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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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

In the matter of the proposed adoption of rules pertaining to medicare supplement insurance minimum standards and proposed amendment of ARM 6.6.505 through ARM 6.6.511 and ARM 6.6.513	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons.

1. On August 2, at 9:00 a.m., a public hearing will be held in Room 260 of the Mitchell Building, 126 North Sanders, Helena, Montana, to consider the proposed adoption of rules pertaining to medicare supplement insurance minimum standards and the proposed amendment of ARM 6.6.505 through ARM 6.6.511 and 6.6.513.

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

6.6.505 POLICY DEFINITIONS AND TERMS (1)(a) remains the same.

(b) The definition may provide that injuries may not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law~~/or/injuries/occurring/while/the/insured/person/is/engaged/in/any/activity/pertaining/to/any/trade/,/business/,/employment/,/or/occupation/for/wage/or/profit~~.

(2) through (3) remain the same.

(4) "Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers. Such expenses shall not include:

(a) home office and overhead costs;

(b) advertising costs;

(c) commissions and other acquisition costs;

(d) taxes;

(e) capital costs;

(f) administrative costs; or

(g) claims processing costs.

(4), (5), (6), (7), (8), (9) and (10) remain the same but will be renumbered.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.506 PROHIBITED POLICY PROVISIONS (1) through (2) remain the same.

(3) The terms "medicare supplement," "medigap" and words of similar import must not be used unless the policy is issued in compliance with this regulation.

(4) No medicare supplement insurance policy, contract or

certificate in force in the state of Montana shall contain benefits which duplicate benefits provided by medicare.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.507 MINIMUM BENEFIT STANDARDS (1) through (2)(d) remain the same.

(e) Except as authorized by the commissioner, an insurer shall neither cancel or nonrenew a medicare supplement policy of certificate for any reason other than nonpayment of premium or material misrepresentation.

(f) If a group medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (2)(h), the insurer shall offer certificateholders an individual medicare supplement policy. The insurer shall offer the certificateholder at least the following choices:

(i) an individual medicare supplement policy which provides for continuation of the benefits contained in the group policy; and

(ii) an individual medicare supplement policy which provides only such benefits as are required to meet the minimum standards.

(g) If membership in a group is terminated, the insurer shall:

(i) offer the certificateholder such conversion opportunities as are described in paragraph (2)(f); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(h) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(i) Termination of a medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefit.

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

(d) Coverage for either all or none of the medicare part A inpatient hospital deductible amount;

(e) Coverage under medicare Part A for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part B;

~~(d)~~(f) Coverage of 20% of the amount of medicare eligible expenses under Part B regardless of hospital confinement,

subject to a maximum calendar year out-of-pocket ~~deductible of $200 of such expenses and to a maximum benefit of $5,000 per covered year~~ amount equal to the medicare Part B deductible [$75].

(g) Effective January 1, 1990, coverage under medicare Part B for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the medicare deductible amount.

(4) For purposes of the standards described in this rule, medicare eligible expenses shall mean health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to medicare claims.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.508 LOSS RATIO STANDARDS (1) Medicare supplement policies ~~must be expected to~~ shall return to policyholders in the form of aggregate benefits under the policy, ~~as estimated~~ for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices:

(a) and (b) remain the same.

(2) All filings of rates and rating schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.

(3) Every entity providing medicare supplement policies in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

(4) For the purposes of this rule, policy forms shall be deemed to comply with the loss ratio standards if:

(a) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates that have been in force for 3 years or more is greater than or equal to the applicable percentages contained in this rule; and

(b) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this rule. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than 3 years.

(5) As soon as practicable, but prior to the effective

date of medicare benefit changes, every insurer, health care service plan or other entity providing medicare supplement insurance or contracts in this state, shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(a) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing, and

(b) Every insurer, health care service plan or other entity providing medicare supplement insurance or benefits to a resident of this state shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan or other entity for such medicare supplement insurance policies or contracts. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) Any appropriate riders, endorsements or policy forms needed to accomplish the medicare supplement insurance modifications necessary to eliminate benefit duplications with medicare. Any such riders, endorsements or policy forms shall provide a clear description of the medicare supplement benefits provided by the policy or contract.

~~(2)~~ (6) For purposes of this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as individual policies.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) remains the same.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of medicare benefits, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing and signed by the insured, unless the increased benefits or coverage are required by the minimum standards for medicare supplement insurance policies, or if the increased benefits or coverage is required by law. If a separate additional premium is charged for benefits provided in

connection with riders or endorsements, the premium charge must be set forth in the policy.

(3) remains the same.

(4) remains the same.

(5) Medicare supplement policies or certificates must have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 10 30 days of its delivery and to have the premium refunded if after examination of the policy or certificate the insured person is not satisfied for any reason.

(6) remains the same.

(7) remains the same.

(8) The following notice requirements apply to all insurers, health care service plans or other entities providing medicare supplement insurance:

(a) As soon as practicable, but no later than 30 days prior to the annual effective date of any medicare benefit changes, every insurer, health care service plan or other entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders and certificate holders of modifications it has made to medicare supplement insurance policies or contracts in a format acceptable to the commissioner or in the format prescribed in appendix A if no other format is prescribed by the commissioner. Such notice shall:

(i) include a description of revisions to the medicare program and a description of each modification made to the coverage provided under the medicare supplement insurance policy or contract; and

(ii) inform each covered person as to when any premium adjustment is to be made due to changes in medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) Such notices shall not contain or be accompanied by any solicitation.

(8),(9) and (10) remain the same but will be renumbered.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT (1) Application forms must include questions designed to elicit information as to whether, as of the date of

application, the applicant has another a/ medicare supplement policy or certificate in force or whether a medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where coverage is sold without a producer, containing such a questions may be used.

(a) Do you have another medicare supplement insurance policy or certificate in force (including health care service contract, health maintenance contract)?

(b) Did you have another medicare supplement policy or certificate in force during the last 12 months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(2) Producers shall list any other health insurance policies they have sold to the applicant, including:

(a) Policies sold which are still in force.

(b) Policies sold in the past 5 years which are no longer in force.

~~(2)~~(3) Upon determining that a sale will involve replacement and prior to the issuance or delivery of the medicare supplement policy or certificate, an insurer, other than a direct response insurer, or its ~~agent~~ producer must furnish the applicant a notice regarding replacement of accident and sickness coverage. One copy of the notice signed by the applicant and the producer, except where coverage is sold without a producer, must be provided to the applicant and an additional signed copy ~~signed by the applicant~~ must be retained by the insurer for three years. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage. In no event, however, will such notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.

(3) and (4) remain the same but will be renumbered.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.511 SAMPLE FORMS The following are sample forms of the outline of coverage and notices regarding replacement of medicare supplement policies:

(1) Sample form A (1) through (3) remain the same.

(4) (A brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts, provided by the medicare supplement coverage in the following order:)

SERVICE	BENEFIT	THIS MEDICARE POLICY PAYS	YOU PAY
HOSPITALIZATION			

SEMIPRIVATE/ROOM/AND BOARD//GENERAL NURSING/AND SPECIAL DIETS/EQUIVALENT	FIRST/$0 DAYS	ALL/UNLIMITED $(1$0)
SEMIPRIVATE/ROOM/AND BOARD//SKILLED NURSING/AND SPECIAL DIETS/EQUIVALENT	$1ST/YR DAY	ALL/UNLIMITED $(45)/A DAY
INTENSIVE/MEDICAL/ SPECIAL/CARE/UNITS/ DRUGS//IAB/TESTS/ DIAGNOSTIC/X-RAYS/ MEDICAL/SUPPLIES/ OPERATING/ROOM//AND/ EQUIPMENT//AND/RECOVERY SERVICES/	9IST/YR 1$0TH/DAY	ALL/UNLIMITED $(90)/A DAY
POSTHOSPITAL SKILLED/NURSING CARE//// IN/A/FACILITY/APPROVED/BY/MEDICARE/ YOU/MUST/HAVE/BEEN IN/A/HOSPITAL/FOR/AT LEAST/THREE/DAYS/AND ENTER/THE/FACILITY WITHIN/14/DAYS/AFTER HOSPITAL/DISCHARGE/	FIRST/Z0 DAYS ADDITIONAL $0/DAYS BEYOND/Z$0 DAYS	Z$$%/OF CHARGES NOTHING
MEDICAL/EXPENSE	PHYSICIAN/S SERVICES/ INPATIENT AND/OUT/ PATIENT MEDICAL SERVICES AND/SUPPLIES AT/A/HOSPITAL/ PHYSICAL/AND SPEECH/THERAPY/ AND/AMBULANCE/	$0%/OF REASONABLE CHARGE (AFTER $(50)/DE/ DUCTIBLE)

DESCRIPTION	THIS POLICY PAYS**	YOU PAY
1. Minimum Standards		

SERVICE
PART A
INPATIENT HOSPITAL SERVICES
Semi-Private Room & Board
Miscellaneous Hospital Services & Supplies such as Drugs, X-Rays, Lab Tests & Operating Room
BLOOD
PART B
MEDICAL EXPENSE
Services of a Physician Outpatient Service
Medical Supplies other than Prescribed Drugs
BLOOD
MISCELLANEOUS
Immunosuppressive Drugs

II. Additional Benefits

PART A
Part A Deductible
Private Rooms
In-Hospital Private Nurses
Skilled Nursing Facility Care
PARTS A & B

Home Health Services

PART B

Part B Deductible

Medical Charges in
Excess of Medicare
Allowable Expenses
(Percentage Paid)

OUT-OF-POCKET MAXIMUM

PRESCRIPTION DRUGS

MISCELLANEOUS

Respite Care Benefits

Expenses incurred in
Foreign Country

Other

TOTAL PREMIUM $_____

IN ADDITION TO THIS OUTLINE OF COVERAGE, [insurance company name] will send an annual notice to you 30 days prior to the effective date of medicare changes which will describe these changes and the changes in your medicare supplement coverage.

**If this policy does not provide coverage for a benefit listed above, the insurer must state no coverage beside that benefit in the first column.

