate performance of the job.

(28) "Orientation" means a process to provide AFDC recipients with information on JOBS, availability of program activities, available supportive services, and contractor and participant responsibilities.

(29) "Post secondary education" means a field of instruction approved by the Montana commissioner of higher education offered by an institution of higher education.

(30) "Recipient" means a person who is eligible for and receiving AFDC, including a person who is eligible for AFDC but does not receive an actual grant because the amount is less than \$10 but more than zero, or because a person who is a participant in work supplementation or is a household member receives a periodic extra pay check and the grant is temporarily suspended.

(31) "Self-initiated education or training" means training received by a participant without referral or assistance from a case manager.

(32) "Supportive services" means expenses and services necessary for a participant's participation in training or acceptance of a job.

(33) "Training activities" means job skills training, job readiness activities and job development and placement.

(34) "Work activities" means job search, on-the-job training, work supplementation and community work experience.

(35) "Work supplementation" means the program provided for at ARM 46.10.701 et seq. which has as its purpose to improve the employability of participants who have not otherwise been able to obtain employment.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE III] ELIGIBILITY (1) A person who is eligible for aid to families with dependent children, as provided for at ARM 46.10.301 et seq., is required to participate in the JOBS program as provided for in these rules unless the person is exempted:

(a) as provided for in subsection (2);
(b) the department determines that it does not have the resources to provide the services of the program to the person; or

(c) the JOBS program is not available in the county where the person resides.

(2) The following persons are exempt from participation in JOBS:

(a) a person under the age of 16;
(b) a person residing at a location more than 1 hours distance in commuting time. This excludes the time necessary to transport a child to and from a child care facility;

(c) a person age 16 to 18, who is enrolled and regularly attending elementary, secondary, vocational, or technical school as a full-time student as defined by the institution;

(d) a dependent child between the ages of 18 and 19 who is a full-time student and expected to complete the education program before the age of 19;

(e) a person who is incapacitated, verified in writing by a licensed physician or psychologist, which, by itself or in conjunction with age, prevents the person from engaging in employment or training for a continuous period of at least 30 days;

(f) a person required to be in the home to care for an incapacitated member of the household if the need for care is verified in writing by a licensed physician or psychologist;

(g) a pregnant woman after the third month of pregnancy, if the pregnancy and period of the pregnancy are verified in writing by a licensed physician or designee or a certified nurse-midwife;

(h) a parent or other caretaker relative who personally provides care for a child under the age of 3 years, unless the

parent or caretaker relative is age 16 through 19, has not completed high school or its equivalency, and there is full-time child care available;

(i) a woman recuperating from childbirth as prescribed by her physician;

(j) a person not residing in a designated JOBS county;

(k) a person working an average of 30 hours or more per week in unsubsidized employment and receiving minimum wage or more or though not receiving minimum wage is working through an employability plan for self employment;

(l) a person 60 years or older; or

(m) a person serving as a full-time volunteer (as defined by the VISTA agency) under the volunteer's in service to America (VISTA).

(3) When exempt status cannot be established until medical information is provided, a person can be classified as temporarily exempt. However, the JOBS status determination of exemption must be completed within 60 days.

(4) The selection of persons to participate in the program will be within the discretion of the department or its designee lead agencies.

(5) In selecting persons to participate in the program priority must be given in the following order:

(a) nonexempt persons who request participation;

(b) nonexempt persons directed by the department to participate; or

(c) exempt persons who volunteer to participate.

(6) Not all eligible AFDC recipients will be selected for JOBS participation. Those persons not selected will be referred at a later time.

(7) Placement of persons into the services made available will be based upon the following factors:

(a) the suitability of the available services for meeting the person's needs as identified in the employability plan;

(b) the availability of the necessary services; and

(c) the ability of the department to meet performance goals.

(8) The selection of persons to participate will be based on a system designed by the county in which participation is sought. The selection system must be based on the criteria of these rules and be approved by the department.

(9) If an on-the-job training participant becomes ineligible for AFDC due to excess earned income, the participant may remain a JOBS participant for the duration of the training and may be eligible for case management and supportive services available to other JOBS participants who become employed, for up to ninety (90) days after the ineligibility.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE IV] SERVICES (1) The following services may be provided to a participant in the JOBS program in accordance with their employability plan:

(a) educational activities below the post-secondary level determined by the case manager to be appropriate to the participant's employment goal.

- (b) job skills training;
- (c) job development and placement;
- (d) individual or group job search;
- (e) on-the-job training;
- (f) community work experience;
- (g) work supplementation;
- (h) training services in a post secondary setting;
- (i) supportive services; and
- (j) self-initiated education and training.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE V] PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES

(1) A caretaker relative under 20 who has not completed high school or its equivalent must participate in educational activities in pursuit of a high school diploma or its equivalent if the case manager determines that such educational activities are appropriate.

(a) A caretaker relative, 16 or 17 years of age, may be exempted from high school or equivalent education attendance if the determination is based on an educational assessment and if a provision is made for the person to participate in another educational activity or work activity.

(b) A caretaker relative, age 16 through 19, caring for a child under the age of 3 is exempt from educational activities unless full-time child care is available.

(c) A caretaker relative under age 20 not exempted from education activities may be required to participate in training or work activities in lieu of educational activities if the person is not making satisfactory progress in educational activities or an educational assessment determines education activities are not appropriate for the person.

(2) A participant who has attained the age of 20 years or older and who has not earned a high school diploma or its equivalent, may be provided educational activities if such activities are determined by the case manager to be appropriate. Any other services or activities may not be permitted to interfere with their participation in appropriate educational activities.

(3) The determination of the appropriateness of educational activities is based on:

(a) results of the participant's available educational assessment;

(b) the participant's social and psychological history;

(c) availability of educational resources; and

(d) the employment goals of the participant specified in the employability plan.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE VII] PARTICIPATION REQUIREMENTS FOR UNEMPLOYED

PARENTS (1) In an unemployed parent assistance unit, both parents may be required to participate in the JOBS program.

(a) In an assistance unit with a child under the age of three, the family may decide which parent will qualify for the exemption of caring for the child.

(b) If the other parent in an assistance unit with a sanctioned unemployed parent refuses to participate in the JOBS program, that person as provided for in [Rule XX] will not receive their portion of the assistance unit's grant.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE VIII] REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL AND WORK AND TRAINING ACTIVITIES

(1) For educational activities, post secondary education and self-initiated education and training satisfactory progress is:

(a) performance meeting the educational institution's standard requirements;

(b) completion within the time periods specified in the employability plan; and

(c) attendance at 75% or more of the activities scheduled for the program the person is participating in.

(2) For work and training activities, satisfactory progress is:

(a) attendance at activities scheduled for the program the person is participating in; and

(b) completion within the time periods specified in the employability plan.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE VIII] JOB SEARCH (1) Participants may be required to participate in individual or group job search a maximum of eight weeks or its equivalent in a twelve month period.

(2) If a family becomes ineligible for AFDC and subsequently reapplies and is determined eligible, the JOBS

participant may be required to complete another 8-week job search if determined necessary by the case manager.

(3) Additional job search may be required in conjunction with some other education, training, or employment activity which is designed to enhance the participant's employment prospects.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE IX] ON-THE-JOB TRAINING (OJT) (1) At the end of the on-the-job training, the participant is expected to be retained as a regular employee.

(2) The participant's training and work in an on-the-job training placement will be governed by a contract entered into with the employer.

(a) The term of the contract will be for a period of no more than 6 months.

(b) The contract will provide:

(i) specific tasks that are to be taught to the participant;

(ii) reasonable time periods for completion of the specific tasks in the training program; and

(iii) the wages and benefits to be provided.

(3) The tasks to be taught to the participant must relate to the responsibilities of the position the participant is taking.

(4) The time periods are to be based on the best interests of the participant and may not exceed the time allowed for that type of a position by the specific vocational preparation level from the training time conversion chart of the Dictionary of Occupational Titles of the United States department of labor.

(5) The wages and benefits to be provided must be reasonably similar to those provided for similar positions with the employer and generally in the area.

(a) If the position given to the participant is subject to a labor contract, the wages and benefits provided to the participant must be in accord with that labor contract.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE X] TRAINING SERVICES--POST SECONDARY (1) A post-secondary education program is appropriate for a participant if:

(a) the training provides skills for jobs that will lead to self-sufficiency and that are available in the local area or areas within Montana the participant is willing to move to;

(b) the participant's program attendance is at least half time as defined by the institution;

(c) the participant, by the institution's standards, is making satisfactory progress; and

(d) the program is consistent with the participant's employment goals.

(2) The cost of post-secondary education including tuition, books, and fees will not be paid for with JOBS funds.

(3) A participant attending a JOBS approved post-secondary education program may be eligible for supportive services deemed necessary for participation, including child care.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XI] COMMUNITY WORK EXPERIENCE PROGRAM (CWEP)

(1) Work experience participation is limited to public service, public work sites or private non-profit organizations and must serve a useful public purpose.

(2) The work conditions provided to work experience participants must be reasonable and safe.

(3) Community work experience program work assignments must take into account the prior training, experience and skills of a participant.

(a) Assignments must be within reasonable commuting distance of the participant's residence.

(b) If possible, a choice of sites may be offered to the participant.

(c) The maximum number of hours per month that a participant may be required to participate in a work experience assignment is the number of hours which would result from dividing the AFDC grant amount by the federal minimum wage.

(d) Educational activities must take priority for those persons under 24 years of age.

(e) The participant's employability plan must be reviewed and be revised as appropriate every 90 days of a person's participation in community work experience program and at the conclusion of each CWEP assignment.

(4) Work experience activities may not be in violation of applicable federal, state, or local health and safety standards.

(5) Work experience activities may not be related to politics, elections, or partisan activities.

(6) A work experience participant may not:

(a) replace a regular employee;

(b) fill an established unfilled position or a position developed in response to or in anyway associated with the existence of a strike, lockout or other bonafide labor dispute; or

(c) violate any existing labor agreement between employees and employer.

(7) The contractor will be responsible for the following activities:

- (a) the recruitment and development of work sites;
- (b) the writing of work site agreements;
- (c) determining the number of hours participants must work at sponsor work sites;
- (d) assignment of participants to sponsors;
- (e) timely notification to sponsors when there is a change in the number of hours participants will be assigned to the work site;
- (f) collection of attendance and evaluation reports;
- (g) resolution of problems between sponsors and participants; and
- (h) compiling data, making required reports and monitoring absences.

(8) Worker's compensation coverage must be provided for all participants.

(9) An agreement must be signed with the department by the contractor and the employer before any work experience participants are placed.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XII] SELF-INITIATED SERVICES (1) A person already engaged in education or training at the time that that person would otherwise commence participation in JOBS is considered to have self-initiated an education or training program.

(2) A self-initiated program will be acceptable if:

(a) the education or training provides skills for jobs that will lead to self-sufficiency and that are available in the local area or areas within Montana the person is willing to move to;

(b) the person is enrolled on at least a half time basis as defined by the institution;

(c) the person is making satisfactory progress; and

(d) the program is consistent with the person's employment goals.

(3) Child care is the only supportive service which may be provided to a person in self-initiated training.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XIII] SUPPORTIVE SERVICES AVAILABILITY

(1) Supportive services are those expenses and services determined necessary for a person to participate in JOBS and may include:

(a) transportation costs necessary for JOBS participation;

(i) allowable transportation services are:

(A) the cost of public transportation or, if unavailable, reimbursement for private vehicle at 17.5 cents per mile, up to \$75.00 per week;

(B) liability insurance for necessary private transport not to exceed a total of \$110.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program; and

(C) auto repairs for necessary private transport not to exceed a total of \$500.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program.

(b) tools for specific job or training needs have been established not to exceed a total cost of \$300.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program;

(c) clothing and personal needs not to exceed a total cost of \$100.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program;

(d) fees including transcripts, applications, birth certificates, GED or equivalency not to exceed a total cost of \$50.00 per month;

(e) medical services including physical, prescription eyeglasses, drugs, immediate dental care can be provided if not available through medicaid or another source not to exceed a total cost of \$150.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program;

(f) counseling if medicaid services have been exhausted;

(g) other items necessary to search for employment not to exceed a total cost of \$25.00 per month; and

(h) other items necessary to obtain and retain employment including legal or housing fee services:

(i) not available through other sources including emergency AFDC;

(ii) consistent with employability plan; and

(iii) not to exceed a total cost of \$300 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program.

(2) Supportive services may be provided as appropriate by the case manager or service provider.

(3) Provision of supportive services is contingent upon the availability of funding.

(4) The provision of supportive services will be through voucher payments.

(5) Supportive services must be referenced in the employment plan and be consistent with employment goals.

(6) Supportive services may not be utilized if the participant has similar services available through other programs including medicaid.

(7) Supportive services are available to a participant for up to fourteen (14) days when a recipient is awaiting receipt of any of the services listed in [Rule IV].