(5) The following charts shall accompany the outline of coverage:

[COMPANY NAME]
NOTICE OF CHANGES IN MEDICARE AND YOUR
MEDICARE SUPPLEMENT COVERAGE - 1990

THE FOLLOWING CHART BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990 Your Coverage Will Pay
MEDICARE PART A SERVICES AND SUPPLIES				
Inpatient Hospital Services	Unlimited number of hospital days after $560 deductible	All but $592 for first 60 days/benefit period		
Semi-Private Room & Board		All but $148 a day for 61st-90th days/benefit period		
Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		All but $296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)		
BLOOD	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each calendar year		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990 Your Coverage Will Pay
	paid under Part B			
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit	100% of costs for 20 days (after a 3 day prior hospital confinement.) /benefit period		
	First 8 days - All but $25.50 a day	All but $74.00 a day for 21st-100th days/ benefit period		
	9th through 150th day - 100% of costs	Beyond 100 days - Nothing/ benefit period		
	Beyond 150 days - Nothing			
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible)	80% of allowable charges (after $75 deductible/ calendar year)		
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immunosup-pressive drugs during	Inpatient prescription drugs. 80% of allowable charges for immunosup-pressive drugs during		

	the first year following a covered transplant (after $75 deductible/ calendar year)	the first year following a covered transplant (after $75 deductible/ calendar year)
BLOOD	80% of all costs except nonreplace-ment fees (blood deductible) for first 3 pints in each benefit period (after $75 deductible/ calendar year)	80% of costs except nonre-placement fees (blood deductible) for first 3 pints (after $75 deductible/ calendar year)

[Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF PRODUCER][ADDRESS/PHONE NUMBER]

~~(8)~~(6) (Statement that the policy does or does not cover the following:)

(a) Private duty nursing,

(b) Skilled nursing home care costs (beyond what is covered by Medicare),

(c) Custodial nursing home care costs,

(d) Intermediate nursing home care costs,

(e) Home health care above number of visits covered by Medicare,

(f) Physician charges (above Medicare's reasonable charge),

(g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay),

(h) Care received outside of U.S.A.,

(i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.

~~(6)~~(7) (A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in (4) above, including conspicuous statements;)

(a) (That the chart summarizing Medicare benefits only briefly describes such benefits.)

(b) (That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)

~~(7)~~(8) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.)

~~(8)~~(9) (The amount of premium for this policy.)

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(2) Sample Form B - Notice Regarding Replacement: (To be used by an insurer other than a direct response insurer.)

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ~~ACCIDENT/AND/SICKNESS~~ MEDICARE SUPPLEMENT INSURANCE

(Insurance Company's Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing ~~accident/and/sickness~~ Medicare supplement insurance and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy provides ~~10~~ 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY PRODUCER: (Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in

this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy as long as you have not allowed your policy to lapse for over 31 days.

~~(2)~~(3) If you are replacing existing Medicare supplement insurance coverage, Yyou may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

~~(3)~~(4) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

_____

(Signature of Producer or Other Representative)

The above "Notice to Applicant" was delivered to me on:

_____

(Date)

_____

(Applicant's Signature)

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(3) Sample form C - Notice Regarding Replacement, (To be used by a direct response insurer.)

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ~~ACCIDENT/AND/SICKNESS/~~MEDICARE SUPPLEMENT INSURANCE

(Insurance Company's Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished) you intend to lapse or otherwise terminate existing ~~accident and sickness~~ Medicare supplement insurance and replace it with the policy delivered herewith issued by (Company Name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this medicare supplement coverage is a wise decision.

(1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy as long as you have not allowed your policy to lapse for over 31 days.

~~(2)~~(3) If you are replacing existing Medicare supplement insurance coverage, Yyou may wish to secure the advice of your present insurer or its ~~agent~~ producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

~~(3)~~(4) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within ~~10~~ 30 days if any information is not correct and complete, or if any past medical history has been left out of the application.

_____
(Company name)

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.513 EFFECTIVE DATE This subchapter is effective on ~~on/February/1,/1992~~ September 1, 1990.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 S 33-22-901 through 33-22-924, MCA

3. The text of the proposed new rules is as follows:

RULE I BENEFIT CONVERSION REQUIREMENTS DURING TRANSITION

(1) Effective January 1, 1990, no medicare supplement insurance policy, contract or certificate in force in this state shall contain benefits which duplicate benefits provided by medicare.

(2) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 shall be restored.

(3) For medicare supplement policies subject to the minimum standards adopted by the states pursuant to the Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the 61st day through the 90th day in any medicare benefit period;

(b) Coverage for either all or none of the medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A medicare eligible expenses incurred as daily hospital charges during use of medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all medicare Part A eligible expenses for hospitalization not covered by medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under medicare Part A for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A;

(f) Coverage for the coinsurance amount of medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the medicare Part B deductible [$75];

(g) Effective January 1, 1990, coverage under medicare Part B for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the medicare deductible amount.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE II STANDARDS FOR CLAIMS PAYMENT (1) Every entity providing medicare supplement policies or contracts must comply with all provisions of section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

(2) Compliance with the requirements set forth in subsection (1) above must be certified on the medicare supplement insurance experience reporting form.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE III FILING REQUIREMENTS FOR OUT-OF-STATE GROUP POLICIES (1) Every insurer providing group medicare supplement insurance benefits to a resident of this state shall file a copy of the master policy and any certificate used in this state in accordance with the filing requirements and procedures applicable to group medicare supplement policies issued in this state; provided, however, that no insurer shall be required to make a filing earlier than 30 days after insurance was provided to a resident of this state under a master policy issued for delivery outside this state.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE IV PERMITTED COMPENSATION ARRANGEMENTS (1) An insurer or other entity may provide commission or other compensation to a producer or other representative for the sale of a medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for 5 renewal years.

(3) No entity shall provide compensation to its producers or other representatives and no producer or other representative shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.

(4) For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

(5) As part of the annual filing under ARM 6.6.508(3) of this rule the entity providing medicare supplement policies shall provide documentation of its commission and other compensation for the first year and for renewal years for each form currently sold.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE V FILING REQUIREMENTS FOR ADVERTISING (1) Every insurer, health care service plan or other entity providing medicare supplement insurance or benefits in this state shall provide to the commissioner a copy of any medicare supplement advertisement intended for use in this state whether through written, radio or television medium for review or approval by the commissioner to the extent it may be required under state law.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE VI STANDARDS FOR MARKETING (1) Every insurer, health care service plan or other entity marketing medicare supplement insurance coverage in this state, directly or through its producers, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its producers or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits clearly and substantially greater than the benefits under the replaced policy for purposes of triggering first year commissions as authorized in (Rule IV) of this rule.

(d) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(e) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(f) Every insurer or entity marketing medicare supplement insurance shall establish auditable procedures for verifying compliance with subsection (1).

(2) In addition to the practices prohibited in Title 33, chapter 18, MCA, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.

(b) High pressure tactics. Employing any method of

marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE VII APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE (1) In recommending the purchase or replacement of any medicare supplement policy or certificate, an insurance producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of medicare supplement coverage which will provide an individual more than one medicare supplement policy or certificate is prohibited; provided, however, that additional medicare supplement coverage may be sold if, when combined with that individual's health coverage already in force, it would insure no more than 100% of the individual's actual medical expenses covered under the combined policies.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE VIII REPORTING OF MULTIPLE POLICIES (1) On or before March 1 of each year, every insurer or other entity providing medicare supplement insurance coverage in this state shall report the following information for every individual resident of this state for which the insurer or entity has in force more than one medicare supplement insurance policy or certificate:

(a) policy and certificate number; and

(b) date of issuance.

(2) The items set forth above must be grouped by individual policyholder.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE IX PROHIBITION AGAINST PREEXISTING CONDITIONS, WAITING PERIODS, ELIMINATION PERIODS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES (1) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

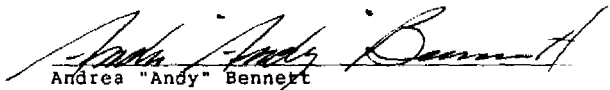
AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE X EFFECTIVE DATE (1) This rule shall be effective on September 1, 1990.

4. The amendments to ARM 6.6.506 through 6.6.511 and 6.6.513 are necessary in order to comply with federal standards initially set forth in the federal Medicare Catastrophic Coverage Act of 1988 and subsequent repeal of that Act, embodied in the Medicare Catastrophic Coverage Repeal Act of 1989. The Medicare Catastrophic Coverage Repeal Act of 1989 amended Section 1882 of Title XVIII of the Social Security Act by mandating certain federal minimum requirements for state medicare supplement regulatory programs. The National Association of Insurance Commissioners (NAIC) was then required to revise its model regulation on medicare supplement insurance to improve the regulation and otherwise reflect changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989. Such regulation was adopted by the NAIC on December 7, 1989. States were given until December 13, 1990, in which to adopt standards equal to or more stringent than those contained in the revised NAIC model regulation on medicare supplement insurance. In order for Montana's medicare supplement regulatory program to meet federal certification standards, it must adopt a form of the NAIC model regulation on medicare supplement insurance. These new rules set minimum standards for such insurance and implement the NAIC's model regulation governing minimum standards for medicare supplement insurance. The new rules amend existing rules that apply requirements and standards to insurers providing medicare supplement coverage. The existing rules will be amended because they no longer conform to federal requirements for medicare supplement insurance. The new rules include requirements for advertising and a buyer's guide, and requirements that medicare supplemental coverage must not be duplicative of medicare coverage, that insurers must adjust premiums in order to produce appropriate loss ratios, that insurers must file such adjustments with the commissioner, that insurers must give notice of modification of medicare supplement insurance and that insurers must file related advertising with the commissioner for review and approval. The purpose of these rules is to provide for the standardization of coverage and simplification of terms and benefits of medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for medicare by reason of age.

5. Interested persons may present oral or written comments at the hearing. Written comments may also be submitted to David Barnhill, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604, before August 10, 1990.

6. David Barnhill has been designated to preside over and conduct the hearing.



Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 2nd day of July, 1990.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to organization, qualified lending institutions, qualified loan servicers, and the adoption of new rules pertaining to definitions, officers certification, false or misleading statements and the reverse annuity mortgage loan provisions	) NOTICE OF PROPOSED AMENDMENT) OF 8.111.101 ORGANIZATIONAL) RULE, 8.111.305 QUALIFIED) LENDING INSTITUTIONS, 8.111.) 305A, QUALIFIED LOAN) SERVICERS AND THE ADOPTION) OF NEW RULES PERTAINING TO) DEFINITIONS, OFFICERS CERTI-) FICATION, FALSE OR MISLEAD-) ING STATEMENTS AND THE) REVERSE ANNUITY MORTGAGE ACT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 11, 1990, the Board of Housing proposes to amend and adopt the above-stated rules.

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

"8.111.101 ORGANIZATIONAL RULE (1) and (2) will remain the same.

(3) Inquiries regarding the board may be addressed to the division administrator of the ~~division of economic and community development~~ department of commerce or the chairman of the board of housing, ~~1424 9th~~ 2001 Eleventh Avenue, Helena, MT 59620. Specific or general inquiries regarding the board and the division may be addressed to the division administrator of the ~~division of economic and community development~~ department of commerce.

(4) will remain the same."

Auth: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, MCA

"8.111.305 QUALIFIED LENDING INSTITUTIONS (1) Any public or private firm or corporation ("applicant") maintaining an office in the state that is authorized by law to make or participate in making new, residential mortgage loans may request, in writing, to be designated as a qualified and approved lending institution under a specific program of the board.

(2) All requests must include:

(a) a listing of the ~~firm or corporation's~~ applicant's principal officers and officer authorized to execute contracts, agreements, and other documents, plus a copy of the authorized officer's statement;

(b) will remain the same.

(c) an indication of the programs under which the ~~firm or corporation~~ applicant seeks designation as a qualified lending institution; and

(d) will remain the same.

~~(c)--the-most-recent-audited-financial-statement-or regulatory-agency-reports,-plus-current-financial-statements which-have-been-prepared-within-60-days-of-submission:~~

~~(i)----financial-statements-and-regulatory-agency-reports shall-be-comprised-of-a-balance-sheet,-year-to-date-income statement,-and-a-statement-of-change-covering-at-least-a-six month-period;~~

~~(ii)---current-financial-statements-must-indicate-a positive-return-on-average-assets;~~

~~(iii)--current-financial-statements-must-indicate-total capital-as-a-percentage-of-average-assets-of-at-least-6%.~~

(c) an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent regulatory agency report, which must indicate a positive return on average assets, and (based on generally accepted accounting principles) indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency. An applicant not governed by a regulatory agency defined herein, must submit its most recent audited financial statements and current financial statements which have been prepared within 60 days of submission. Current financial statements shall be comprised of a balance sheet, year to date income statement, and a statement of change covering at least a six-month period. Current financial statements must indicate a positive return on average assets, and current financial statements must indicate total capital as a percentage of average assets of at least 6%.

(f) will remain the same.

(3) The board will determine whether or not ~~a-lending institution~~ an applicant is qualified under the terms and conditions of 90-6-103, 90-6-104, 90-6-106 and 90-6-108, MCA, the applicable trust indenture and the rules then in effect. Approved and qualified ~~lending-institutions~~ applicants will be notified and advised of the conditions of their approval.

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

(6) Each year or as requested by the board, the qualified and approved lending institutions participating in the board's bond programs shall file audited financial statements or equivalent regulatory agency reports. The financial statements or regulatory agency reports shall exhibit total capital as a percentage of average assets of at least 6%. If the qualified and approved lending institution's capital to average assets ratio is below 6%, the institution must meet the capital requirements of its regulatory agency ~~i.e.,-banks---FDIC;-savings-&-loans---FSLIC;-credit-unions--NCUA;~~ or demonstrate, with current financial statements, an increasing ratio of capital to average assets.

(7) Any applicant which fails to meet the requirements set forth in this regulation, will not be allowed to submit a new application to qualify as an approved lending institution for a minimum period of 180 days from the date of its previous application."

Auth: Sec. 90-6-104, 90-6-106, 90-6-108, MCA; IMP, Sec. 90-6-106, 90-6-108, 90-6-110, MCA

"8.111.305A QUALIFIED LOAN SERVICERS (1) Any institution which has, as its function, the servicing of mortgage loans secured by residential real estate, and maintains an office in the state, may apply in writing to be designated as a qualified and approved servicer for board of housing mortgage loans ("applicant"). All applications shall include the following:

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

(f) ~~the~~ an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent ~~audited financial statement or~~ regulatory agency report, ~~plus current financial statement which have been prepared within 60 days of submission;~~

~~(i) financial statements and regulatory agency reports shall be comprised of a balance sheet, year to date income statement, and a statement of change covering at least a six month period;~~

~~(ii)~~ ~~current financial statements~~ which must indicate a positive return on average assets, and (based on generally accepted accounting principles)

~~(iii)~~ ~~current financial statements~~ must indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency. An applicant not governed by a regulatory agency defined herein, must submit its most recent audited financial statements and current financial statements which have been prepared within 60 days of submission. Current financial statements shall be comprised of a balance sheet, year to date income statement, and a statement of change covering at least a six-month period. Current financial statements must indicate a positive return on average assets, and current financial statements and must indicate total capital as a percentage of average assets of at least 6%.

(g) will remain the same.

(2) A qualified and approved servicing institution restructured by the institution's regulatory agency, or corporate reorganization or ownership restructure shall reapply for designation as an approved and qualified servicer. The restructured institution shall be exempt from the one year corporate ownership requirements set forth in (1)(b), above, and the requirement for a financial statement covering a six-month period as set forth in (1)(f)~~(i)~~, above. The financial statements required shall cover the period from the date restructured through the date of application.

(3) The application ~~for approved and qualified servicer~~ will be reviewed by the board's staff, and the institution will be notified in writing of the status of the application.

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

(c) each year or as requested by the board, file audited financial statements or equivalent regulatory agency reports. The financial reports shall exhibit total capital as a percentage of average assets of at least 6%. If the institution's capital to average assets ratio is below 6%, the institution must meet the capital requirements of its regulatory agency ~~(i.e., banks--FDIC; savings & loans--FSLIC; credit unions--NCUA)~~, or demonstrate, with current

financial statements, an increasing ratio of capital to average assets.

(5) Any applicant which fails to meet the requirements set forth in this regulation, will not be allowed to submit a new application to qualify as a loan servicer for a minimum period of 180 days from the date of its previous application."

Auth: Sec. 90-6-104, 90-6-106, MCA; IMP, Sec. 90-6-108, MCA

3. The proposed new rules will read as follows:

"I DEFINITION OF REGULATORY AGENCY (1) The term regulatory agency includes only the following:

(a) office of thrift supervision;

(b) federal deposit insurance corporation ("FDIC");

(c) federal reserve system;

(d) office of comptroller of currency;

(e) national credit union administration ("NCUA").

(2) Any reference in these regulations to "regulatory agency" shall refer only to the agencies listed herein or their successors.

(3) Any requirement in these regulations that an entity may meet conditions imposed by this act by supplying submissions previously provided to regulatory agencies, shall only apply if the submission is to one of the agencies defined in this regulation."

Auth: Sec. 90-6-104, 90-6-106, MCA; IMP, Sec. 90-6-104, 90-6-106, MCA

"II OFFICERS CERTIFICATION (1) Each submission provided pursuant to regulation 8.111.305 or 8.111.305A shall contain an officer's certificate certifying that all of the information supplied is accurate and the officer is not aware of any information which would result in a failure of the company to meet the requirements of the regulations. A form of the certificate is available at the office of the board of housing.

(2) Annually, each qualified lending institution and loan servicer, in addition to all other requirements contained in the act and applicable regulations, must provide an officer's statement certifying that the company continues to meet all of the qualifications to remain a lender or servicer. A form of the certificate is available at the office of the board of housing."

Auth: Sec. 90-6-104, 90-6-106, MCA; IMP, Sec. 90-6-104, 90-6-106, MCA

"III FALSE OR MISLEADING STATEMENTS (1) The submissions of false, misleading, or deceptive information in an application shall be grounds for rejection of the application and denial of further consideration."

Auth: Sec. 90-6-104, 90-6-106, MCA; IMP, Sec. 90-6-104, 90-6-106, MCA

REASON: The Board is proposing amendments to ARM 8.111.101, to give the correct address of the Board to reflect that it is

now under the Montana Department of Commerce. The amendments to ARM 8.111.305 and 8.111.305A are necessary to clarify some confusion under the existing rules. The amendments make clear what applicants must do to qualify as lending institutions and/or qualified loan servicers. The three proposed new rules provide in part, additional clarification by defining terms utilized in the existing rules. They also provide that qualified lending institutions and qualified servicers must provide appropriate certificates annually to the Board that they are in full compliance with the existing Board rules and standards. Proposed new rule III establishes penalties for filing false or misleading statements.

"IV PURPOSE OF REGULATIONS (1) These rules are enacted by the Montana board of housing ("Board") to provide explanation and guidance to individuals in applying for reverse annuity mortgage loans. The legislature in enacting the reverse annuity mortgage loan program provided that the board shall adopt all procedural and substantive rules for the administration of the loan program. These rules are in conformance with the legislative directive.

(2) These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.

(3) If further information is needed as to procedures or instructions on reverse annuity mortgage loans, it will be furnished by the board."

Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-502, 90-6-504, 90-6-505, 90-6-506, MCA

"V DEFINITIONS As used in these rules the following words and phrases have the following meanings:

(1) "Appraisal" means an opinion of a qualified FHA appraiser on the nature, quality and value, of specific interests in identified real estate approved for federal housing administration (FHA) purposes.

(2) "Family income" means the income of all adult members of the household, other than full-time students. The income is the amount of the total income (adjusted gross income) shown on the prior year's federal income tax return(s) plus the prior year's non-taxable income such as social security and municipal bond interest. Any investment or business losses which were subtracted in determining gross income must be included.

(3) "Permanent vacation of the secured property" means any period when the mortgagor (or the last to survive) does not live in the residence for a period of one hundred and eighty (180) consecutive days.

(4) "FHA" means federal housing administration."

Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-505, 90-6-506, MCA

"VI COUNSELING REQUIREMENTS (1) All applicants for reverse annuity mortgage loans must complete the required counseling.

(2) Information as to the required counseling is available at the governor's office or through the board."
Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-502, MCA

"VII ELIGIBILITY REQUIREMENTS (1) To be eligible for a reverse annuity mortgage loan, the applicant must do the following:
(a) successfully complete the required counseling (information about required counseling is available at the governor's office and the board's offices);
(b) submit a reverse annuity mortgage application package to the board;
(c) obtain an FHA appraisal for the property;
(d) own the subject residence free and clear of any liens or encumbrances;
(e) be at least 68 years of age;
(f) meet the income limits as set by the board;
(g) if the property is jointly owned, both borrowers must meet all of the conditions;
(h) if property is jointly owned, it must be held as joint tenants, with rights of survivorship."
Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-505, 90-6-506, MCA

"VIII INCOME LIMITS AND LOAN AMOUNTS (1) The annual income limits to be eligible for a reverse annuity mortgage loan shall not exceed the following:
(a) one person household, $9,500.00;
(b) two person household, $10,900.00;
(c) three person household and up, $12,250.00.
(2) A loan amount may not exceed 80% of the appraised value of the property. The maximum dollar amount of a loan is $40,000.00. The minimum dollar amount of a loan is $15,000.00."
Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-503, MCA

"IX REPAYMENT OF THE LOAN (1) The reverse annuity mortgage loan is payable on the maturity date as set forth in the loan agreement, except when the borrower has made a written request for a deferral of such payment and been granted the request. Upon maturity, the borrower may remain in the property without having to make any repayment on the loan. The loan becomes due and payable upon the occurrence of any of the following events:
(a) the death of the last surviving borrower;
(b) sale or transfer of the property to anyone other than the original borrower;
(c) permanent vacation of the property;
(d) any other act or occurrence which in the opinion of the board causes, or is likely to cause, a material decrease in the value of the property."
Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-506, MCA

"X SECURITY FOR THE LOAN (1) The property pledged as security for the reverse annuity mortgage will be the only source the board has for repayment of the loan."

Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-505, 90-6-506, MCA

"XI INTEREST RATE (1) The board will set an interest rate for the reverse annuity mortgage program, which rate may be changed by the board."

Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-505, MCA

"XII CASH ADVANCES (1) As part of the loan amount, the board may advance at closing either to the borrower or to third parties as directed by the borrower, an amount not to exceed $2,500.00 to allow the borrower to satisfy any liens on the property or make emergency repairs to the property, and in addition, an amount not to exceed $600.00 to cover closing costs for items such as appraisals, title policies, recording of documents, and closing costs. Such amounts so advanced shall be added to the initial loan balance. To receive a cash advance, the borrower must submit a request in writing on forms supplied by the board."

Auth: Sec. 90-6-507, MCA; IMP, Sec. 90-6-502, 90-6-505, MCA

REASON: The above new rules implement the Reverse Annuity Mortgage Loan program. The new rules and rule amendments are mandated by the legislature in Chapter 178 of the Laws of 1989 which directs the board to provide loans to elderly Montana residents.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Housing, 2001 Eleventh Avenue, Helena, Montana 59620, no later than August 9, 1990.

5. If a person who is directly affected by the proposed amendments and adoptions 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 Housing, 2001 Eleventh Avenue, Helena, Montana 59620, no later than August 9, 1990.

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

BOARD OF HOUSING
TOM MATHER, CHAIRMAN

BY: 
CHARLES A. BROOKE, DIRECTOR
DEPARTMENT OF COMMERCE

13-7/12/90 MAR Notice No. 8-111-8

STATE OF MONTANA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
BEFORE THE PETROLEUM TANK RELEASE
COMPENSATION BOARD OF THE STATE OF MONTANA

In the matter of the amendment of 16.47.311 and the adoption of a rule for the Petroleum Tank Release Compensation Board	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION OF RULES FOR THE PETROLEUM TANK RELEASE COMPENSATION BOARD

TO: All Interested Persons:

1. On August 20, 1990, at 9 a.m., a public hearing will be held in the conference room at 836 Front Street, Helena, Montana, in the matter of the proposed rules for the Petroleum Tank Release Compensation Program.

2. The proposed amendment and new rule would read as follows:

16.47.311 DEFINITIONS (1) As used in this chapter:

(a) "Act" means Title 75, chapter 11, part 3, MCA, and section 17-7-502, MCA.

(b) "Bodily injury," as defined in section 75-11-302(3), MCA, will be measured by the board to include detriment that is currently in existence or certain to occur in the future, based on competent evidence as opposed to conjecture or speculation [27-1-203, MCA; Ewing v. Esterholt, 684 P.2d 1053 (Mont. 1984)].

(c) "Day" means a calendar day, including weekends and holidays. Whenever a period of days specified in the Act or this chapter ends on a day state offices are not open for business, the period ends on the next day state offices are open.

(d) "Property damage," as defined in section 75-11-302 (17), MCA, will be measured by the board in terms of diminution of market value, unless the cost of repairing damage is less than the diminution of market value [Spackman v. Ralph Parsons Co., 147 Mont. 500, 414 P.2d 918 (1966)].

(e) "Responsible party" means the person, whether owner or operator, who undertakes a cleanup plan after a release from a tank, or the representative of such person, and designated on form 5 and filed with the board.

(f) "Tank," as employed within the definition of a petroleum storage tank at 75-11-302(16), MCA, is further defined to mean a stationary device designed to contain an accumulation of petroleum or petroleum products and constructed of non-earthen materials (e.g. concrete, steel, plastic) that provide structural support.

(2) The Act defines ~~fifteen~~ fourteen other terms at section 75-11-302, MCA. (AUTH: Sec. 75-11-318; IMP: Sec. 75-11-302 through 75-11-318)

Rule I. RELEASE DISCOVERED AFTER APRIL 13, 1989 CONSTRUED (1) A tank owner or operator may be eligible for reimbursement for eligible costs caused by an accidental release from a petroleum storage tank if the release was discovered after April 13, 1989, even though the tank was out of service on the date of discovery or is presently out of service. (AUTH: Sec. 75-11-318, MCA; IMP: Sec. 75-11-308, MCA).

3. Rationale: The amendment to 16.47.311 defining tank is drawn from the language used to define a tank for the DHES' underground storage tank program, at 16.45.101A(62), ARM. The Board proposes this definition to clarify its understanding that leaks from construction site skid tanks, 55-gallon drums, and similar portable devices are not within the scope of the compensation fund.

The proposed new rule is based upon a letter from the legislature's Administrative Code Committee to the Board on the subject of petroleum storage tanks which may have been taken out of service some time before the effective date of the Board's organic statute, HB 603.

4. Interested persons may present their data, views, or arguments either orally or in writing no later than August 20, 1990 to Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, Cogswell Building, Helena, MT 59620.

5. Howard Wheatley, Chairman, and Roger Tippy, Counsel to the Petroleum Tank Release Compensation Board, have been designated to preside over and conduct the hearing.

PETROLEUM TANK RELEASE
COMPENSATION BOARD
HOWARD WHEATLEY, Chairman

By: Jean A. Riley
JEAN A. RILEY, Executive Director

Certified to the Secretary of State July 3, 1990.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 32.18.101 pertaining to Hot Iron Brands	NOTICE OF PROPOSED AMENDMENT OF RULE 32.18.101 HOT IRON BRANDS REQUIRED

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 14, 1990 the Board of Livestock acting through the department of livestock proposes to amend Rule 32.18.101 allowing freeze brands on horses, mules or asses.

2. The amended rule as proposed will provide as follows: 32.18.101 HOT IRON BRANDS REQUIRED (1) Under the brand laws of the state, with the following exceptions only hot iron brands will be recognized by the department of livestock, brands-enforcement division on all livestock ~~with the exception of~~ for sheep, goats, and swine and with the exception that freeze brands may be applied to horses, mules or asses.

AUTH: 81-1-102, MCA IMP 81-1-102, MCA

3. The Board of Livestock proposes to amend this rule pursuant to 81-1-102 MCA which allows the department to "adopt rules governing the recording and use of livestock brands."

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620 no later than August 13, 1990.

5. If a person who is directly affected by the proposed rule 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 or she has to Les Graham, Executive Secretary to the Board of Livestock, no later than August 13, 1990.

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

NANCY ESPY, CHAIRMAN
Board of Livestock

BY: LON MITCHELL, STAFF ATTORNEY
Department of Livestock

Certified to the Secretary of State July 2, 1990.

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

In the matter of the amendment of Rules 46.8.901 and 46.8.902 pertaining to developmental disabilities standards	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.8.901 AND 46.8.902 PERTAINING TO DEVELOPMENTAL DISABILITIES STANDARDS

TO: All Interested Persons

1. On August 2, 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 Rules 46.8.901 and 46.8.902 pertaining to developmental disabilities standards.

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

46.8.901 STANDARDS: ADOPTION AND APPLICABILITY

(1) The department hereby adopts minimum standards to assure quality community-based services for ~~developmentally disabled~~ persons with developmental disabilities. Providers shall, by July 1, ~~1990~~ 1994, be accredited by the appropriate accreditation organization in accordance with these rules and based upon the applicable minimum standards.

(2) The department hereby adopts and incorporates by reference the standards for services for ~~developmentally disabled individuals~~ persons with developmental disabilities, a sets of accreditation standards published by the accreditation council ~~for services for mentally retarded and other developmentally disabled persons (ACMRDD)~~ on services for people with developmental disabilities (ACDD) and by the commission on accreditation of rehabilitation facilities (CARF) which set forth minimum standards for community-based services for ~~developmentally disabled~~ persons with developmental disabilities. A copy of both the ~~ACMRRD~~ ACDD and CARF service standards may be obtained on temporary loan from the Department of Social and Rehabilitation Services, Developmental Disabilities Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604~~, or be purchased from the Accreditation Council for Services for Mentally Retarded and other Developmentally Disabled Persons, 4435 Wisconsin Avenue, N.W., Washington, D.C. 20016~~. The ACDD standards may be purchased from ACDD, 8100 Professional Place, Suite 204, Landover, MD 20785. A copy of the CARF standards may be obtained from CARF, 101 North Wilmot Road, Tucson, AZ 85715.