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XIV] AVAILABILITY OF SERVICES AFTER LOSS OF AFDC ELIGIBILITY (1) A JOBS participant who loses AFDC eligibility may receive case management activities and supportive services for up to 90 days from the date AFDC closes.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XVI] LEAD AGENCY (1) The department may contract with a lead agency to conduct the program within the county.

(2) The lead agency is ~~the~~ the department's contractor and coordinates the provision of the services as set forth in the county plan.

(3) The lead agency may sub-contract for any provisions of the county plan. The lead agency will be responsible for those portions of the program sub-contracted out.

(4) The lead agency must include assurances in their contract with the department that:

(a) federal funds made available under JOBS will not be used to supplant non-federal funds for existing services and activities; and

(b) the services being contracted for are not otherwise available from the provider on a non-reimbursable basis.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XVII] RESPONSIBILITIES OF LEAD AGENCY (1) The lead agency must provide an orientation process to provide all non-exempt and volunteer AFDC recipients with information on the services available through the program, and the contractor's and participant's responsibilities. This orientation must include but is not limited to:

(a) education, employment, and training opportunities available under the JOBS plan;

(b) the obligation of the contractor including but not limited to:

(i) coordinating the provision of case management, initial assessment, and supportive services; and

(ii) developing an employability plan with the assistance of the participant.

(c) the rights, responsibility and obligation of the participants, and the consequences for refusing to participate; and

(d) the types and location of child care services accessible to participants in the program.

(2) The lead agency must conduct an initial assessment of employability. The initial assessment may be conducted through various methods such as interview, testing, counseling and self-assessment instruments. The initial assessment must be based on:

(a) the person's educational, child care and other supportive service needs;

(b) the person's skills, aptitude and prior work experience; and

(c) a review of family circumstances.

(3) The lead agency must enter into with each participant the mandatory JOBS contract developed by the department. The person must be informed of the purpose of the contract and the participant's obligations under the contract.

(4) An employability plan must be developed for each participant.

(5) The lead agency must coordinate and arrange for services that will assure effective participation of participants in the program.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XVII] PARTICIPANTS EMPLOYABILITY PLAN AND JOBS CONTRACT

(1) The employability plan must:

(a) contain an employment goal for the participant;

(b) describe services to be provided;

(c) describe JOBS activities that will be undertaken by the participant to achieve the employment goal;

(d) describe any needs of the assistance unit that might be met by JOBS;

(e) be completed within 30 days of enrollment; and

(f) be re-evaluated at least every 90 days or more often if determined appropriate.

(2) The participant's JOBS contract entered into between the department, its designee lead agency, and the participant must specify the following:

(a) the length of participation in the program;

(b) the hours of participation per week;

(c) the education, training and employment activities and the support services that the participant is to participate in;

(d) the responsibilities of each of the parties; and

(e) the manner of assessment.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XVIII] CASE MANAGEMENT (1) A case manager may be available to each participant.

(2) Case management will:

(a) assess the educational, child care and other supportive services needs of the participant;

(b) assess the skills, prior work experience, and employability of the participant;

(c) develop a participant's employability plan;

(d) coordinate the participant's access to services to ensure the most appropriate delivery of services to the participant;

(e) assist the assistance unit in obtaining available resources and opportunities required for self-support;

(f) monitor service delivery;

(g) conduct follow-up and assessment of the participant's needs; and

(h) evaluate the participant's progress toward self-sufficiency.

(3) Case management may be provided for up to 90 days after termination from the AFDC program.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XIX] GOOD CAUSE (1) A participant has good cause for failure to participate in the program due to any of the following circumstances:

(a) illness of the JOBS participant;

(b) illness of another household member sufficiently serious to require the presence of the JOBS participant;

(c) required appearance in court or incarceration; or

(d) an unanticipated emergency, such as, but not limited to:

(i) death of a family member; or

(ii) severe weather conditions, if others in a similar situation have the same difficulty.

(2) A participant has good cause for failure to accept employment under the auspices of the program due to any of the following circumstances:

(a) the wage is less than the federal minimum wage;

(b) child care is necessary and is not available; and

(c) the net income from the employment is less than the assistance unit's cash assistance at the time that the employment is offered.

(i) Net income is the gross income less necessary and reasonable work related expenses.

(ii) Necessary and reasonable work related expenses include:

- (A) mandatory payroll deductions excluding child support payments;
- (B) costs of required clothing;
- (C) costs of reasonable work-related transportation;
- (D) union dues; and
- (E) other costs which are necessary to work.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XX] SANCTIONS (1) An AFDC recipient who is required to participate in the JOBS program and who participates as required and who without good cause refuses or fails to participate in the program or refuses or fails to accept or maintain employment will lose, as provided for in (2), their portion of the AFDC household grant. The sanctions will be imposed for failure to participate in all aspects of the program including orientation, assessment, employability, development planning, case management and participation in assigned components.

(2) The sanctions imposed for failure to participate without good cause are the following:

(a) for the first occurrence: loss of the person's portion of the household grant for 1 month or until the failure to comply ceases, whichever is longer;

(b) for the second occurrence: loss of the person's portion of the household grant for 3 months or until the failure to comply ceases, whichever is longer; or

(c) for the third and later occurrences: loss of the person's portion of the household grant for 6 months or until the failure to comply ceases, whichever is longer.

(3) A person who begins to participate again in the program must participate for two weeks after the date of beginning participation before benefits may be received.

(4) During the sanction period, the department, for the purposes of calculating a household's AFDC grant, will not take into account the needs of the following persons:

(a) the person, including an only dependent child, who failed to participate; or

(b) the second parent in an unemployed household.

(5) An exempt volunteer participant in the JOBS program who has entered the program and who fails to participate in the program will not be allowed to reenter the program unless there is no other person seeking an opening in the program.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XXI] CONCILIATION (1) When there is a dispute between the JOBS provider and a participant regarding a re-

quired JOBS activity, conciliation must be provided to resolve the dispute.

(2) Either the participant or the provider may request conciliation.

(3) The conciliation process will begin no later than ten (10) days after a request for conciliation has been made.

(4) Conciliation begins with a scheduled appointment between the participant and the provider.

(5) During the initial meeting, the participant's rights and responsibilities will be clearly explained including the consequences of a continued failure to participate.

(6) The conciliation process will not exceed 30 days in duration.

(7) If it becomes apparent that the dispute cannot be resolved through conciliation, the process may be terminated earlier, upon written notification, either by the participant or the provider.

(8) If it is the provider who initiates the conciliation process, after reasonable efforts have been made to conduct the meeting and the participant has failed to appear, the provider shall terminate the conciliation process.

(9) The conciliation process must be fair and impartial.

(10) All conciliation efforts and proceedings and any results and proceedings and any results which are achieved will be recorded legibly, completely, and accurately in the case record.

(11) When the conciliation period has terminated or the dispute remains unresolved after 30 days, the provider will recommend in writing to the eligibility technician that a sanction be imposed.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XXII] FAIR HEARING PROCEDURE (1) A recipient appealing a sanction that has not been resolved by the conciliation process provided for in [Rule XXI] is entitled to a fair hearing and appeal provided for in ARM 46.2.201 et seq.

(2) Benefits may be continued as provided for in ARM 46.2.206 pending the fair hearing decision.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XXIII] EVALUATIONS-PERFORMANCE STANDARDS

(1) Evaluation shall consist of an expected resolution rate for service providers of fifty-six percent (56%) of the number of people served during the year and seventy-five percent (75%) of the resolutions must be as a result of employment.

- (a) A resolution consists of:
 - (i) employment of at least 20 hours per week that is expected to last 30 days or more;
 - (ii) termination from AFDC for any reason; or
 - (iii) reassessment and redetermination of exempt status for a participant (individual must have participated in an approved component for 30 days or more).
- (2) Participants will be tracked separately who are in:
 - (a) high school education or equivalency;
 - (b) basic and remedial education; or
 - (c) English as a second language.
- (3) Participants attending a combination of one or more of the activities in (2) at least 20 hours per week will be subtracted during the period of participation from the enrollment count before determining resolution rate.
- (4) The department shall monitor the program based on:
 - (a) the placement of participants in unsubsidized employment;
 - (b) the retention of participants in unsubsidized employment;
 - (c) the increase in earning, including hourly wages, or participants due to placement in unsubsidized employment;
 - (d) the reduction in the number of persons and families receiving aid to families with dependent children; and
 - (e) the amount of reductions in payments for aid to families with dependent children.
- (5) In monitoring and evaluating the performance of the program, the department shall determine:
 - (a) the reasons for high and low levels of performance;
 - (b) administrative efficiencies, and
 - (c) overall program coordination.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-5-211, 53-4-215, 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110 MCA

[RULE XXIV] AFDC WORK SUPPLEMENTATION PROGRAM; CONDUCT OF PROGRAM

(1) The work conditions provided to work supplementation participants must be reasonable and safe.

(2) Work supplementation activities must not be in violation of applicable federal, state or local health and safety standards.

(3) A work supplementation job may not replace a regular employee, fill established unfilled position vacancies, be developed in response to or in any way associated with the existence of a strike, lockout, or other bonafide labor dispute, nor violate any existing labor agreement between employees and an employer.

(4) A work supplementation job may not be related to politics, elections or partisan activities.

(5) A work supplementation position may not assist, promote or deter activities related to union organizing.

(6) The state may subsidize any type of position not otherwise prohibited by these rules.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

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

46.10.701 AFDC WORK SUPPLEMENTATION PROGRAM, GENERAL

(1) The department may operate an employment training and experience program through the JOBS program provided for at [Rule I] et seq. in which long-term AFDC recipients may volunteer to participate. The program will provide, as set forth in this subchapter, a in subsidized employment opportunities for participants in those counties designated by the department.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

46.10.702 AFDC WORK SUPPLEMENTATION PROGRAM, DEFINITIONS

Subsections (1) through (13) remain the same.

(14) "Volunteer" means an AFDC recipient who makes the decision to participate in WSP. "Transitional child care" means the AFDC related child care benefit provided for in ARM 46.10.408 and ARM 46.10.409.

(15) "Transitional medicaid coverage" means the AFDC related medicaid coverage provided for in ARM 46.12.3401(1)(c).

Original subsections (15) and (16) remain the same in text but will be recategorized as subsections (16) and (17).

(17) "WSP participant" means an AFDC recipient employed in a WSP job.

(18) "WSP placement" means placement in a WSP job.

(19) "WSP service" means counseling, training, educational, assessment or other supportive services available to a volunteer participant as provided in these rules and in the discretion of the department or its agent.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

46.10.704 AFDC WORK SUPPLEMENTATION PROGRAM, PARTICIPANT ELIGIBILITY

(1) To be eligible to participate in the WSP program, the volunteer a person must:

(a) be approved for participation by the department through the JOBS program provided for at [Rule I] et seq.

Original subsections (1)(a) through (1)(c) remain the same in text but will be recategorized as subsections (1)(b) through (1)(d).

(d) agree to the terms and conditions of the WSP program; and

(ef) during the ~~volunteer's~~ person's period of participation in the WSP program, not be a member of a household with another member participating in the WSP program;

(g) during the person's period of participation in WSP, not be participating in on-the-job training; and

(h) during the person's period of participation in WSP, not have a spouse or other member of the assistance unit participating in work supplementation.

Subsection (2) remains the same.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

46.10.705 AFDC WORK SUPPLEMENTATION PROGRAM, APPLICATION AND PLACEMENT, AND EMPLOYER REQUIREMENTS (1) A person will be placed into WSP at the discretion of the department acting through the case management process of the JOBS Program. volunteer must submit a WSP application on the form and in the manner prescribed by the department or its agent.

(2) Following application and a preliminary determination of eligibility, Upon entering the program, the participant shall cooperate and participate in:

Subsections (2)(a) and (2)(b) remain the same.

(3) Following application and preliminary determination of eligibility, or, in the discretion of the department or its agent, following completion of an employability assessment and any appropriate and necessary training, the department or its agent shall may commence a job search to locate an employer who agrees to provide a WSP job to the participant under written contract with the department.

Subsections (3)(a) and (3)(b) remain the same.

(4) The department may contract with another department, agency or organization to conduct employability assessments, provide employment training, conduct job searches or provide WSP services for participants. Such contractor may be referred to as the "job developer".

Subsection (5) remains the same.

(6) A position an employer provides to a participant in work supplementation must be a new position in the employer's business.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

46.10.707 AFDC WORK SUPPLEMENTATION PROGRAM, TERMINATION AND REASSIGNMENT (1) If the participant's WSP job is terminated voluntarily or involuntarily, the recipient participant may be placed in another WSP job only if the county director and job developer case manager concur that:

(a) termination was beyond the recipient's participant's control or for good cause, and

Subsection (1)(b) remains the same.

(2) A participant who either terminates WSP employment without good cause, as defined in ARM 46.10.311 [Rule XV], or

reduces earned income within 30 days preceding the benefit month, shall be subject to the following penalties and sanctions:

Subsection (2)(a) remains the same.

~~(b) if the participant is a nonexempt WIN participant, the participant may be deregistered from the WIN program as specified in ARM 46.10.310.~~

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

46.10.708 AFDC WORK SUPPLEMENTATION PROGRAM, AFDC ELIGIBILITY; RESIDUAL GRANT Subsections (1) through (3) remain the same.