~~(a) Providers who are fully accredited by the commission on accreditation of rehabilitation facilities (CARF) on~~

~~July 1, 1985, and who continue to maintain that accreditation shall be in compliance with the minimum standards for services and will not be subject to the accreditation surveys and standards of ACMRDD. The department hereby adopts and incorporates by reference the set of accreditation standards published by the commission on accreditation of rehabilitation facilities which set forth minimum standards for existing CARF accredited facilities and facilities serving people with disabilities. A copy of the CARF service standards may be obtained on temporary loan from the Department of Social and Rehabilitation Services, Developmental Disabilities Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604, or be purchased from the Commission on Accreditation of Rehabilitation Facilities, 2500 North Pantano Road, Tucson, Arizona 85715.~~

(3) ~~A provider not currently accredited by CARF contracting with the division for the provision of services at the time of adoption of this rule shall complete an ACMRDD survey within the period of July 1, 1985, to June 30, 1987, and shall complete another ACMRDD survey within the period of July 1, 1987, to June 30, 1989.~~ Providers shall be accredited by either ACDD or CARF. Should the Title XIX medicaid waiver regulations change in the future and require compliance with a set of performance standards, those providers who are funded in whole or part by the Title XIX medicaid waiver shall comply with those performance standards that are specified in the Title XIX medicaid waiver regulations.

(4) Any provider not contracting with the division at the time of the adoption of this rule but who contracts with the division at a later date shall submit evidence to the division of ability to comply with standards prior to the signing of a contract and shall be accredited by ~~ACMRDD~~ ACDD or CARF within the ~~second~~ third year of contracting with the division.

(5) The division will not contract further for services with a provider that is not in compliance with the requirements of this rule concerning ~~survey completion and standards compliance~~ accreditation.

(a) A provider that has been accredited but loses accreditation must regain accreditation within three years of losing accreditation. Such providers will be allowed up to two attempts to regain accreditation during that three year period before the department terminates the contract.

Subsections (6) through (7)(j) remain the same.

(k) evaluation and diagnosis; ~~or~~

(l) ~~vocational placement.~~ supported work - individual job placement; or

(m) intensive audit habilitation.

Subsection (8) remains the same.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.902 DEPARTMENT ASSISTANCE (1) The department shall:

~~(a) provide to each provider by July 1, 1985, one manual entitled standards for services for developmentally disabled individuals which was developed by the accreditation council for services for mentally retarded and other developmentally disabled persons (ACMRDD) and published in 1984;~~

~~(b) notify each provider of the date they are to initiate the ACMRDD survey process. This notification shall occur at least three months prior to that initiation date;~~

~~(c) provide each provider with the necessary ACMRDD application forms;~~

(da) maintain copies of all provider survey and accreditation reports;

(eb) provide to a provider such technical assistance as the department may offer and the provider has requested;

(fc) provide information to the regional councils and the state planning and advisory council as requested about the status of each provider in relation to the survey and accreditation process~~.~~;

(d) pay for one accreditation survey per biennium. Should a provider fail an accreditation survey, all subsequent accreditation surveys during that biennium will be paid for by that provider.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

3. The rule concerning minimum standards took effect on July 1, 1985. It expires on June 30, 1990. Originally the rule stipulated that service providers be surveyed by the Accreditation Council on Services for People with Developmental Disabilities (ACDD), unless the service provider was accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) prior to July 1, 1985. In the interest of continuing to provide quality services to Montanans who have developmental disabilities, the Department of Social and Rehabilitation Services is extending the use of minimum standards until June 30, 1993. The Department also will allow the service providers a choice of two accreditation agencies -- ACDD or CARF.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than August 10, 1990.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 28, 1990.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to permit applications, course requirements, permit examinations, temporary permits and the repeal of a rule pertaining to permit restrictions	) NOTICE OF AMENDMENT OF 8.56.602 PERMIT APPLICATION, 8.56.602B COURSE REQUIREMENTS FOR LIMITED PERMIT APPLICANTS, 8.56.602C PERMIT EXAMINATIONS, 8.56.604 TEMPORARY PERMITS AND REPEAL OF 8.56.606 PERMIT RESTRICTIONS

TO: All Interested Persons:

1. On March 15, 1990, the Board of Radiologic Technologists published a notice of proposed amendment and repeal of the above-stated rules at page 402, 1990 Montana Administrative Register, issue number 3.

2. The Board amended and repealed the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF RADIOLOGIC
TECHNOLOGISTS
CAROLE ANGLAND, CHAIRPERSON

BY: 
CHARLES A. BROOKE, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 2, 1990.

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

In the matter of the amendment of rules 16.8.921, 16.8.925, 16.8.927, 16.8.928, 16.8.941	NOTICE OF AMENDMENT OF RULES (Air Quality Bureau)

To: All Interested Persons

1. On April 26, 1990, the Board published notice at pages 805 of the Montana Administrative Register, issue No. 8, to amend rules which would adopt recently promulgated federal requirements involving new major stationary sources of air pollution which are planning to locate in any portion of Montana which is attaining the national ambient air quality standards. On May 17, 1990, the Board published notice of date change for public hearing on the proposed amendments at page 880 of the Montana Administrative Register, issue No. 9.

2. The board has amended the rules as proposed with no changes.

3. No comments were received.

DONALD E. PIZZINI, Director

Certified to the Secretary of State July 2, 1990.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Emergency Amendment of Rule 23.5.102, Motor Carrier Safety Regulations	))))	NOTICE OF EMERGENCY AMENDMENT OF RULE 23.5.102, Motor Carrier Safety Regulations

To: All Interested Persons.

1. Section 44-1-1005, MCA, authorizes the Department of Justice to adopt rules for the safe operation of motor carriers and other commercial motor vehicles operating within Montana. Section 61-10-141(4), MCA, provides that the Montana Highway Patrol and the Department of Highways shall jointly enforce the safety rules adopted under section 44-1-1005, MCA. These safety rules are found in section 23.5.102, ARM, which was transferred to the Department of Justice from the Public Service Commission in July of 1985 pursuant to Montana Laws of 1985, chapter 686.

Section 23.5.102, ARM, adopts by reference the federal motor carrier safety regulations of the Department of Transportation. Section 2-4-307(3), MCA, provides that when a state agency adopts federal regulations by reference, any later changes in those federal regulations are not effective as state rules unless the changes are adopted by either following the standard rulemaking procedure found in the Montana Administrative Procedure Act (Title 2, ch. 4, MCA) or the abbreviated rulemaking procedure found in section 2-4-307(5), MCA. The federal regulations adopted by reference in section 23.5.102, ARM, have changed substantially since the transfer of the state rule in July of 1985. The Department of Justice has recently learned that those substantial changes have never been adopted as enforceable Montana rules because the requirements of section 2-4-307(3), MCA, have not been met.

The Department of Justice finds that the present inability to enforce certain sections of the federal motor carrier safety regulations constitutes an imminent peril to the public safety and that such imminent peril requires amendment of this rule upon fewer than 30 days notice. For example, many of the federal motor carrier safety regulations concerning brake equipment requirements for commercial motor vehicles are currently unenforceable because they have been amended since July of 1985 and the amended versions have not been adopted as enforceable Montana rules. In the Department's view, the safety of the traveling public would be in imminent peril if the enforcement of such significant portions of the federal motor carrier safety regulations were to be stayed to allow for 30 days notice of rulemaking.

The Department also finds that the rule adopting the federal motor carrier safety regulations by reference is reasonably necessary to effectuate the purpose of section 44-1-1005, MCA.

2. This emergency amendment is effective as of the date it is certified to the Secretary of State because of the Department's findings contained in paragraph 1.

3. The Department will take appropriate measures to make this emergency rule amendment known to persons who may be affected.

4. A standard rulemaking procedure will be undertaken with a full public hearing prior to the expiration of these emergency rules.

5. Rule 23.5.102, ARM is amended as follows:

23.5.102 DEPARTMENT OF TRANSPORTATION AND I.C.C. RULES

(1) ~~All motor carriers and motor vehicles operating under the jurisdiction of this Department shall comply with the motor carrier and motor vehicle safety regulations and noise emission requirements of the U.S. Department of Transportation and the Interstate Commerce Commission, and this Department, by reference, hereby adopts the motor carrier and motor vehicle safety regulations promulgated and adopted by the Department of Transportaiton and the Interstate Commerce Commission. These regulations may be found in the Code of Federal Regulations, Title 49, Chapter III; they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

All motor carriers and other motor vehicles operating within the State of Montana which are subject to regulation by the Department under section 44-1-1005, MCA, shall comply with, and the Department does hereby adopt, the federal motor carrier safety regulations of the Department of Transportation, with the exception of those regulations specifically excluded below. The regulations adopted may be found in the Code of Federal Regulations, Title 49, Chapter III, Subchapter B with appendices; they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. 49 C.F.R. § 391.11(b)(1); 49 C.F.R. § 392.10; 49 C.F.R. § 393.42; and 49 C.F.R. § 396.17 apply only to vehicles subject to regulation which are engaged in interstate commerce as defined in 49 C.F.R. § 390.5. Those regulations specifically excluded are found in 49 C.F.R. Part 383, Commercial Driver's License Standards; 49 C.F.R. Part 387, Minimum Levels of Financial Responsibility for Motor Carriers; 49 C.F.R. Part 391, Subpart H, Controlled Substance Testing; and 49 C.F.R. Part 394, Notification and Reporting of Accidents.

AUTH: Sec. 44-1-1005(1), MCA.

IMP: Secs. 44-1-1005 and 61-10-141(4), MCA.

6. The rationale for this emergency amendment is set forth in paragraph 1.

7. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Montana Highway Patrol, Motor Carrier Safety Assistance Program, Scott Hart Building, 303 North Roberts, Helena, Montana 59620.

By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State on June 29th, 1990.

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

In the matter of the amendment of Rules 46.12.541 and 46.12.542 pertaining to hearing aid services	))))	NOTICE OF THE AMENDMENT OF RULES 46.12.541 AND 46.12.542 PERTAINING TO HEARING AID SERVICES

TO: All Interested Persons

1. On May 17, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.541 and 46.12.542 pertaining to hearing aid services at page 898 of the 1990 Montana Administrative Register, issue number 9.