(a) The residual grant shall be the amount of the benefit standard for an assistance unit of that size, as provided in ARM 46.10.403, less that household's net earned income for the month, as determined by retrospective budgeting including WSP wages as earned income and subject to the provisions of ARM 46.10.711(4).

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

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

46.10.710 AFDC WORK SUPPLEMENTATION PROGRAM, MEDICAL ASSISTANCE AND CHILD CARE BENEFITS Subsection (1) remains the same.

~~(2) Beginning the month following the end of grant diversion, the participant and assistance unit members shall be eligible for extended medical assistance for nine (9) months if: An assistance unit may receive transitional medicaid coverage, as provided for in ARM 46.12.3401(1)(a)(ii), upon the completion of work supplementation by a member of the unit. The assistance unit becomes eligible during the month after completion of work supplementation.~~

~~(a) the fourth month of the \$30 and one-third disregard provided in ARM 46.10.512 is used in the last month of WSP placement; and~~

~~(b) the grant is closed in the following month solely because of the loss of the \$30 and one-third disregard.~~

~~(3) Beginning the month following the end of grant diversion, the participant and assistance members shall be eligible for extended medical assistance for four (4) months if the grant is closed the month following the end of grant diversion solely because of: An assistance unit, a member of which is participating in work supplementation, may receive transitional child care, as provided for in ARM 46.10.408, when the unit's residual grant is \$0. The assistance unit becomes eligible during the month after the residual grant becomes \$0. During a WSP month, child care costs will be reimbursed at 100%. After WSP ends, child care costs will be reimbursed at the rates provided for in ARM 46.10.409.~~

(a) ~~increased earned income; The residual grant is calculated as provided for in ARM 46.10.708(3)(a).~~

~~(b) increased child support; or~~

~~(c) increased hours of work.~~

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

4. Rules 46.10.308, 46.10.309, 46.10.310, 46.10.311, 46.10.312 and 46.10.313 as proposed to be repealed are on pages 46-786, 46-786.1, 46-786.2, 46-787 and 46-788 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

5. Rules 46.10.601, 46.10.602, 46.10.603, 46.10.604, 46.10.605, 46.10.606, 46.10.607 and 46.10.608 as proposed to be repealed are on pages 46-817, 46-818, 46-819 and 46-820 of the Administrative Rules of Montana.

AUTH: Sec. 53-3-707 MCA

IMP: Sec. 53-3-707 MCA

6. Rule 46.10.713 as proposed to be repealed is on page 46-836 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 MCA

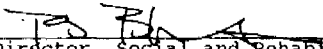
IMP: Sec. 53-2-201, 53-4-211 and 53-4-215 MCA

7. The Fifty-First Montana Legislature passed into law Senate Bill 70, which has been codified beginning at 53-2-1101, MCA, authorizing the implementation of the Montana J.O.B.S. Program beginning July 1, 1990. J.O.B.S. is a mandatory program for non-exempt recipients of aid to families with dependent children (AFDC) and must provide education, training and work activities, and supportive services to assist participants in becoming self-sufficient.

8. 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 59604-4210, no later than July 19, 1990.

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

10. These rules will be applied retroactively to July 1, 1990.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to licensing	)	8.8.2804, 8.8.2805, 8.8.
requirements, contracts and	)	2901, 8.8.2903 AND
contracts and penalties, boxing	)	8.8.3201, AND
contestants, physical examina-	)	ADOPTION OF NEW RULES I
tion and ring - equipment and	)	(8.8.2807) DISCIPLINARY
adoption of new rules pertaining	)	ACTIONS AND II (8.8.2905)
to disciplinary actions and the	)	MANAGERS
relationship of managers and)	
boxers)	

TO: All Interested Persons:

1. On April 26, 1990, the Board of Athletics published a notice of proposed amendment and adoption of the above-stated rules at page 765, 1990 Montana Administrative Register, issue number 8.
2. The Board adopted the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF ATHLETICS
DR. JOHN R. HALSETH, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1990.

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to applica-) 8.12.601 AND 8.12.606
tions and renewal fees and the) AND ADOPTION OF NEW RULE
adoption of a new rule pertain-) I (8.12.614) FEE SCHEDULE
ing to fees)

TO: All Interested Persons:

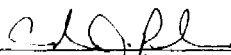
1. On April 26, 1990, the Board of Chiropractors published a notice of proposed amendment and adoption of the above-stated rules at page 769, 1990 Montana Administrative Register, issue number 8.

2. The Board amended and adopted the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF CHIROPRACTORS
ROGER COMBS, D.C., CHAIRMAN

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1990.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the general	)	NOTICE OF AMENDMENT AND
amendment and repeal of rules	)	REPEAL OF RULES PERTAINING
pertaining to regulation of	)	TO THE PRACTICE OF COSMETO-
the practice of cosmetology and	)	LOGY AND ADOPTION OF NEW
adoption of new rules pertain-	)	RULES PERTAINING TO BOOTH
ing to booth rentals	)	RENTALS

TO: All Interested Persons:

1. On April 12, 1990, the Board of Cosmetologists published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the practice of cosmetology at page 658, 1990 Montana Administrative Register, issue number 7. The hearing was held on May 7, 1990 in the downstairs conference room of the Department of Commerce Building in Helena.

2. The Board amended ARM 8.14.401, 8.14.601, 8.14.607, 8.14.801, 8.14.805 - 8.14.808, 8.14.812, 8.14.814, 8.14.901, 8.14.902, 8.14.904, 8.14.909, 8.14.1003, 8.14.1010, 8.14.1101, 8.14.1103 - 8.14.1106, 8.14.1201 and 8.14.1206; repealed ARM 8.14.610, 8.14.809 and 8.14.810; and adopted new rule IV (8.14.819) exactly as proposed. The Board did not adopt proposed new rule II.

3. The Board amended ARM 8.16.602, 8.14.603, 8.14.604, 8.14.605, 8.14.606, 8.14.608, 8.14.802, 8.25.803, 8.14.813, 8.14.815, 8.14.816, 8.14.902, 8.14.1109, 8.14.1205, 8.14.1215; and adopted new rules I (8.14.817), III (8.14.818) and V (8.14.820) as proposed but with the following changes:

"8.14.602. INSPECTION, SPACE AND EQUIPMENT (1) through (3) will remain the same as proposed.

(4) ~~A-practice-workroom-for-cosmetology-students-must-be provided-for-each-anticipated-group-of-10-students. Each additional-6-students-is-considered-an-anticipated-group-of 10. Each-practice-room-must-be-provided-with-the-following: THE FLOOR PLAN OF THE SCHOOL WILL INDICATE THE NUMBER OF STUDENTS THIS SCHOOL IS PERMITTED TO ENROLL. THIS NUMBER OF STUDENTS WILL DICTATE THE QUANTITY OF EQUIPMENT FOR EACH ANTICIPATED GROUP OF 10 STUDENTS. SIX ADDITIONAL STUDENTS IS TO BE CONSIDERED A GROUP OF 10 NEW STUDENTS. PRACTICE WORKROOM(S) FOR COSMETOLOGY STUDENTS MUST INCLUDE:~~

(a) 3 2 shampoo bowls

(b) through (n) will remain the same.

~~(o)---separate-rest-rooms-for-male-and-female-persons; which-shall-include-hot-and-cold-running-water;~~

(p) and (q) will remain the same as proposed but will be renumbered (o) and (p).

(5) through (5)(b) will remain the same as proposed.

~~(c)---separate-rest-rooms-for-male-and-female-persons which-shall-include-hot-and-cold-running-water;~~

(d) will remain the same as proposed but will be renumbered (c).

(i) through (xi) will remain the same as proposed.

(6) SEPARATE REST ROOMS FOR MALE AND FEMALE PERSONS MUST BE PROVIDED FOR THE SCHOOL AND SHALL INCLUDE HOT AND COLD RUNNING WATER."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, 37-31-312, MCA

"8.14.603 SCHOOL OPERATING STANDARDS (1) through (13) will remain the same as proposed.

(14) Discipline of any student for any violation of school or board rules should be in writing. Students must be provided with a copy of THE disciplinary action file signed by both the student and the instructor. A copy of each disciplinary action file must be sent to the board office within 5 days of final decision.

(14)(a) through (17)(a) will remain the same as proposed.

(b) The student's required training time resumes on the date of the re-enrollment. ONE WITHDRAWAL IS PERMITTED PER A COURSE OF STUDY, NOT TO EXCEED A MAXIMUM OF 60 DAYS DURATION. The Board will take into consideration any prolonged medical withdrawal on a case by case basis.

(18) through (20) will remain the same as proposed."

Auth: Sec. 37-1-13, 376-31-203, 37-31-311, MCA; IMP, Sec. 37-31-301, 37-31-304, 37-31-311, MCA

"8.14.604 SUBSTITUTE INSTRUCTORS (1) Instructors with inactive licenses may not substitute FOR more than 10 days for an active instructor in any calendar year."

Auth: Sec. 37-1-131, 37-31-203, 37-31-322, MCA; IMP, Sec. 37-31-311, 37-31-322, MCA

"8.14.605 CURRICULUM - COSMETOLOGY/MANICURING STUDENTS

(1) The hours for training courses for cosmetologists shall be distributed as follows:

Manicuring	200 hours
Shampooing <u>SCALP TREATMENT</u>	--50 125 hours
Permanent waving	400 hours
<u>HAIR STYLING</u> (pin curls, finger waving, hair-styling, THERMAL) etc.	--150 275 hours
<u>Facials</u>	75 hours
<u>Scalp treatments</u>	--75 hours
Dyes, tints, and bleaches.	--325 300 hours
Hair cutting and shaping	225 hours
Ethics, sales, personal grooming	100 hours
Shop management, business methods, state law, rules, appointment book, and shop etiquette	100 hours
Cosmetic chemistry, electricity.	50 hours

Balance-to-be-used-at-the-discretion-of
-the-instructor INSTRUCTOR'S DISCRETION.--250 150 hours

(2) through (8) will remain the same as proposed."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, MCA

"8.14.606 STUDENT REGISTRATION (1) will remain the same as proposed.

(a) cosmetology students must submit proof of AN EIGHTH tenth grade graduation (diploma or certification);

(b) through (7) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA; IMP, Sec. 37-31-304, 37-31-311, 37-31-323, MCA

"8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) Each school, approved by the board to offer a teacher-training program must have at least 1 full-time active instructor who holds a current 4-B OR 4-C certificate issued by the Montana state department of public instruction.

(a) through (7) will remain the same as proposed."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, MCA

"8.14.802 LICENSE EXAMINATIONS (1) will remain the same as proposed.

(a) Practical examinations for manicurists shall consist of actual demonstrations in nail care of the hands AND FEET and the application and maintenance of artificial nails.

(2) through (5) will remain the same as proposed.

(6) ANY MANICURIST APPLICANT, FAILING TWICE TO PASS THE EXAMINATION FOR A LICENSE TO PRACTICE MUST TAKE 35 HOURS OF ADDITIONAL TRAINING AT A REGISTERED SCHOOL OF MANICURING APPROVED BY THE BOARD.

(6) (7) In order to pass the examination given by the board to practice cosmetology or manicuring an applicant must obtain a grade of not less than 85% 75% "overall" or "in each part" on the practical exam and not less than 85% 75% on the written theory.

(7) and (8) will remain the same but will be renumbered (8) and (9)."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-307, 37-31-308, 37-31-321, MCA

"8.14.803 APPLICATIONS FOR EXAMINATION - TEMPORARY LICENSES (1) With respect to cosmetology students, no application for examination will be accepted unless accompanied by the proper fees, credentials, the hours record showing that the 2,000 hours have been completed and records showing that the student has been enrolled for at least 10 months AND NOT MORE THAN 14 MONTHS.

(2) With respect to manicuring students, no application for examination will be accepted unless accompanied by the proper fees, credentials, the hours record showing that 350 hours have been completed and records showing that the student has been enrolled for at least 9 weeks AND NOT MORE THAN 12 WEEKS.

(3) through (5) will remain the same as proposed.

(6) Temporary licenses must be returned to the office of the department immediately if the applicant is unable to take the examination."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-304, 37-31-307, 37-31-311, MCA

"8.14.813 EXPIRED LAPSED LICENSE (1) will remain the same as proposed.

(a) In the event that a MANICURIST license has lapsed for over 3 years, for any reason, the licensee must

take a course of 60 hours of training in a properly licensed school of manicuring, provide certification thereof, make application, pay proper fees and take and pass the written and practical licensing examinations.

(2) through (6) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-31-203, 37-31-322, MCA; IMP, Sec. 37-31-322, MCA

"8.14.815 CONTINUING EDUCATION - INSTRUCTORS (1) In order to obtain continuing education credits, instructors must have prior approval from the board before attending any advance instructor or teacher training seminar OR TAKE A COURSE or workshop affiliated with any college or university.

(2) through (4) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-322, MCA

8.14.816 SALONS - COSMETOLOGICAL/MANICURING (1) will remain the same as proposed.

(2) Salons and booths must be equipped with permanent facilities to give adequate service to patrons and they shall be subject to inspection and acceptance by the state board.

(3) through (4) will remain the same as proposed.

(5) Business area salons must be physically separate and apart from any other residential-areas-or commercial enterprises housed in the same structure, and have their own private entrance, ADEQUATE separate utilities and separate EASILY ACCESSIBLE rest rooms.

(6) through (11) will remain the same as proposed."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-312, MCA

"8.14.902 SCHOOL REQUIREMENTS (1) and (2) will remain the same as proposed.

(3) Written-Tests must be given at intervals to determine the progress of the student.

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

Auth: Sec. 37-32-201, 37-32-304, 37-32-306, MCA; IMP, Sec. 37-32-302, 37-32-304, MCA

"8.14.1109 PREMISES (1) through (4) will remain the same as proposed."

(5) Soiled linens, towels and aprons APPAREL lab-coats shall be kept in a suitable hamper provided for that purpose.

(6) and (7) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-32-201, 37-32-206, MCA; IMP, Sec. 37-32-201, 37-32-304, 37-32-306, MCA

"8.14.1205 VENTILATION (1) will remain the same as proposed.

(2) All manicuring and artificial nail salons must have mechanical exhaust systems. All cosmetology salons doing artificial nails must have A mechanical exhaust systems."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-331, MCA

"8.14.1215 PERSONAL HYGIENE OF PERSONNEL (1) All

persons working in schools, and salons AND BOOTHS shall keep their hands and fingernails clean, and wear clean, professional attire. Shoes and socks/nylons shall be worn at all times.

(2) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA; IMP, Sec. 37-31-204, 37-31-311, MCA

"I (8.14.817) BOOTH RENTAL LICENSES ~~(1) -- There will be two categories of booth rental licenses:~~

~~(a) -- Primary licenses will be issued to qualified salon owners;~~

~~(b) (1) Secondary licenses will be issued to booth tenants; -- New secondary licenses must be obtained for each location a secondary booth rental licensee works in. Booth rental licenses are not transferrable."~~

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

"III (8.14.818) SECONDARY BOOTH RENTAL LICENSE APPLICATION SUPPLEMENTS (1) Applicants for secondary booth rental licenses must include with their applications correct copies of diagrams of the complete primary salon areas where the booth will be located, with the areas that are being proposed for booth rental shaded in and numbered."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

"V (8.14.820) RESPONSIBILITY OF PRIMARY-LICENSEE SALON OWNER (1) The salon owner ~~(primary-licensee)~~ is responsible for all conduct and conditions in his or her salon except that contemplated by THOSE CAUSED BY THE BOOTH RENTER OR TAKING PLACE IN the booth. tenant-(secondary-licensee)-or-taking place within the rented booth area.

(a) Toward this purpose the primary-licensee SALON OWNER must post in a conspicuous place in the salon a diagram or floor plan of his/her entire salon premises showing all booth rental areas therein shaded in and numbered."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

4. The Board thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

COMMENT: The Montana State Cosmetologist's Association, Inc. (Association) asked that the Board clarify the language on 8.14.602(4) so that it is not interpreted to mean that separate workrooms are required for each 10 students.

RESPONSE: The Board concurred and amended subsection (4) as shown.

COMMENT: The Association suggested that (4)(c) and (5)(c) be deleted and be combined as a new subsection (6) for purposes of clarity and style and drafting.

RESPONSE: The Board concurred and a new subsection (6) was added.

COMMENT REGARDING 8.14.603(14): The association commented that discipline of students was not a Board concern and would require more unnecessary documentation to be provided to the Board from the school. Two persons observed the time limit of 5 days for submission of disciplinary documentation being too short.

RESPONSE: The suggestions were rejected because the Board feels that it does have authority over any person violating the practice act and the Board's rules. However, the board agreed that it need not be notified every time a school rule had been broken by a student. The board amended the rule as shown above. Since the revised rule requires that the board be notified only when a board rule is broken, the time limit of 5 days was sufficient.

COMMENT REGARDING 8.14.603(17): The association expressed concerns that without clarification of this subsection, many students would withdraw numerous times and not maintain continuous courses of study.

RESPONSE: The board concurred with the comments and has revised the rule as shown above.

COMMENT REGARDING 8.14.604: The association proposed that this rule be clarified, because the present form could be interpreted to permit instructors with inactive licenses to substitute for 1 active instructor for 10 days and then substitute another 10 days for a different active instructor.

RESPONSE: The board concurred and has revised the wording as shown.

COMMENT REGARDING 8.14.605: The association submitted a suggested revised curriculum. This curriculum was not a consensus of instructors, but merely of the association. Combining curriculum titles and new headings were also suggested.

RESPONSE: The board will send out a poll to schools and their instructors and ask for their input regarding the curriculum. The new headings were appreciated and used by the Board. ARM 8.14.605 was revised as shown above.

COMMENTS REGARDING 8.14.606: The association brought to the board's attention the fact that it was not the association's desire to limit the number of students from entering school by increasing the educational requirements. It was pointed out that the practice act establishes a 10th grade education qualification for examination.

RESPONSE: The board concurred and has not adopted the proposed amendment to that rule.

COMMENTS REGARDING 8.14.608: The association brought to the Board's attention the fact that a 4-C certificate is only a temporary license and that a school with a teaching program would need to have a teacher with a 4-B certificate.

RESPONSE: The board concurred and has revised the rule to include a 4-B certificate.

COMMENTS REGARDING 8.14.802(2): The association stated that they would like to see subsection (2) remain unaltered as it maintains the credibility of examinees.

RESPONSE: The Board rejected this proposal because the subject of the present rule is covered by statute.

COMMENT REGARDING 8.14.802(10): The association brought to the board's attention the fact the board has authority under 37-31-308(3) to prescribe requirements for qualifying to retake manicuring examinations (subsection (10)) could remain in the rule.

RESPONSE: The board reexamined the statute, concurred, and is not deleting (10) as proposed. Subsection (10) is now numbered (6).

COMMENT: The association argued that raising the pass-fail point on the examinations would impose a hardship on the students and might be unfair as other states are lowering their requirements.

RESPONSE: The Board concurred and did not adopt the amendment to subsection (11). Subsection (11) is now numbered (7).

COMMENTS REGARDING 8.14.803: The association felt that it was important to add the maximum limit of 14 months to the end of subsection (1) and the maximum limit of 12 weeks to subsection (2) for clarification and to implement section 37-31-304(2)(a), MCA.

RESPONSE: The Board concurred and added the suggested wording to subsections (1) and (2).

COMMENTS REGARDING 8.14.813: The association commented that striking the word "manicurist" would be confusing and because the rule in its previous form treated cosmetologists and manicurists differently, and there were and are valid reasons for the distinctions.

RESPONSE: The Board concurred and did not adopt that amendment.

COMMENTS REGARDING 8.14.814: The association argued that salon and booth rental fees could be lower than the \$15.00. It also asked for clarification whether a salon owner would have to purchase a booth rental license in addition to a salon license.

RESPONSE: The board rejected these comments, because the salon and booth rental are already proposed for reduction by \$10.00 and all fees have been cut by more than 50% since 10/27/89. The costs of inspecting booth rentals have been waived which is also a savings to the licensee of \$25.00. New rules make it clear that a salon licensee would not need to purchase a booth rental license.

COMMENTS REGARDING 8.14.815: The association suggested that the phrases "attending any advanced instructor or teacher training seminar" or "taking a course or workshop affiliated with a college or university" be added to subsection (1) to make clear that not all continuing education has to be affiliated with a college or university. The association also asked the Board to give blanket approval for all MSCA CE programs.

RESPONSE: The board agreed to add the suggested language to subsection (1). However, the board felt it unwise to give blanket approval for all programs of any sponsor, sight unseen. The board does not give blanket approval for any CE programs. Each course must be reviewed to assure that it meets the board's requirements.

COMMENTS REGARDING 8.14.816: The association questioned that the term "permanent" in subsection (2) made the provisions vague.

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

COMMENT: The association felt the wording in subsection (5) is too restrictive and suggested substitute language.

RESPONSE: The board concurred and subsection (5) was revised as shown above.

COMMENT: The association suggested subsection (9) should be revised to refer specifically to cosmetological services and manicuring services, respectively, instead of "business" as there may be times that the salon would be open for retail sales, tanning, etc., when no professional services were offered. It argued that these occasions don't require the presence of licensed professionals.

RESPONSE: The board rejected these proposals because the suggested language did not clarify anything and could cause some difficulties for new licensees.

COMMENT: The association questioned whether the Board really wanted to delete subsection (12), which would have the effect of permitting practice outside the licensed salon under some circumstances.

RESPONSE: The board explained that it was their intention to delete this subsection, as the subject was adequately addressed by statute.

COMMENTS REGARDING 8.14.902: The association suggested that the word "oral" remain in the rule and also that the word "practical" added in order to make the rules less restrictive and to anticipate future testing practices.

RESPONSE: The board concurred and has removed the phrase "written and oral" and inserted the word "Tests."

COMMENTS REGARDING 8.14.1104: The association felt that proposal would unduly restrict storage space for no good reason.

RESPONSE: The board rejected these comments for the reason that the type of materials used in electrology did not lend themselves to storage in a rest room.

COMMENTS REGARDING 8.14.1109: The association suggested that the word "apparel" would be more appropriate than "lab coats."

RESPONSE: The board concurred and made the amendment as shown above.

COMMENTS REGARDING 8.14.1205: The association supported the proposition that salons doing artificial nails need to have more ventilation. Its concern was that the rule did not give any guidelines for mechanical ventilation.

RESPONSE: The board revised the rule slightly on the mechanical ventilation in order to clarify the definition and relax the standard in order not to impose an unnecessary burden on salons.

COMMENTS REGARDING 8.14.1215: The association suggested that the rule also encompass booth rentals.

RESPONSE: The Board concurred and subsection (1) has been amended to include booths as shown above.

COMMENTS: Staff of the Administrative Code Committee made the following comments:

ARM 8.14.601(3)(a) does not state why the amendment is reasonably necessary:

RESPONSE: The Board concurred and the statement of reasonable necessity is to make the public aware that student work only is being done in that establishment.

ARM 8.14.814 listed several sections as implementing sections and only 37-31-323 is implemented by the proposed amendment.

RESPONSE: The Board concurred and made the correction.

ARM 8.14.816 does not state the reasonable necessity for the proposed amendments relating to booth rental licenses.

RESPONSE: The Board concurred and the statement of reasonable necessity is that these amendments are needed for more complete compliance with the mandate of the legislature in Chapter 88 of the Laws of 1989 that the board adopt rules for the qualifications and registration of applicants for booth licensure.

ARM 8.14.904 lists 37-32-302, MCA, as the section implemented; the correct section is 37-32-301, MCA.

RESPONSE: The Board concurred and made the correction.

ARM 8.14.1106 lists 37-32-203, MCA, as authority and 37-34-306, MCA as a section implemented; there are no such section.

RESPONSE: The Board concurred and made the correction.

ARM 8.14.1109 lists 37-32-206, MCA, as authority; there is no such section.

RESPONSE: The Board concurred and made the correction.

New rule I (8.14.817) requires a booth rental license of a salon owner with a booth rental tenant. Section 37-31-302, MCA, requires a booth rental license only of the booth tenant. The Board lacks statutory authority to require booth rental licensure of salon owners.

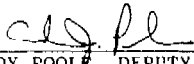
RESPONSE: The Board concurred and has amended the rule as shown above.

New rule II is unnecessary because the definition of a "booth" in 37-31-101, MCA, establishes the relationship between the establishment and booth rental tenant as that specified in 39-51-204(1)(i), MCA.

RESPONSE: The Board concurred and new rule II was not adopted by the Board.

5. No other comments or testimony were received.

BOARD OF COSMETOLOGY
MARLENE SORUM, CHAIRPERSON

BY: 
ANDY FOOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1990.

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

In the matter of the) NOTICE OF AMENDMENT OF
general amendment, repeal and) 8.58.401, 8.58.404, 8.58.
adoption of rules pertaining to) 405, 8.58.409, 8.58.410 -
the administration, licensing) 412, 8.58.414, 8.58.415A,
and conduct of real estate) 8.58.418 - 8.58.421;
licensees and the registration) REPEAL OF 8.58.406 - 8.58.
and sales of subdivisions) 408, AND 8.58.417; AND
) ADOPTION OF NEW RULES I
) THROUGH XII

TO: All Interested Persons:

1. On March 15, 1990, the Board of Realty Regulation published a notice of public hearing on the proposed amendment, repeal and adoption of the above-stated rules at page 405, 1990 Montana Administrative Register, issue number 5. The public hearing was held on April 5, 1990, in the Scott Hart Auditorium in Helena, Montana.