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

46.12.541 HEARING AID SERVICES, REQUIREMENTS

Subsections (1) through (3)(c) remain as proposed.

(i) for persons over 21 years of age, the audiological examination results show that there is an average pure tone loss of at least forty (40) decibels ~~plus or minus five (5) decibels~~ over the frequency at 500, 1,000, 2,000~~,~~ AND 3,000 ~~and 4,000~~ AT 35 DB hertz in the best ear~~.~~. The following criteria shall apply to adults aged 21 years or older for binaural hearing aids:

Subsections (3)(c)(i)(A) through (7) remain as proposed.

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

46.12.542 HEARING AID SERVICES, REIMBURSEMENT

Subsections (1) through (1)(b) remain as proposed.

~~(2) Effective July 1, 1989, the reimbursement rates listed will be increased by two percent (2%). All items paid by report will remain at the rate indicated.~~

(~~3~~2) Medicaid payment for hearing aid purchase or rental will cover only the following items in the amounts indicated:

List of Services	Fee
Purchase of instrument	Manufacturer's invoice plus a dispensing fee of ~~$200.00~~ $208.08 for a monaural (single) hearing aid and ~~$300.00~~ $312.12 for binaural (two hearing aids, one for each ear) hearing aids.

~~Hearing aid rental .....~~	~~$1.21 per day~~
HEARING AID RENTAL	$1.21 PER DAY
Hearing aid service & repair (which includes a 6 month warranty)	~~$72.60 maximum per year per aid~~ Invoice price plus $2~~1~~0.00 handling fee
Hearing aid recasing	~~$36.30 maximum per year per aid~~ Invoice price plus $2~~1~~0.00 handling fee
Accessories (Cords, receivers, etc.)	~~$42.35 maximum per year per aid~~ Invoice cost plus $2~~1~~0.00 handling fee
Bone ossilator	~~$78.65 maximum per year per aid~~ Invoice cost plus $2~~1~~0.00 handling fee
Ear mold	~~$18.15~~ Invoice cost plus $2~~1~~0.00 handling fee
Hearing aid batteries	~~$1.00~~ $1.~~04~~15 per cell
HEARING AID DISPENSOR'S IN OFFICE REPAIR	BR (PAID AT 90% OF BILLED AMOUNT)

Subsection (3) remains as proposed.

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

3. The Department has thoroughly considered all commentary received:

COMMENT: Change the testing requirements for hearing aids from 1,000, 2,000, 3,000, and 4,000KHz to 500, 1,000, 2,000, and 3,000KHx at 35dB. These testing levels will more accurately reflect a flat hearing loss.

RESPONSE: The Department concurs and will adopt these suggested testing levels.

COMMENT: Why is physician referral required for audiology and hearing aid services?

RESPONSE: Federal regulation at 42 CFR 440.110(c) requires the physician referral.

COMMENT: Currently only unmasked pure tone air conduction threshold is required for audiometric testing. On site of lesion testing should also be required, either bone conduction or tympanometry when a sound treated room is available or tympanometry when a sound treated room is not available.

RESPONSE: The Department will consider this comment when it revises its rules on audiology services. Audiometric testing requirements are found in the rules on audiology services.

COMMENT: Speech audiometric results (SRT and Discrimination) should be included for each ear unless the person has a condition which prevents reliable testing.

RESPONSE: See response to previous comment.

COMMENT: The six month trial of a monaural hearing aid should be eliminated as a criterion for binaural hearing aids. Some individuals may have more difficulty adjusting when a monaural hearing aid is tried than when binaural hearing aids are originally tried. Comments indicate that literature is available to support this belief.

RESPONSE: The Department is willing to review the literature and to consider future changes of this criterion.

COMMENT: Headphone discrimination testing should be used to determine the benefit of binaural amplification.

RESPONSE: The program is interested in pursuing this area and would be interested in receiving specific standards of testing and measurement for future consideration.

COMMENT: One person opposed eliminating hearing aid rentals as a benefit of the program. Clients rent aids when their own aids are sent to the factory for repairs.

RESPONSE: The Department will retain rental of hearing aids as a benefit of the program.

COMMENT: Allow an extended warranty of two years rather than one year.

RESPONSE: The extended warranty will remain at one year. The Department has determined that the number of cases where the insurance would be used for lost aids would not justify the cost of providing the coverage for the medicaid population which uses hearing aids.

COMMENT: What documentation is required to justify binaural hearing aids for vocational or educational purposes?

RESPONSE: Indicate that the person is attending school or is involved in vocational training or activities.

COMMENT: Under the requirement that binaural hearing aids require successful fitting of a monaural hearing aid, would the fitting of the second hearing aid be billed as a monaural fitting?

RESPONSE: Yes.

COMMENT: Does the invoice price of hearing aid repair include the shipping charges by the manufacturer when the aid is returned to the hearing aid dispenser?

RESPONSE: Yes. If the shipping costs are actually incurred in making the repair, they are to be included in the invoice price.

COMMENT: The cost of hearing aid batteries should be increased from the current level of $1.02 per cell. Several suggestions were made to increase the allowable cost for hearing aid batteries which ranged from $1.10 to $1.25.

RESPONSE. The program will increase the allowable cost for hearing aid batteries to $1.15 per cell.

COMMENT: The proposal to reimburse hearing aid repairs and ear molds at cost plus a ten dollar ($10.00) handling fee is not enough. It was indicated that to evaluate the hearing aid for repairs or to take an impression for an ear mold may require up to an hour to complete. One commentor suggested flat rates for different types of repairs. Others suggested increases for the handling fee which varied from fifteen dollars ($15.00) to forty dollars ($40.00) with twenty dollars ($20.00) being the most frequently suggested amount.

RESPONSE: Based on the information received with respect to both recommended charges and the amount of time involved to perform the services, the Department will allow a twenty dollar ($20.00) handling fee for hearing aid repairs and ear molds.

COMMENT: The Department should increase the dispensing fee from the current amount of two hundred four dollars ($204.00) for monaural aids and three hundred six dollars ($306.00) for binaural aids to three hundred two dollars and fifty cents for both monaural and binaural.

RESPONSE: The Department believes that given the average invoice cost of a monaural hearing aids of one hundred seventy five dollars ($175.00) the dispensing fee represents an adequate markup over costs.

COMMENT: How will repairs made in the dispenser's office be made when there is no invoice price from a manufacture and will we be able to charge a handling fee for this service?

RESPONSE: The Department will establish a code for repairs done in the dispenser's office. The code will be paid at ninety percent (90%) of billed charges. The handling fee will not apply to this service.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 28, 1990.

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

In the matter of the adoption of Rule I and the amendment of Rules 46.12.602 and 46.12.605 pertaining to orthodontia and dentures	)))))	NOTICE OF THE ADOPTION OF RULE I AND THE AMENDMENT OF RULES 46.12.602 AND 46.12.605 PERTAINING TO ORTHODONTIA AND DENTURES

TO: All Interested Persons

1. On May 17, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule I and the amendment of Rules 46.12.602 and 46.12.605 pertaining to orthodontia and dentures at page 917 of the 1990 Montana Administrative Register, issue number 9.

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

46.12.602 DENTAL SERVICES, REQUIREMENTS Subsection (1) remains as proposed.

(2) Medicaid reimbursement for dental care is limited to services specified in ~~this rule [Rule I]~~ ARM 46.12.606 or as otherwise provided for under ARM 46.12.605(13)(r).

Subsections (3) and (3)(a) remain as proposed.

(b) must be listed in ~~this rule [Rule I]~~ ARM 46.12.606 or as otherwise provided for under ARM 46.12.605(13)(r).

Original subsections (4) through (14) will be deleted and readopted and amended as [Rule I] ARM 46.12.606.

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

46.12.605 DENTAL SERVICES, REIMBURSEMENT Subsections (1) through (1)(a) remain as proposed.

(b) the amount allowable for the same service under medicare as stated by a medicare explanation of benefits; ~~or~~

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

(d) SERVICES NOT LISTED IN ARM 46.12.606 THAT ARE DETERMINED MEDICALLY NECESSARY BY THE DEPARTMENT'S DESIGNATED REVIEW ORGANIZATION AFTER AN EPSDT SCREEN WILL BE REIMBURSED THROUGH THE BY REPORT METHOD WHICH IS 65.2% OF THE BILLED CHARGES.

Subsections (2) through (4)(h) remain as proposed.

(i) 02190 - pins for retention (maximum 2) each pin - 4.29~~.~~;

(j) D1351 - SEALANTS, PER TOOTH - THROUGH THE BY REPORT METHOD WHICH IS 65.2% OF THE BILLED CHARGES.

Subsections (5) through (8) remain as proposed.

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

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

[RULE I] 46.12.606 DENTAL SERVICES, COVERED PROCEDURES

Subsections (1) through (1)(b)(i)(F) remain as proposed.

(G) recementing of inlays; ~~and~~

(H) pulpotomys prior authorized by the designated review organization~~.~~; AND

(I) SEALANTS.

Subsections (1)(c) through (1)(e)(ii) remain as proposed.

(A) replacement of lost dentures if the loss is documented by a caseworker, THE TREATING DENTIST OR THE DENTURIST PROVIDING THE DENTURES;

Subsections (1)(e)(ii)(B) through (1)(e)(ii)(K) remain as proposed.

~~(L) tissue conditioners in conjunction with placement of dentures;~~

Subsection (1)(e)(ii)(M) remains as proposed but will be recategorized as subsection (1)(e)(ii)(L).

(NM) placing name on a new, full or partial dentureS AND EXISTING DENTURES FOR A NURSING HOME RESIDENT.

Subsections (1)(e)(iii) through (3) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The references to the method of covering tissue conditioners is not clear.

RESPONSE: ARM 46.12.605(9) has been amended to state the current policy more clearly than the language used in the first notice of the rule change.

COMMENT: The references to the coverage of placing names in dentures is incomplete.

RESPONSE: ARM 46.12.606(1)(N) has been amended to address the coverage of placing names in existing dentures for nursing home residents.