2. The new rules will be numbered as follows: I (8.58.301), II (8.58.405A), III (8.58.406A), IV (8.58.406B), V (8.58.406C), VI (8.58.406D), VII (8.58.408A), VIII (8.58.422), IX (8.58.423), X (8.58.415B), XI (8.58.415C) and XII (8.58.424).

3. The Board amended ARM 8.58.401, 8.58.404, 8.58.405, 8.58.410, 8.58.412, 8.58.415A, 8.58.418, 8.58.420, and 8.58.421; repealed ARM 8.58.406, 8.58.407, 8.48.408 and 8.58.417 and adopted new rules 8.58.406B, 8.58.406D, 8.58.422, 8.58.423, 8.58.415B, 8.58.424 exactly as proposed.

4. The Board amended ARM 8.58.409, 8.58.411, 8.58.414, and 8.58.419; and adopted new rules 8.58.301, 8.58.405A, 8.58.406A, 8.58.406C, 8.58.408A and 8.58.415C as proposed but with the following changes:

"8.58.409 BRANCH OFFICE REQUIREMENTS (1) For the purpose of this rule, "branch office" shall mean any office, division, room, unit, space, terminal, receptacle, or other like space, at a fixed location or open to the public, at which general business is transacted. It need not include any of the above within the principal office or any location used solely for demonstration, OPEN HOUSE, MODEL HOME, exhibition, or advertising purposes for referral to the principal office.

(2 through (6) will remain the same as proposed.

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-308, MCA

"8.58.411 FEE SCHEDULE (1) and (2) will remain the same as proposed.

(3) Examination fees

(a) For initial examination..... ~~\$35.00~~ \$40.00

(b) For each subsequent examination by the same nominee..... ~~\$30.00~~ \$40.00

(4) For each rescheduling of examination.. ~~\$30.00~~ \$40.00

(5) through (25) will remain the same as proposed.

Auth: Sec. 37-1-131, 37-1-134, 37-51-203, 37-51-204
MCA; IMP, Sec. 37-1-134, 37-51-202, 37-51-204, 37-51-207,
37-51-310, 37-51-311, MCA

"8.58.414 TRUST DEPOSITORY ACCOUNT REQUIREMENTS

(1) Each broker shall maintain a separate bank account, which shall be designated a trust DEPOSITORY account, wherein all down-payments, earnest money deposits, RENT PAYMENTS, SECURITY DEPOSITS, or other trust DEPOSITORY funds received by the broker or his salesman salesperson on behalf of his a principal PRINCIPAL, third-party, or any other person shall be deposited. Such trust DEPOSITORY accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third-party, or any other person, as may be designated by agreements. Interest payable to the broker shall be identified by agreement as consideration for services performed. OFFICES OR FIRMS HAVING MORE THAN ONE BROKER, WHETHER BROKER-OWNER OR BROKER-ASSOCIATE, MAY UTILIZE A SINGLE DEPOSITORY ACCOUNT.

(2) Trust DEPOSITORY accounts shall be maintained in banks located in Montana.

(3) will remain the same as proposed.

(a) The name of such separate account shall be identified by the word "trust-account"-or-"trustee" DEPOSITORY ACCOUNT.

(b) will remain the same as proposed.

(c) However, trust DEPOSITORY monies, (with the exception of the broker's commissions) may be disbursed in advance of the termination or consummation of the transaction upon written agreement of the buyers and sellers.

(d) At the client's instructions, trust DEPOSITORY monies may be retained in the trust-account DEPOSITORY ACCOUNT although there is no purchase, lease or rental agreement in existence or when the transaction has been consummated or terminated.

(4) Each broker shall only deposit trust DEPOSITORY funds received on real estate transactions in his trust DEPOSITORY account and shall not commingle his personal funds or other funds in said trust DEPOSITORY account with the exception that a broker may deposit and keep a sum not to exceed \$1000 in said account from his personal funds, including the interest earned on the trust DEPOSITORY account, if the trust DEPOSITORY account is maintained in an interest bearing account and the interest accrues to the broker, which sum shall be specifically identified and deposited to cover bank service charges relating to said trust DEPOSITORY account.

(5) A broker may maintain more than one trust DEPOSITORY account.

(6) Each broker shall deposit all real estate money received by him or his salesman in the broker's trust DEPOSITORY account within three business days of receipt of said money by said broker or said salesman unless otherwise provided in the purchase contract, (lease agreement, or rental agreement.)

(7) When a broker is registered in the office of the board as in the employ of another broker, the responsibility for the maintenance of the trust DEPOSITORY account shall be THE responsibility of the employing broker.

(8) will remain the same as proposed.

(9) No payments of personal indebtedness of the broker shall be made from such trust DEPOSITORY account other than a withdrawal of earned commissions payable to such broker or withdrawals made on behalf of the beneficiaries of such trust DEPOSITORY account.

(10) Money held in the trust DEPOSITORY account which is due and payable to the broker must be withdrawn within 5 business days after such money becomes due and payable to the broker.

(11) through (12)(b) will remain the same as proposed.

(c) trust DEPOSITORY account checks shall be numbered and all voided checks retained. The checks shall denote the broker's business name, address, and should be designated as "trust-account" "DEPOSITORY ACCOUNT".

(12)(d) through (13) will remain the same as proposed.

(14) The trust DEPOSITORY account must be reconciled monthly except in the case where there has been no activity during that month.

(15) will remain the same as proposed.

(16) Each broker shall authorize the board to examine such trust DEPOSITORY account by a duly authorized representative of the board. Such examination shall be made at such time as the board may direct.

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-203, MCA

"8.58.419 GROUNDS FOR-LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) and (2) will remain the same as proposed.

(3) In addition to all other provisions contained in the statutes and rules administered by the board, particularly section 37-51-321, MCA, (statutory grounds for license discipline) failure to comply with any of the following shall constitute an act against the interest of the public:

~~4a--Agency--Dual-Agency--and-Agency-Disclosure Relationships~~

~~4i+ (a) Licensees shall not MAY act as the agent of more than one principal in the same transaction unless IF the licensee reasonably believes that the duties owed to one principal will not directly conflict with the duties owed to the other in such fashion that adverse consequences are likely to result, and unless each principal consents after full disclosure by the licensee.~~

~~4i+ (b) Licensees shall disclose to all third parties the existence and nature of the existing agency relationship NO LATER THAN when an offer is prepared in a transaction.~~

~~4b--Violation-of-Laws-and-Regulations~~

~~4i+ (c) Licensees shall be-charged-with-knowing-the applicable-laws-and-regulations-affecting-the transaction~~

MAINTAIN A LEVEL OF KNOWLEDGE CUSTOMARY FOR LICENSEES OF THIS STATE, INCLUDING LAWS AND RULES ADMINISTERED BY THE BOARD, AND SHALL NOT VIOLATE LAWS AND RULES AFFECTING ANY TRANSACTION IN WHICH HE OR SHE ACTS.

~~4ii--licensees-shall-not-violate-any-law-applicable-to real-estate-transaction;~~

4ii+ (d) Licensees shall not engage in activities that constitute the practice of law.

~~4c--Services-of-Others~~

(i) through (iii) will remain the same as proposed but will be renumbered (e) through (g).

4iv+ (h) Licensees, in engaging or recommending the services of an attorney, title company, appraiser, escrow agent, or other like person or entity, on behalf of a principal third party, or other person, shall disclose any financial relationship and/OR FINANCIAL interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended.

~~4d--Nature-of-Property--Disclosure~~

(i) and (ii) will remain the same as proposed but will be renumbered (i) and (j).

4iii+ (k) Licensees, when entering into a listing agreement shall make a prompt effort to verify that the principal listing the property is the owner or is authorized by the owner to list the property. THE LICENSEE MAY, BUT IS NOT REQUIRED TO, CONDUCT A TITLE SEARCH OR OBTAIN A TITLE REPORT AT THE INITIAL LISTING.

(iv) will remain the same as proposed but will be renumbered (l).

~~4e--Advertising~~

4i+ (m) The licensee or agency in advertising shall be especially careful to present a true picture and shall not advertise without disclosing his or her name and identity as a real estate licensee or licensed real estate agency. Such disclosure shall be required whenever the licensee or agency negotiates or attempts to negotiate the listing, sale, purchase, or exchange of real estate which belongs to the licensee, the agency, or the principal.

(ii) will remain the same as proposed but will be renumbered (n).

~~4f--General-Conduct~~

(i) and (ii) will remain the same as proposed but will be renumbered (o) and (p).

4iii+ (q) ~~licensees-shall-not-knowingly-enter-or wilfully-continue-in-any-transaction-as-a-principal-or agent-herein-profit-or-gain-or-other-benefit-or-compensation from that-profit-or-gain-or-other-benefit;-may-accrue-to-the licensee-through-the-retention-of-payments-received-by-one party-to-a-transaction-or-agreement-which-reasonably-should be-applied-to-an-obligation-owed-to-another-party-to-the same-transaction-or-agreement;~~ LICENSEES SHALL NOT KNOWINGLY ENTER, OR WILFULLY CONTINUE IN, ANY TRANSACTION, EITHER AS A PRINCIPAL OR AGENT, WHEREIN A PURPOSE OR OBJECTIVE OF THE

LICENSEE OR HIS PRINCIPAL IS TO COMMIT ANY OF THE FOLLOWING ACTS: USE, OR CONSPIRE WITH OTHERS TO OBTAIN, INFLATED PROPERTY APPRAISALS; INFLUENCE OTHERS TO PURCHASE PROPERTY FOR ANOTHER PERSON IN ORDER TO CIRCUMVENT CREDIT AND DOWN PAYMENT REQUIREMENTS OR OTHER LIMITATIONS IMPOSED BY LENDERS, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR THE VETERANS ADMINISTRATION; FILE AN APPLICATION TO REFINANCE A LOAN FOR THE PURPOSE OF DRAWING OUT THE EQUITY, WHEN PROHIBITED BY LENDERS, THE DEPARTMENT OF HUD OR VA REGULATIONS; OR ACQUIRE AS AN INVESTOR, OR PERSONALLY, PROPERTIES SUBJECT TO A LOAN GUARANTEED OR INSURED BY THE DEPARTMENT OF HUD, COLLECT RENTS THEREON, WHILE PURPOSELY FAILING TO MAKE MORTGAGE PAYMENTS ON THE PROPERTY.

(iv) through (vi) will remain the same as proposed but will be renumbered (r) through (t).

~~vi~~ ~~ii~~ (u) Licensees shall ~~see that-~~ MAKE A REASONABLE ATTEMPT TO GET all agreements, financial obligations and recommendations regarding all real estate transactions are in writing.

(viii) through (x) will remain the same as proposed but will be renumbered (v) through (x).

~~tg~~ ~~+~~ ~~Offers~~

~~ti~~ ~~+~~ (y) Licensee shall submit all written offers to a principal when such offers are received prior to the listing agreement having been terminated or the transaction based on that listing having been closed, whichever occurs first. HOWEVER, CONTINUING TO PRESENT OFFERS AFTER AN OFFER HAS BEEN ACCEPTED SHALL NOT BE DEEMED TO BE A VIOLATION OF 37-51-321(10), MCA.

(ii) will remain the same as proposed but will be renumbered (z).

~~tiit~~ ~~+~~ ~~Licensees shall make no representation concerning prior offers to persons interested making an offer unless the contents of the representation are based on an offer in writing;~~

~~tiit~~ ~~+~~ (aa) A licensee shall inform any seller at the time an offer is presented that he will be expected to pay certain closing costs, such as discount points and the approximate amount of said costs.

~~th~~ ~~+~~ ~~Licensees in Relation to Other Licensees and Employees~~

(i) through (v) will remain the same as proposed but will be renumbered (ab) through (af).

(4) will remain the same as proposed.

(5) The revocation or suspension or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, whether as an attorney, salesperson, broker, appraiser, or similar occupation or profession, shall be grounds for license discipline in this state, ~~if the grounds for that disciplinary treatment would be grounds for such treatment of a licensee under the board.~~ IF THE BOARD, AFTER APPROPRIATE NOTICE AND HEARING, DETERMINES THAT THE SUBSTANTIVE GROUNDS FOR THAT DISCIPLINARY TREATMENT DEMONSTRATES THE LICENSEE'S UNWORTHINESS OR INCOMPETENCY TO ACT AS A BROKER OR SALESMAN."

Auth: Sec. 37-1-131, 37-1-136, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-321, MCA

"8.58.301 MEANING-OF-TERMS-USED DEFINITIONS (1) through (h) will remain the same as proposed.

(i) ~~"principle"~~ "PRINCIPAL" shall include the seller or buyer with whom the agent has a contract;

(j) will remain the same as proposed.

(k) ~~"seller"~~ shall include vendor, ~~lessor~~ LESSOR, and like terms;

(l) ~~"supervision"~~ shall include substantially day to day, active ~~oversight~~ OVERSEEING;

(m) ~~"third party"~~ shall include any person in a transaction who is not the principal or agent in any ~~single~~ agency relationship."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, MCA

"8.58.405A APPLICATION FOR EXAMINATION -- SALESPERSON AND BROKER (1) will remain the same as proposed.

(2) All applications must be legible, accurate, and fully completed; ~~and must include--a recent 2" x 2" face identification photograph of the applicant.~~

(3) through (5) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-302, 37-51-303, MCA

"8.58.406A APPLICATION FOR LICENSE--SALESPERSON AND BROKER (1) Applicants for license must make application on forms approved by the board and accompanied by the required fee, AND MUST INCLUDE A RECENT 2" x 2" PHOTOGRAPH FOR IDENTIFICATION OF THE APPLICANT.

(2) and (3) will remain the same as proposed.

(4) For salesperson applicants, the board will require a recent credit rating, supervising broker certification, and references attesting to ~~verify~~ good repute, honesty, trustworthiness, and competency. THE BOARD MAY UTILIZE THE CONTENT OF THE CREDIT REPORT IN ITS ASSESSMENT OF THE SALESPERSON'S QUALIFICATIONS, ONLY TO THE EXTENT THAT SUCH REPORT DISCLOSES JUDGEMENTS OR SIMILAR ITEMS IN WHICH THE APPLICANT HAS BEEN FOUND LIABLE FOR MISMANAGEMENT, FRAUD, CONVERSION, OR CONDUCT OF A SIMILAR NATURE.

(5) For broker applicants, the board will require a recent credit rating, and references attesting to good repute, honesty, trustworthiness, and competence. THE BOARD MAY UTILIZE THE CONTENT OF THE CREDIT REPORT IN ITS ASSESSMENT OF THE SALESPERSON'S QUALIFICATIONS, ONLY TO THE EXTENT THAT SUCH REPORT DISCLOSES JUDGEMENTS OR SIMILAR ITEMS IN WHICH THE APPLICANT HAS BEEN FOUND LIABLE FOR MISMANAGEMENT, FRAUD, CONVERSION, OR CONDUCT OF SIMILAR NATURE.

(6) For the purpose of determining the 37-51-302(2)(c) qualifications of a broker applicant, "actively engaged" will be applied to mean "engaged substantially full time, day to day, as an occupation" and having obtained 10 listings and

10 sales and attended, participated, observed, reviewed, and conducted the various stages of these transactions and the showings, negotiations, closings, and like matters pertaining to them, to the full extent possible within the scope of a salesperson's license. This experience may be obtained while licensed within the state, or licensed in another state. This rule SUBSECTION is advisory only, but may be a correct interpretation of the law. Ch-6377-Er-1983-

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-1-135, 37-51-202, 37-51-302, MCA

"8.58.406C APPLICATION FOR EQUIVALENCY--BROKER

(1) through (2)(b) will remain the same as proposed.

(c) any appropriate combination of the above. SUBSECTION

(2) IS ADVISORY ONLY, BUT MAY BE A CORRECT INTERPRETATION OF THE LAW.

(3) and (4) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-302, MCA

"8.58.408A NON-RESIDENT LICENSE--SALESPERSON AND BROKER

(1) will remain the same as proposed.

(2) Non-resident salespersons must be under the supervision of licensed resident real estate brokers or accompanied by and under the direct supervision of licensed non-resident real estate brokers while conducting activities in this state."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-302, 37-51-306, MCA

"8.58.415C CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL (1) through (3)(a) will remain the same as proposed.

(b) at least two years of post-secondary education in a field traditionally associated with the subject matter of real estate transactions with a generally recognized professional OR EDUCATIONAL designation; or

(c) through (e) will remain the same as proposed.

(f) SUCH OTHER QUALIFICATIONS AS ARE DETERMINED BY THE DEPARTMENT OR BOARD TO MEET THE SPIRIT AND INTENT OF THESE REQUIREMENTS.

(4) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-51-202, 37-51-204, MCA

5. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

Comments: Comments were provided to the board from staff of the Administrative Code Committee noting the inconsistency between the term "salesperson" used in the rules and the term "salesman" used in the statutes.

Response: The board noted the inconsistency, but also noted that salesperson is used in other rules and decided that the term would remain in the rules to maintain consistency therein.

Comments regarding 8.58.404: Comments were provided to the board from the Montana Association of Realtors suggesting limiting the preliminary review of exam applications to accommodate walk-in testing.

Response: The board rejected the suggestion because it limited the testing application process to walk-in testing and did not allow preregistration of exam candidates. It would eliminate the new testing procedure.

Comments regarding 8.58.405: Participants proposed a revision to delete the word "percent" and the % symbol to more accurately describe the pass-fail point.

Response: The board concurred and made the revision.

Comments regarding 8.58.409: The Montana Association of Realtors recommended the inclusion of "open house" and "model home" as exemptions from requiring a branch office license.

Response: The board concurred and the suggested categories were added.

Comments regarding 8.58.411: The new testing service costs suggested increasing examination fees from \$35.00 to \$40.00. This matter was discussed at the hearing. There was no opposition.

Response: The fee change was made by the board without objection.

Comments: The Montana Association of Realtors recommended a reduction of fees charged for the transferring of sales licenses within an office.

Response: This proposed fee reduction was rejected because the same amount of staff clerical work is involved in a transfer within an office as a transfer between separate offices.

Comments regarding 8.58.414: The Montana Association of Realtors recommended the change of terms from "trust account" to "depository account" throughout this rule.

Response: The board concurred and adopted the suggested language.

Comments: The Montana Association of Realtors recommended a change in the requirement that each broker shall maintain

a separate bank account to provide, "Offices or firms having more than one broker, whether broker-owner or broker-association, may utilize a single depository account."

Response: The board concurred and adopted the suggested language.

Comments: Mr. Jack Morton suggested that "rent payments" and "security deposits" be included among the funds deposited in trust accounts.

Response: The board concurred and adopted the suggested language.

Comments: Mr. Morton also recommended clarification of the distribution of earnest money by agreement between the principal and third parties.

Response: The board rejected this suggestion because the distribution of earnest money does not require communications between the principal and third party.

Comments: Staff of the Administrative Code Committee commented about what it thought were inaccurate authority cites for ARM 8.58.415A and new rule XI (8.58.415C).

Response: The board concurred and deleted reference to sections 37-51-202 and 37-51-204.

Comments: The Administrative Code Committee called to the board's attention an apparent error in the MCA section cited, observing that it currently refers to 37-58-203, when the reference should be 37-51-203.

Response: The board concurred and made the correction.

Comments regarding 8.58.419(3)(a): The Montana Association of Realtors suggested altering phraseology in the rule from a negative of "the licensee shall not" to a positive of the "license may."

Response: The board concurred and adopted the suggested language.

Comments regarding 8.58.419(3)(b): The Montana Association of Realtors suggested the addition of the term "no later than", to identify at what point the licensee must disclose agency relationship.

Response: The board concurred and adopted the suggested language.

Comments regarding 8.58.419(3)(c) and former (3)(b)(ii): The Montana Association of Realtors requested deletion of subsection (ii) and amending the language of subsection (c)

because it felt that the standard exceeds the civil liability standard currently applicable in this state for any other profession and would be impossible to meet.

Response: The board concurred and adopted the suggested changes.

Comments regarding 8.58.419(3)(h): The Montana Association of Realtors suggested the addition of the phrase "or/financial" interest to clarify what types of interests must be identified.

Response: The board concurred and adopted the suggested language.

Comments regarding 8.58.419(3)(k): The Montana Association of Realtors suggested exempting a title search or title report from listing requirements because the rule would hold the agent to a standard to which they could be held in a court of law later in a possible law suit.

Response: The board concurred and adopted the suggested language.

Comments regarding 8.58.419(3)(l): Mr. Morton suggested deleting the proposed language "or that the property was the site of a suicide, homicide, or other felony."

Response: These suggestions were rejected, as the subjects are not material to the value of the property and do not need to be disclosed as such.

Comments regarding 8.58.419(3)(m): Mr. Morton suggested deleting the word "licensed" real estate agency, because agency's are not currently licensed.

Response: The board concurred and adopted the suggested change.

Comments regarding 8.58.419(3)(q): The Montana Association of Realtors suggested revisions to this section for clarification purposes.

Response: The board concurred and adopted the proposed revisions with minor changes.

Comments regarding 8.58.419(3)(s): The Montana Association of Realtors suggested deletion of this section of the proposed rules because the standard of "reasonable efforts" is not defined and leads to an after-the-fact and possibly arbitrary determination by the board of whether or not the agent's conduct has reached the required level.

Response: The proposed deletion of this subsection was rejected, as the subsection addresses a different stage of

a transaction than found elsewhere in the proposed rule amendment. The subsection also clarifies the board's specific jurisdiction over licensees who have not fulfilled contracts obligating the payment of escrows, etc.

Comments regarding 8.58.419(3)(u): Mr. Morton suggested revising this rule to provide that, "licensee shall make a reasonable attempt to get" agreements, etc. in writing, instead of imposing an absolute responsibility on the licensees.

Response: The board concurred and adopted the suggested language.

Comments regarding 8.58.419(3)(v): Mr. Morton suggested revising this proposed rule to include the words "or informal" regarding appraisals because the rule implies that "informal" appraisals outside the scope of their experience are acceptable. Since most appraisals made by licensees would fall within the "informal" category, they should also be included within the regulation.

Response: The proposed revision was rejected because the practice act does not include appraisals within the definition of "broker."

Comments regarding 8.58.419(3)(w): Mr. Morton suggested deletion of the word "exclusive" from this subsection so that broker's consent is needed whenever a cooperating broker shares the listing with a subsequent broker.

Response: This suggestion was rejected because the effect of the deletion would be to make the listing an open listing.

Comments regarding 8.58.419(3)(x): Mr. Morton suggested deletion of the words "rent" and "renters", as being redundant to lessees and lessors.

Response: This proposal was rejected because the terms are not synonymous. Rent is paid month to month, whereas a lease is for a period of time specified by contract.

Comments regarding 8.58.419(3)(y): Several participants suggested either deletion of or revision of the existing rule to make it clear that continuing to present offers after an offer has been accepted shall not be a violation of 37-51-321(10), MCA.

Response: The board concurred and revised the proposal to include the suggested exemption.

Comments regarding 8.58.419(3)(z): Mr. Morton suggested revision of this rule to permit disclosure of the terms of an offer, but not the identity of the party making the offer.

Response: This suggestion was rejected and the rule was adopted as proposed. The board felt that it is not a common practice in the industry to reveal the contents and nature of an offer.

Comments regarding former 8.58.419(3)(aa): The Montana Association of Realtors suggested deleting this subsection as it is not necessary. This section was intended to clarify new language in subsection (ii) in a previous draft which has been removed.

Response: The board concurred and the proposed subsection was deleted.

Comments: Mr. Morton suggested the addition of a provision requiring licensees to try to get offers in writing, but to present all offers, oral or not.

Response: This suggestion was rejected as the current rules require that all written offers be presented. That is the intent of the rule, and the board felt there was insufficient reasons to relax the rule.

Comments regarding 8.58.419(5): The Montana Association of Realtors suggested the addition of language that would clarify that the license disciplinary action must be tied to the unworthiness or incompetency to act as a real estate licensee.

Response: The board concurred and revised the subsection accordingly.

Comments: Mr. Morton suggested additional rules covering the withdrawing of offers prior to acceptance, and earnest money requirements on an offer.

Response: The suggestions were rejected by the board. These subjects are usually covered on typical agreements to buy and sell.

Comments regarding new rule I (8.58.301)(i): There were several suggestions to correct the spelling of the word "principal."

Response: The board concurred and the change was made as shown.

Comments regarding new rule I (8.58.301(k)): The Montana Association of Realtors suggested correcting the spelling of the word "lessor".

Response: The board concurred and the change was made as shown.

Comments regarding new rule I (8.58.301(1)): The Montana Association of Realtors suggested revising the word in the definition from "oversight" to "overseeing."

Response: This comment was adopted by the board.

Comments regarding new rule I (8.58.301(m)): The Montana Association of Realtors suggested the deletion of the term "single" from the definition of third party.

Response: The board concurred and the change was made.

Comments regarding new rule II (8.58.405A(2)): Mr. Morton suggested deletion of identifying photographs from this rule. The board also proposed moving this to the license application requirements to accommodate the new testing service applications.

Response: The proposed rule was adopted with the deletion of the photo requirement and transferring it to proposed new rule III (8.58.406A(1)).

Comments regarding new rule III (8.58.406A): Staff of the Administrative Code Committee commented that this proposed rule states that the whole rule is advisory, but only subsection (6) is intended as advisory.

Response: The board made note of the comment and made the necessary change to limit the advisory portion to subsection (6), as shown above.

Comments regarding new rule III (8.58.406A(4) & (5)): Mr. Morton suggested deleting the reference letter requirements.

Response: The suggestion was rejected because reference letters are an approved method of obtaining information about an applicant's worthiness.

Comments: The Montana Association of Realtors suggested limiting the use of the credit reports to those finding liability for mismanagement, fraud, conversion, or similar matters, as the credit reports generally provide only superficial information which can be misleading.

Response: The board concurred and revised the rule accordingly.