COMMENT: The first notice as published does not address the coverage of sealants and reimbursement of sealants and other services required under EPSDT by OBRA 89.

RESPONSE: The final rule will be amended to address the additional coverage required under EPSDT by OBRA 89.

COMMENT: The Department of Family Services social workers are no longer in a position to investigate the circumstances surrounding lost dentures or to provide reports on lost dentures.

RESPONSE: ARM 46.12.606(1)(e)(ii)(A) will be revised to allow reports from nursing home and hospital social service staff. If the patient was not in a hospital or nursing home when the dentures were lost, or if a report cannot be obtained from the social service staff of the nursing home or hospital, a report from the treating dentist or the denturist providing the dentures will be accepted.

5. These rules will be applied retroactively to January 1, 1990.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 28, 1990.

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

In the matter of the amendment of Rule 46.12.3803 pertaining to medically needy income levels	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICALLY NEEDY INCOME LEVELS

TO: All Interested Persons

1. On May 17, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medically needy income levels at page 908 of the 1990 Montana Administrative Register, issue number 9.

2. The Department has amended the following rule as proposed with the following changes:

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS Subsections (1) through (2) remain as proposed.

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

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

Family Size	One Month Net Income Level	Two Month Net Income Level	Three Month Net Income Level
1	$ ~~383~~ 386	$ ~~766~~ 772	$~~1,149~~ 1,158
2	~~383~~ 400	~~766~~ 800	~~1,149~~ 1,200
3	~~408~~ 423	~~816~~ 846	~~1,224~~ 1,269
4	~~433~~ 445	~~866~~ 890	~~1,299~~ 1,335
5	~~507~~ 519	~~1,014~~ 1,038	~~1,521~~ 1,557
6	~~580~~ 594	~~1,160~~ 1,188	~~1,740~~ 1,782
7	~~654~~ 669	~~1,308~~ 1,338	~~1,962~~ 2,007
8	~~727~~ 744	~~1,454~~ 1,488	~~2,181~~ 2,232
9	~~762~~ 780	~~1,524~~ 1,560	~~2,286~~ 2,340
10	~~795~~ 814	~~1,590~~ 1,628	~~2,385~~ 2,442
11	~~826~~ 846	~~1,652~~ 1,692	~~2,478~~ 2,538
12	~~854~~ 876	~~1,708~~ 1,752	~~2,562~~ 2,628
13	~~882~~ 904	~~1,764~~ 1,808	~~2,646~~ 2,712
14	~~907~~ 930	~~1,814~~ 1,860	~~2,721~~ 2,790
15	~~930~~ 954	~~1,860~~ 1,908	~~2,790~~ 2,862
16	~~951~~ 976	~~1,902~~ 1,952	~~2,853~~ 2,928

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131 MCA

3. No written comments or testimony were received.

4. This rule will be applied retroactively to July 1, 1990.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 28, 1990.

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

In the matter of the amendment of Rule 46.12.4101 pertaining to qualified medicare beneficiaries eligibility for medicaid	)))))	NOTICE OF THE AMENDMENT OF RULE 46.12.4101 PERTAINING TO QUALIFIED MEDICARE BENEFICIARIES ELIGIBILITY FOR MEDICAID

TO: All Interested Persons

1. On May 17, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.4101 pertaining to qualified medicare beneficiaries eligibility for medicaid at page 910 of the 1990 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.4101 with the following changes.

46.12.4010 QUALIFIED MEDICARE BENEFICIARIES, APPLICATION AND ELIGIBILITY FOR MEDICAID Subsections (1) through (6) remain as proposed.

AUTH: Sec. ~~53-6-101~~ 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

3. No written comments or testimony were received.

4. This rule will be applied retroactively to July 1, 1990.

Julia E. Rehbein
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 28, 1990.

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

In the matter of the adoption of Rules 46.30.501 through 46.30.1607 and the repeal of Rules 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.40.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 and 46.30.429 pertaining to child support enforcement procedures and administration	)	NOTICE OF THE ADOPTION OF RULES 46.30.501 THROUGH 46.30.1607 AND THE REPEAL OF RULES 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30-211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.30.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 AND 46.30.429 PERTAINING TO CHILD SUPPORT ENFORCEMENT PROCEDURES AND ADMINISTRATION

TO: All Interested Persons

1. On February 22, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules 46.30.501 through 46.30.1607 and the repeal of Rules 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.30.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 and 46.30.429 pertaining to child support enforcement procedures and administration at page 375 of the 1990 Montana Administrative Register, issue number 4.

2. The Department has adopted [Rule IV] 46.30.507, DISTRIBUTION OF COLLECTIONS; [Rule VI] 46.30.601, HEARING REQUEST; [Rule XXX] 46.30.801 PROVIDING INFORMATION; [Rule XXXVI] 46.30.1005, AMOUNTS TO BE REPORTED; [Rule XXXVII] 46.30.1007, CONTESTING ACCURACY OF REPORTED INFORMATION; [Rule XLIII] 46.30.1209, ISSUES DETERMINABLE AT HEARING; [Rule XLV] 46.30.1213, AVAILABILITY OF HARDSHIP ADJUSTMENTS; [Rule XLVI] 46.30.1215, EFFECT OF HARDSHIP DETERMINATION; [Rule XLVII] 46.30.1217, PROCEDURES FOR DETERMINING HARDSHIP ADJUSTMENTS; [Rule XLIX] 46.30.1301, OFFSET OF STATE TAX REFUNDS FOR CHILD SUPPORT; [Rule LI] 46.30.1305, CHILD SUPPORT OFFSET OF JOINT

RETURN; [Rule LII] 46.30.1401, INDEPENDENT SUPPORT ENFORCEMENT CONTRACTOR; [Rule LIII] 46.30.1501, AUTHORITY AND PURPOSE; [Rule LVI] 46.30.1519, DETERMINING BASIC CHILD SUPPORT; [Rule LIX] 46.30.1537, SELF-SUPPORT RESERVE; and [Rule LXII] 46.30.1601, AUTHORITY AND PURPOSE as proposed.

3. The Department has adopted [Rule VIII] 46.30.605, NOTICE OF HEARING; [Rule IX] 46.30.607, CONDUCT OF HEARING; [Rule X] 46.30.609, DISCOVERY; [Rule XI] 46.30.611, EXCHANGE OF EXHIBITS; [Rule XII] 46.30.613, SUBPOENA, SUBPOENA DUCES TECUM; [Rule XIII] 46.30.615, INFORMAL DISPOSITION; [Rule XV] 46.30.619, DELAYS AND CONTINUANCES; [Rule XVI] 46.30.621, DISMISSAL; [Rule XVII] 46.30.623, AMENDMENTS; [Rule XIX] 46.30.627, EVIDENCE; [Rule XXIII] 46.30.635 BRIEFS; [Rule XXV] 46.30.639, ENTRY OF DEFAULT; as proposed. However, the authorizing statutes have been corrected as follows:

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

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

[RULE I] 46.30.501 DEFINITIONS Subsections (1) through (5) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-26~~1~~2 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434 MCA

[RULE II] 46.30.503 APPLICABILITY OF RULES (1) The provisions of this chapter set forth and limit the rules pertaining to actions by the CSED under Title IV-D of the Social Security Act. Unless specifically so provided, other department rules do not apply to such CSED actions notwithstanding any statement of general applicability contained in the rule. The provisions of this chapter do not apply to actions by the department under other chapters.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-26~~1~~2 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434 MCA

[RULE III] 46.30.505 TIME COMPUTATION Subsections (1) and (1)(a) remain as proposed.

(b) The last day of the period so computed is to be included, unless it is a ~~s~~Saturday, ~~s~~Sunday, or legal holiday in which event the period runs until the end of the next day which is neither a ~~s~~Saturday, ~~s~~Sunday nor a holiday.

Subsections (1)(c) and (2) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-26~~1~~2 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434 MCA

[RULE V] 46.30.509 RECEIPT OF PAYMENTS REQUIRED Subsections (1) through (1)(c) remain as proposed.

(2) The withholding of income by a ~~payer~~ payor pursuant to an order under 40-5-421, MCA, shall not alone be sufficient for credit against an obligor's support obligation. The CSED shall not be liable for amounts withheld by a payer from an obligor's income which are not actually received by the CSED.

AUTH: Sec. 40-5-202 and 40-5-405 MCA
IMP: Sec. 40-5-205, 40-5-412 and 40-5-421 MCA

[RULE VII] 46.30.603 SERVICE OF SUBSEQUENT NOTICE, MOTIONS, BRIEFS, AND OTHER PAPERS (1) After service of notice under 40-5-208, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-10~~3~~5, MCA, and ARM 46.30.803, all subsequent notices including amendments to the afore-described notices, motions, briefs and other papers pertaining to a pending administrative action may be served by regular U.S. mail, postage prepaid, addressed to the obligor at:

Subsections (1)(a) through (1)(c) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232, ~~and~~ 40-5-413, and 40-5-414 MCA

[RULE XIV] 46.30.617 STIPULATIONS (1) At any time prior to entry of a final decision and order, the parties or a party in a contested case may stipulate to any fact or applicable law. The parties or the party so stipulating will be bound thereby in all subsequent proceedings, whether before the CSED or a district court, unless the stipulation is withdrawn prior to the entry of a final administrative order.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-405 and MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XVIII] 46.30.625 STANDARD OF PROOF (1) The standard of proof in all hearings conducted under this chapter shall be by a preponderance of the evidence.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XX] 46.30.629 DEFENSES Subsections (1) through (1)(e) remain as proposed.

(f) statute of limitations;

(g) res judicata or collateral estoppel;

Subsections (1)(h) through (2) remain as proposed.