Comments regarding new rule III (8.58.406A(6)): Mr. Morton suggested exempting farm & ranch sales, commercial sales, and any area other than residential sales from the rule. Mr. Morton felt it was an inappropriate requirement for a person in property management, farm and ranch, or commercial transactions to meet the "active" standard.

Response: The suggestion was rejected as this means of qualification is covered in another section.

Comments regarding new rule IV (8.58.406B(2)): Mr. Morton suggested deletion of this section, as statutes do not allow the waiver of the two year requirement.

Response: The suggestion was rejected because the statutes authorize the board to determine equivalent standards.

Comments regarding new rule V (8.58.406C): Staff of the Administrative Code Committee observed that this proposed rule was advisory, but the rule did not so state.

Response: The comments were noted and accepted by the board. This change has been made accordingly.

Comments regarding new rule VII (8.58.408A): Staff of the Administrative Code Committee observed that this proposed rule referred to "direct supervision" when the correct term is just "supervision."

Response: The board concurred and amended the rule accordingly.

Comments regarding new rule VII (8.58.408A(2)): Mr. Morton suggested deletion of the reference to non-resident sales licenses from this proposed rule.

Response: The suggestion was rejected because the licensed non-resident salesperson would not have to abide by Montana's supervision requirements. The board feels that a non-resident salesperson must be supervised by a resident broker if the public is to be protected.

Comments regarding new rule IX (8.58.423): Mr. Morton suggested the addition of a rule requiring broker to notify the board office of any violation of board law or rules when terminating a sales associate.

Response: The suggestion was rejected as the existing complaint process covers instances when violations occur.

Comments regarding new rule IX (8.58.423(4)): Mr. Morton suggested revising the rule to require notification of the principal and giving him an opportunity to rescind the listing contract, upon termination of the listing agent.

Response: The suggestion was rejected, as this is an office policy item that should be addressed in the employment contract.

Comments regarding new rule XI (8.58.415C(3)(b)): Mr. Morton suggested adding "or educational" designation, to clarify

instructor approval requirements. Mr. Morton felt it would be appropriate to give the staff more discretion in approving continuing education instructors, i.e. business doctorate.

Response: The board concurred and adopted the suggested language.

Comments regarding new rule XI (8.58.415C(3)): Mr. Morton suggested adding a section giving the board authority to evaluate instructors that may not fit into any one requirement category. Mr. Morton gave the same reasons for this suggestion as he did for the above rule (8.58.415C(3)(b)).

Response: The board concurred and the suggestion was adopted by the board.

Comments regarding new rule XII (8.58.424): Staff of the Administrative Code Committee observed that the word "judgment" was misspelled in the rule.

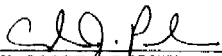
Response: The board concurred and the correction was made.

Comments regarding new rule XII (8.58.424(6)): The Montana Association of Realtors suggested restricting the publication of discipline actions to board publications.

Response: The suggestion was rejected by the board because the board is a public agency created for the protection of the public from the perils of incompetent and unprincipled realtors. The ability to disseminate disciplinary actions on a nondiscriminatory basis is essential to that protection.

6. No other comments or testimony were received.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1990.

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


In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to fees) 8.61.404 AND 8.61.1203
) PERTAINING TO FEES

TO: All Interested Persons:

1. On March 15, 1990, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment of the above-stated rules at page 424, 1990 Montana Administrative Register, issue number 5.
2. The Board amended the rules exactly as proposed.
3. One comment was received from the staff of the Administrative Code Committee stating the authority cites listed were erroneous. The correct authority cite for 8.61.1203 is 37-23-103, MCA. The Board noted this comment and the correct authority cite will appear on replacement pages.
4. No other comments or testimony were received.

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

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1990.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

IN THE MATTER OF THE TRANSFER)	
AND AMENDMENTS TO 8.124.101	)	CORRECTED NOTICE OF
(23.16.1701) through 8.124.229	)	ADOPTION OF RULES
(23.16.1829), ARM, AND ADOPTION OF	)	RELATING TO GAMBLING
RULES I through XV relating to)	
Title 23, chapter 5, parts 1)	
through 6.		

TO: All Interested Persons:

1. On December 21, 1989, the Department of Justice published notice of proposed transfer, amendment, adoption, and repeal of rules relating to gambling at page 2127, issue number 24, 1989 Montana Administrative Register. On April 26, 1990, the Department adopted and repealed the rules at page 828, issue number 8, 1990 Montana Administrative Register. Certain oversights have since come to the Department's attention.

2. In the December 21, 1989, notice, the Department noted that Rules 8.124.225 (23.16.1825) and 8.124.226 (23.16.1826) had been repealed previously when the rules were rules of the Department of Commerce. The numbers in parentheses were proposed to be the Department of Justice numbers for the two rules. In the April 26, 1990, notice of adoption these two rules were listed as 23.16.1925 and 23.16.1926 in ¶ 3, the notice of repeal prior to transfer. This was done because certain rules were renumbered between proposal and adoption. These numbers are incorrect, as all four numbers currently identify different rules: 23.16.1825 - License Qualifications; 23.16.1826 - Quarterly Reporting Requirements; 23.16.1925 - Possession of Unlicensed Machines; and 23.16.1926 - Location of Machines on Premises. The two repealed-but-transferred-for-reference rules are now numbered: 23.16.1945 and 23.16.1946. In conclusion, Department of Justice Rule 23.16.1945 is transferred from the Department of Commerce, it was repealed Rule 8.124.225 - CIVIL VIOLATIONS -- CRIMINAL VIOLATIONS and Department of Justice Rule 23.16.1946 is transferred from the Department of Commerce it was repealed Rule 8.124.226 - PENALTIES FOR CIVIL VIOLATIONS ISSUED BY DEPARTMENT.

3. In the April 26, 1990, notice of adoption, the Department neglected to respond to counsel for the Administrative Code committee's comment that the statement of reasonable necessity should be expanded. Therefore, the following language should be inserted in issue 8 of the 1990 Montana Administrative Register p. 828, following ¶ 4.

4. Counsel for the ACC commented that the Department's statement of reasonable necessity (§ 3 in the Notice of Public Hearing) should be expanded. The Department agrees and adopts the following expanded statement of reasonable necessity: The Department finds that the rules hereby adopted are necessary to specifically inform all those involved in public gambling activities of their rights and responsibilities under Montana's new gambling laws. The Department also finds that the degree of specificity in the rules adopted is necessary to ensure a uniform regulatory climate for legal gambling activities in Montana; to protect those involved in all aspects of legal gambling activities from unscrupulous persons; to protect the tax revenues due from legal gambling activities; to provide appropriate forms and instructions for tax filing and permit application purposes; and to protect the health, safety, and welfare of the citizens of Montana, especially those adversely affected by legalized gambling. The Department also finds that the proposed amendments to rules are necessary to implement the recent changes to Montana's gambling laws to incorporate previous statutory requirements into rule form (§ 23-5-621, MCA), and to effectuate the above-enumerated legislative purposes. Finally, the Department finds that the proposed repeal of certain rules is necessary because the statutory changes have either withdrawn statutory authority for the rule or have rendered the statute superfluous; also, in several instances, the Department has adopted rules of more general applicability which duplicate existing rules.

BY:

Marc Racicot
MARC RACICOT

Attorney General

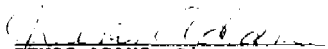
Certified to the Secretary of State on June 4th, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.28.321 relating to)	ARM 42.28.321
Required Records - Audits -)	relating to Required Records
Motor Fuels Tax.)	- Audits - Motor Fuels Tax.
)	

TO: All Interested Persons:

1. On March 29, 1990, the Department of Revenue published notice of the proposed amendment of ARM 42.28.321 relating to required records for audits concerning motor fuels tax at page 580 of the 1990 Montana Administrative Register, issue no. 6.
2. No public hearing was held.
3. No comments or testimony were received.
4. The Department has amended the rule as proposed.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 4, 1990.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules	)	RULES 46.12.1107,
46.12.1107, 46.12.1108,	)	46.12.1108, 46.12.1109,
46.12.1109, 46.12.1110,	)	46.12.1110, 46.12.1111,
46.12.1111, 46.12.1112,	)	46.12.1112, 46.12.1113 and
46.12.1113 and 46.12.1114	)	46.12.1114 PERTAINING TO
pertaining to skilled	)	SKILLED NURSING AND
nursing and intermediate	)	INTERMEDIATE CARE SERVICES
care services in	)	IN INSTITUTIONS FOR MENTAL
institutions for mental	)	DISEASES
diseases)	

TO: All Interested Persons

1. On February 8, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to skilled nursing and intermediate care services in institutions for mental diseases at page 278 of the 1990 Montana Administrative Register, issue number 3.

2. The Department has adopted Rules 46.12.1107 (I), PURPOSE; 46.12.1108 (II), DEFINITIONS; 46.12.1110 (IV), SCREENING AND UTILIZATION REVIEW REQUIREMENTS FOR MEDICAID RECIPIENTS; 46.12.1111 (V), REIMBURSEMENT; 46.12.1112 (VI), PAYMENT; 46.12.1113 (VII), COST REPORTING; 46.12.1114 (VIII), ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES as proposed.

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

(RULE III) 46.12.1109 GENERAL REQUIREMENTS AND LIMITATION FOR MENTAL DISEASE Subsection (1) remains as proposed.

(2) Payment is not available for services provided to any individual who is under age 65 and is in an institution for mental diseases except for persons under 21 receiving inpatient psychiatric services described at ARM 46.12.590.

Subsection (3) remains as proposed.

(4) ~~The nursing facility institution for mental diseases~~ must provide for recorded individual plans of treatment and care to ensure that institutional care maintains the recipient at, or restores him to, the greatest possible degree of health and independent functioning. The plans must include:

Subsections (4)(a) through (4)(e) remain as proposed.

(5) ~~Nursing facilities~~ Institutions for mental diseases must meet three or more of the following factors ~~to be considered institutions for mental diseases:~~

(a) the facility is licensed as a psychiatric facility for the care and treatment of individuals with mental diseases by the state of Montana.

Subsections (5)(b) through (6) remain as proposed.

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

IMP: Sec. 53-6-101 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The department is expanding the scope of the Medicaid program by activating an optional service previously unfunded by the state legislature. SNF and ICF services in IMDs are among six optional services in which little or no expenditures are currently made.

RESPONSE: There is little or no relationship between the optional services addressed in the proposed rules and the other seldom used optional services. It is unnecessary to withdraw these rules merely because other optional services have low utilization or because Montana has a relatively large number of optional services. Facilities that would benefit from this rule are already receiving reimbursement by the Medicaid program as nursing facilities.

COMMENT: The department should clarify that the rules of IMD do not affect the rules for inpatient psychiatric services for persons under 21. A facility delivering psychiatric services can be determined to be an IMD and therefore be restricted by the proposed rules.

RESPONSE: Rule I states that "these rules are intended to provide the criteria for payment of nursing facility services to Medicaid recipients age 65 or older who are residents of an institution for mental disease." The proposed rules also contain definitions and explanations of nursing facility services, skilled nursing and intermediate care services and other criteria for services to persons age 65 or older. Additional clarification may be considered redundant.

COMMENT: Rule III(2). The department should add "except for persons under 21 receiving inpatient psychiatric services described at ARM 46.12.590" to the end of the sentence.

RESPONSE: This comment will be incorporated into the final rule.

COMMENT: The department is adopting a reimbursement system which will allow the IMD to receive cost based reimbursement, a maximum update equal to the Medicare market basket and will be rebased every second year. This is preferential treatment compared to existing nursing facilities. The only facilities which can immediately benefit from the new rules are state owned facilities. For those facilities currently participating in Medicaid which will become IMDs, the department should limit the reimbursement to the current rate they receive through ARM 46.12.1201.

RESPONSE: Cost-based reimbursement is considered an appropriate initial methodology to insure reasonable and adequate payments for this unique classification of providers. There are significant differences in services provided by nursing facilities in comparison to an institution for mental disease. Thus, it can be expected that their costs will be different to provide these services.

COMMENT: The department should clarify whether or not an IMD may provide inpatient hospital services and how these services will be reimbursed. While the rules are obviously directed at nursing facilities it is unclear whether hospital services provided by an IMD are excluded.

RESPONSE: It is clearly stated throughout the proposed rules that they are intended for payment of nursing facility services provided in an IMD. The mention of hospital in the definition of institution for mental diseases is merely part of the broad definition of this type of institution.

COMMENT: The department should take this opportunity to create a less cumbersome billing procedure for outpatient (non-facility based) services. The department will also subject providers to the limits included in other outpatient services which will limit the provider's ability to conform to Rule III(4).

RESPONSE: IMD nursing facilities will bill for ancillary and other covered services in the same manner as other nursing facilities. Should this impair a provider's ability to meet the requirements under these rules, the procedures may need to be reevaluated.

COMMENT: Rule III(5) lists the factors that a nursing facility must meet in order to be considered an institution for mental disease. (A) Under III(5)(a) it is suggested that the sentence describe who the licensing body is. (B) To our knowledge there

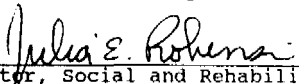
is no facility that is an IMD that is accredited by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO). (C) Should a facility be considered an IMD without the requirement of the provision of active treatment for mental disease?

RESPONSE: (A) Rule III(5)(a) states that one of the factors to be considered in determining if a nursing facility meets the requirements for an IMD is that the facility is licensed as a psychiatric facility for the care and treatment of individuals over 65 with mental diseases. The licensing body is the state of Montana Department of Health and Environmental Sciences. We will incorporate the state of Montana as the licensing authority in the final copy of the rule.

(B) JCAHO accreditation is only one of ten factors that can indicate if a facility meets the requirements to be considered an institution for mental diseases. Nursing facilities only have to meet three of these ten factors to be considered an IMD. JCAHO accreditation can apply to hospitals and psychiatric facilities which are included in the definition of an institution for mental diseases. To date we have not had a facility that has been classified as an IMD for payment of nursing facility services to Medicaid recipients age 65 or older. This rule sets forth the criteria to provide payment for IMD services if facilities meet the general requirements in Rule III.

(C) The definition in Rule II identifies that an institution for the mentally retarded is not an institution for mental diseases. Active treatment is a requirement for facilities for the mentally retarded and is not a requirement for institutions for mental disease under Rule III general requirements and limitations for IMD's, and 42 CFR 441 subpart C.

5. These rules will be applied retroactively to October 1, 1989.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 4, 1990.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule	)	RULE 46.12.2003 PERTAINING
46.12.2003 pertaining to	)	TO REIMBURSEMENT FOR
reimbursement for	)	OBSTETRICAL SERVICES
obstetrical services)	

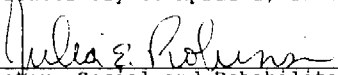
TO: All Interested Persons

1. On April 12, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.2003 pertaining to reimbursement for obstetrical services at page 702 of the 1990 Montana Administrative Register, issue number 7.

2. The Department has amended Rule 46.12.2003 as proposed.

3. No written comments or testimony were received.

4. This rule is applied retroactively to April 1, 1990.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 4, 1990.

VOLUME NO. 43

OPINION NO. 61

CITIES AND TOWNS - Power to establish office hours other than between 8 a.m. and 5 p.m. Monday through Friday;

COURTS, CITY - Power to establish office hours other than between 8 a.m. and 5 p.m. Monday through Friday;

LOCAL GOVERNMENT - Power of third-class city or town to establish office hours other than between 8 a.m. and 5 p.m. Monday through Friday;

MONTANA CODE ANNOTATED - Sections 1-1-301(4), 1-2-102, 3-1-301, 3-1-302, 3-11-101, 7-4-102(1), 7-4-102(3), 7-4-4101(1)(c), 7-4-4102(1)(c), 7-4-4103(1)(c);

OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 49 (1989), 43 Op. Att'y Gen. No. 27 (1989), 43 Op. Att'y Gen. No. 16 (1989).

- HELD: 1. A city judge is not prohibited by section 3-11-101, 3-1-301, or 3-1-302, MCA, from establishing regular sessions of the court during evening hours other than on Sundays or other legal holidays.
2. Subject to the provisions of section 7-4-102(3), MCA, applicable to third-class cities or towns, so long as the city court is open between the hours of 8 a.m. and 5 p.m. Monday through Friday for the transaction of business, such as the filing of court documents with the clerk, section 7-4-102(1), MCA, does not prohibit the city judge from establishing regular evening sessions of the court.
3. Section 7-4-102(3), MCA, permits the governing body of a third-class city or town to set the office hours of the city court at times other than between 8 a.m. and 5 p.m. Monday through Friday, except Sundays and other legal holidays.

May 17, 1990

Frank Altman
Harlem City Attorney
P.O. Box 268
Havre MT 59501

Dear Mr. Altman:

As legal advisor for the City of Harlem, you have requested my opinion on the following questions:

1. Does section 3-1-301, MCA, permit a city court judge to set business hours other than between 8 a.m. and 5 p.m. weekdays?

2. Does section 7-4-102(3), MCA, permit the governing body of a third-class city or town to set the business hours of the city court at times other than between 8 a.m. and 5 p.m. weekdays?

Your inquiry arises out of the apparent practice of the Harlem City Judge to hold regular sessions of court between the hours of 5:30 p.m. and 6:30 p.m., Monday through Friday. You question whether in the first instance the city judge is permitted by statute to set such hours and, if not, whether Montana law allows the city governing body to permit or establish such hours by ordinance.

Section 3-11-101(1), MCA, establishes a city court in each city or town and requires the city judge to establish regular sessions of the court. It further provides: "On judicial days, the court shall be open for all business, civil and criminal." See also § 3-1-301, MCA. Although state law does not define judicial days, section 3-1-302, MCA, entitled "nonjudicial day," provides:

(1) No court may be open nor may any judicial business be transacted on legal holidays, as provided for in 1-1-216, and on a day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:

(a) to give, upon its request, instructions to a jury when deliberating on its verdict;

(b) to receive a verdict or discharge a jury;

(c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.

(2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day.

I recently held that this section prohibits a court from conducting a criminal trial on Sunday, except to conclude a trial already initiated. 43 Op. Att'y Gen. No. 27 (1989). Further, the requirement that the court be open for the transaction of business does not necessarily translate into a requirement that the presiding judge be present during those hours. See, e.g., 43 Op. Att'y Gen. No. 49 (1989). Although it has been held that a court can only exercise its jurisdiction at the time and place fixed by statute, Thompson v. Commonwealth, 99 S.W.2d 705, 706 (Ky. 1936); Bradley v. State, 213 S.W.2d 901, 902-03 (Ark. 1948), it is generally recognized that so long as it is within the statutory limits the time for transaction of judicial business is within the discretion of the judge. Jennett v. State, 168 So. 224 (Ala. Ct. App. 1936); Martinez v. State, 569 P.2d 497, 502 (Okla. Crim. App. 1977); Rhodes v. Crites, 113 N.W.2d 611, 616 (Neb. 1962). "A basic

inherent power of any court in the administration of justice is the ability to control its own trial docket. This inherent power includes setting time for trial." Seastrom v. Konz, 544 P.2d 744, 746 (Wa. 1976).

The Montana Code sections pertaining to the time for conducting court business generally refer to days rather than to specific hours. See §§ 3-11-101(1), 3-1-301, 3-5-401(1), MCA. As used throughout the Code, the term "day" means "the period of time between any midnight and the midnight following." § 1-1-301(4), MCA. Thus, section 3-11-101, MCA, read together with sections 3-1-301 and 3-1-302, MCA, contains nothing which would prohibit a city court judge from establishing evening sessions of the court, so long as regular sessions are not convened on legal holidays and the court is open for business on judicial days. These sections place no limitations upon the hours of business.

There is, however, another applicable statute which must be considered. Section 7-4-102(1), MCA, requires that all local government offices be kept open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays. See 43 Op. Att'y Gen. No. 16 (1989). The city judge, being an officer of a city or town, § 7-4-4101(1)(c), 7-4-4102(1)(c), 7-4-4103(1)(c), MCA, is subject to the provisions of section 7-4-102, MCA, and must, absent the governing body's action pursuant to section 7-4-102(3), MCA, keep his or her office open during the hours specified therein. This does not mean, however, that the city judge is prohibited from setting office hours after 5 p.m. on weekdays. Section 7-4-102(1), MCA, further provides: "Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires." So long as the office of the city court is open during the required hours for the transaction of business, "such as the filing of court documents with the clerk," 43 Op. Att'y Gen. No. 49 at 5, the city judge may set additional hours for the regular sessions of the court.

This conclusion finds support in case law from other jurisdictions. For example, in Seastrom v. Konz, *supra*, a defendant in a criminal case challenged the practice of the part-time justice of the peace to conduct evening trials. The applicable statute provided:

All state elective and appointive officers shall keep their offices open for the transaction of business from eight o'clock a. m. to five o'clock p. m. of each business day from Monday through Friday, state legal holidays excepted. On Saturday, such offices may be closed.

This section shall not apply to the courts of record of this state or to their officers nor to the office of the attorney general and the lieutenant governor.

Id., 544 P.2d at 746. Noting that justice of the peace courts, known as district courts in the state of Washington, are not courts of record, the court nonetheless concluded that the setting of evening trials was permissible. Id. The court relied on the inherent power of every court to control its docket, and found that that power included the setting of time for trial. Id. The court further concluded: "To allow evening trials enables part-time district court judges ... to devote a portion of the day to their private occupations." Id. Finally, the court found that an evening trial in a criminal case did not violate either the due process clause or the equal protection clause. Id.

A similar conclusion was reached in State v. Pauly, 99 N.W.2d 889 (Minn. 1959), where the court considered a challenge to the setting of a municipal court trial at 8 p.m. Minnesota law governing municipal courts provided: "The court shall be opened every morning, except on Sundays and holidays, for the hearing and disposition, summarily, of all complaints made of offenses committed within the county, of which the court has jurisdiction." Id., 99 N.W.2d at 890. Recognizing that "municipal courts, being creatures of statute, are limited to the authority delegated by the enabling acts under which they are organized[.]" Id. at 891, the court nonetheless found the evening trial setting permissible. It construed the statute to require the municipal court to be open in the mornings for disposition of complaints and other matters not requiring trial, but found that the setting of trial times was within the court's discretion, dependent upon the convenience of the court, counsel, and the parties and witnesses. The court stated: "Where experience indicates that such convenience will be better served by trials of such complaints after 7 p. m., it would seem to be well within the inherent power of these courts to adopt rules accordingly." Id. at 891.

Since the city of Harlem is a third-class city or town, you request interpretation of the powers of the governing body under section 7-4-102(3), MCA. That section was enacted in response to 43 Op. Att'y Gen. No. 16, in which I concluded that section 7-4-102, MCA, did not allow a city to enact an ordinance reducing the number of hours during which city offices must be open. See Minutes of the House Committee on Local Government, 51st Leg., 1st Special Sess., June 27, 1989, at 1-3; Minutes of the Senate Committee on Education and Cultural Resources, 51st Leg., 1st Special Sess., June 22, 1989, at 1-2. Subsection (3) of 7-4-102, MCA, provides: "The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business that are different from the days and times required by subsection (1)."

You question whether subsection (3) would allow the governing body of a third-class city or town to enact an ordinance establishing hours of the city court outside the times of 8 a.m. to 5 p.m. Monday through Friday. You suggest that since the amendment was intended to allow such cities and towns to reduce

the number of hours during which city offices must be open, it permits the establishment of hours only within the time frame set forth in subsection (1). I respectfully disagree.

Subsection (3) plainly grants the governing bodies of third-class cities and towns the power to set "days and times" different from those required by subsection (1). When the language of a statute is plain and unambiguous the statute speaks for itself. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). Although legislative intent generally controls in the interpretation of a statute, § 1-2-102, MCA, such intent is first to be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, no other means of interpretation may be applied. Boegly v. Glacier Mountain Cheese Co., 46 St. Rptr. 1389, 1391, 777 P.2d 1303, 1305 (1989). Thus, if the language is unambiguous, the rules of statutory construction are not invoked. Id.; see also Phelps v. Hillhaven Corp., 231 Mont. 245, 251, 752 P.2d 737, 741 (1988). Further, the language of the statute must be given its plain and ordinary meaning. Rierson v. State, 188 Mont. 522, 527, 614 P.2d 1020, 1023, on reh'g, 622 P.2d 195 (1980). Giving "different" its plain and ordinary meaning, i.e., "distinct, separate, not the same, other" (Webster's New International Dictionary 727 (2d ed. 1941)), I conclude that interpreting it to mean "less than" would be artificially restrictive.

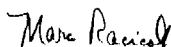
It has been suggested, however, that giving "different" its ordinary meaning conceivably would allow third-class cities and towns the power to set city office hours on Sundays or other legal holidays. As applied to the city court, of course, section 3-1-302, MCA, would prohibit the city from enacting such an ordinance. For purposes of this opinion, I need not consider the application of section 7-4-102(3), MCA, with respect to other city offices.

THEREFORE, IT IS MY OPINION:

1. A city judge is not prohibited by section 3-11-101, 3-1-301, or 3-1-302, MCA, from establishing regular sessions of the court during evening hours other than on Sundays or other legal holidays.
2. Subject to the provisions of section 7-4-102(3), MCA, applicable to third-class cities or towns, so long as the city court is open between the hours of 8 a.m. and 5 p.m. Monday through Friday for the transaction of business, such as the filing of court documents with the clerk, section 7-4-102(1), MCA, does not prohibit the city judge from establishing regular evening sessions of the court.

3. Section 7-4-102(3), MCA, permits the governing body of a third-class city or town to set the office hours of the city court at times other than between 8 a.m. and 5 p.m. Monday through Friday, except Sundays and other legal holidays.

Sincerely,



MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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 lists 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 March 31, 1990. This table includes those rules adopted during the period April 1, 1990 through June 30, 1990 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 March 31, 1990, this table and the table of contents of this issue of the MAR.

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