(3) In the event an affirmative defense is raised for the first time less ~~that~~ than ten days prior to a hearing or during a hearing, the hearing officer may, upon request of any other party, delay or continue the hearing to permit such other party to consider the affirmative defense and, if applicable, to provide testimony or other evidence to refute or rebut the affirmative defense.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XXI] 46.30.631 PRESUMPTIONS (1) The hearing officer may apply the following presumptions when consistent with all surrounding facts and circumstances:

(~~1~~a) ~~T~~the presumptions both conclusive and rebuttable which are set forth in Title 26, Chapter 1, Part 6, MCA and the rebuttable presumptions set out in 40-5-234 and 40-6-105, MCA~~;~~;

(~~2~~b) ~~T~~that mail or other communications properly addressed and transmitted to the post office or other common carrier, or by electronic means, with all postage, tolls or charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary courses of business; and

(~~3~~c) ~~T~~that a person who receives or has received public assistance is eligible or was eligible for such assistance.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XXII] 46.30.633 OFFICIAL NOTICE (1) The ~~H~~hearing officer shall take official notice of the following:

Subsections (1)(a) through (2)(d) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XXIV] 46.30.637 HEARING OFFICER DUTIES AND POWERS (1) In addition to the powers and duties set forth in 2-4-611, MCA, the hearing officer shall have the power and duty to carry out, undertake or perform any task or action expressly or implicitly required for a hearing officer under this chapter.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XXVI] 46.30.641 DECISION AND ORDER (1) The hearing officer shall make findings of fact and conclusions of law, and enter an order based thereon. Such decision and order shall constitute a final agency decision subject to judicial review under the Montana Administrative Procedures Act.

Subsections (2) and (3) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XXVII] 46.30.643 TIMEFRAMES FOR COMPLETION OF ACTIONS Subsections (1) and (2) remain as proposed.

(a) 90 days after successful service of a notice under 17-4-1035, 40-5-208, 40-5-222, 40-5-223, 40-5-225, and 40-5-235, MCA; or

Subsections (2)(b) through (4) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

[RULE XXVIII] 46.30.701 TERMS AND CONDITIONS

Subsections (1) through (2) remain as proposed.

(3) Except as provided in subsection (6) of this Rule, the CSED has the exclusive right to determine the type, timing and extent of services in accordance with the provisions of Title IV-D of the Social Security Act, and regulations promulgated thereunder.

Subsections (4) and (5) remain as proposed.

(6) Unless an obligee's children are eligible for Mmedicaid benefits, the CSED shall, upon receipt of a written request from the obligee, refrain from the establishment or enforcement of health insurance orders, or the collection of past-due support through tax refund intercept.

Subsections (7) and (8) remain as proposed.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-203 MCA

[RULE XXIX] 46.30.703 TELEPHONE COMMUNICATIONS

(1) Due to the need for maintaining confidentiality of records, it is essential that the CSED confirm the identity of persons to whom information is provided. Because a telephone caller's identity cannot be verified, no telephone inquiries concerning confidential information will be accepted by the CSED.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-203 MCA

[RULE XXXI] 46.30.803 NOTICE TO OBLIGOR (1) If the CSED determines that an obligor failed to provide or maintain health or medical insurance coverage pursuant to statute or court or administrative order, or if the obligor fails to provide information concerning such coverage, or both, the CSED may cause to be served upon the obligor, a notice of such failure. The notice shall include:

Original subsections (1) through (6) remain as proposed but will be recategorized as subsections (1)(a) through (1)(f).

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-208 MCA

[RULE XXXII] 46.30.805 REQUEST FOR HEARING (1) If an obligor is served with a notice as provided in ARM 46.30.631, to show cause why monetary sanctions should not be imposed on the obligor, and if the obligor desires to show cause, the obligor must, within 10 days after receipt of the notice, request an administrative hearing.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-208 MCA

[RULE XXXIII] 46.30.807 AMOUNT OF MONETARY SANCTION (1) The CSED will assess the amount of $100 for each month an obligor is determined to have failed to provide or maintain health or medical insurance as ordered or as required by statute. The CSED will assess an additional $100 for each month an obligor fails to provide or update information concerning coverage. When an obligor fails to obtain and maintain coverage and also fails to provide information regarding such coverage or lack of coverage, a total possible sanction of $200 per month may be assessed.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-208 MCA

[RULE XXXIV] 46.30.1001 NOTICE OF INTENT TO REPORT (1) The notice of intent to report a support debt to a consumer reporting agency required by 40-5-261, MCA, may be given by incorporating a statement of such intent in the notices generally served on obligers under 40-5-208~~,~~ 40-5-222, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-103, MCA, and 45 CFR 303.72 as amended.

AUTH: Sec. 40-5-262 MCA
IMP: Sec. 40-5-261 MCA

[RULE XXXV] 46.30.1003 ELECTRONIC REPORTS (1) For the purpose of reporting a support debt to a consumer reporting agency, upon a request by a consumer reporting agency, the CSED may provide such information by electronic means.

AUTH: Sec. 40-5-262 MCA
IMP: Sec. 40-5-261 MCA

[RULE XXXVIII] 46.30.1101 MODIFICATION OF SUPPORT ORDERS Subsections (1) through (2)(a) remain as proposed.

(b) for support orders established by a district court, make application to the district court as provided for by 40-5208(2)(b)(iii), MCA.

Subsection (3) remains as proposed.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-226 MCA

[RULE XXXIX] 46.30.1201 DEFINITIONS For the purposes of this sub-chapter ~~(Rules XXXIX to XLVII)~~, the following definitions apply:

Subsection (1) remains as proposed.

(2) "File" or "file with the department" for the purposes of 40-45-414(1), MCA, means that the request for hearing must be delivered to and received by the CSED hearing office within the time specified by law.

Subsections (3) and (4) remain as proposed.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

[RULE XL] 46.30.1203 WITHHOLDING ENTITY (1) The CSED is hereby designated the "income withholding entity" pursuant to 42 USC 666(b)(5).

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

[RULE XLI] 46.30.1205 VOLUNTARY WITHHOLDING (1) Notwithstanding the provisions of 40-5-412(2), MCA, the CSED may, at the request of the obligor, take steps to implement income withholding at any earlier time, in an amount determined in accordance with 40-5-416, MCA.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

[RULE XLII] 46.30.1207 EFFECT OF DELAY OR CONTINUANCE (1) If, due to a request for an extension of time by an obligor, a hearing decision cannot be rendered within the 45 day time provided for in 40-5-414 (6), MCA, (unless the appropriateness of withholding to pay current support is at issue), the withholding of income to pay current support shall commence on the day the extension of time is approved by the hearing officer. In such case, withholding to pay the alleged delinquent portion will not commence until after the hearing

has been conducted and it has been determined what amounts are properly due and owing.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

[RULE XLIV] 46.30.1211 PROMPT DELIVERY OF WITHHELD AMOUNT (1) For purposes of 40-5-421(1), MCA, the term "promptly" as it relates to the delivery of withheld amounts shall be defined as being no more than 10 days after the obligor's regularly scheduled payday.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-421 MCA

[RULE XLVIII] 46.30.1219 UNCLAIMED COLLECTIONS (1) In non-public assistance cases wherein automatic income withholding has commenced in accord with 40-5-204(5) or 40-6-116(8), MCA, and the obligee has not yet made application for CSED services, the CSED shall deposit collections in a trust or escrow account to be held until such application is received or it has been determined that the obligee has abandoned all claim to the collections. Such abandonment shall be deemed to occur if the obligee has not made application for services within six months. Should this occur the CSED will terminate income withholding and return the withheld funds to the obligor minus fees, if any. Interest earned as a result of funds held in the trust or escrow account accrue to the benefit of the CSED and may not be claimed by either the obligee or the obligor.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

[RULE L] 46.30.1303 NOTICE OF STATE TAX REFUNDS FOR CHILD SUPPORT DEBTS (1) After the state auditor gives written notice of a pending offset as provided by 17-4-105(2), MCA, and the taxpayer desires to contest the proposed offset, the taxpayer must request a hearing in accord with ARM 46.30.601 following the day the notice was mailed to the taxpayer.

AUTH: Sec. 17-4-105 MCA
IMP: Sec. 17-4-105 MCA

[RULE LIV] 46.30.1507 REBUTTABLE PRESUMPTION Subsection (1) remains as proposed.

(2) At the request of one of the parties and upon consideration of the factors set out in 40-4-204, 40-4-208 and 40-6-116, MCA, a variance from the guideline may be granted if the evidence shows that the application of the guideline would be unfair for the child or one of the parties.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

[RULE LV] 46.30.1513 SPECIFICATION OF NET AVAILABLE RESOURCES (1) In determining for each parent the net resources which can be made available for child support, the following considerations apply:

~~(1) Gross Income.~~ (a) "Gross income" includes income from any source, except as excluded below, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment benefits, gifts and prizes and alimony or spousal maintenance.

Original subsection (1)(b) remains the same in text but will be recategorized as subsection (1)(a)(i).

(eii) Gross income ~~from self-employment or proprietorship of a business, or joint ownership of a partnership or closely held corporation~~ for those who are self-employed, or who receive profits from a business enterprise such as a joint venture, a partnership, or a sub-chapter S corporation or a Montana close corporation includes gross receipts minus ordinary and necessary expenses for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, and investment tax credits, ~~or any other business expenses which are not related to the disposable income of the parent~~.

Original subsection (1)(d) remains the same in text but will be recategorized as subsection (1)(a)(iii).

(2b) ~~Imputed Income. (a) If~~ "Imputed income" means if a parent is voluntarily unemployed or underemployed, income may be imputed based on the parent's ability or capacity to earn net income.

~~(b) Income should not be imputed to a parent who is physically or mentally incapacitated or is caring for legal dependents age two and younger.~~

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

(~~ii~~B) When a parent is remarried, married, or is living with a person in a relationship akin to husband and wife, and the parent elects to stay home as homemaker, the value for homemaker services may be assessed and attributed to the parent as income. The value of homemaker services should be imputed at the minimum wage level for a forty hour week unless the court or administrative hearing officer determines another amount to be more appropriate.

Original subsection (1)(d) remains the same in text but will be recategorized as subsection (1)(b)(ii).

(iii) Income should not be imputed if any of the following conditions exist:

(A) the reasonable costs of day care for the parties minor children approach or equal the amount of income the custodial parent can earn;

(B) a parent is physically or mentally disabled to the extent that he or she cannot earn a minimum wage;

(C) a parent is engaged in education or retraining to establish basic job skills; or

(D) unusual emotional and/or physical needs of the child require the custodial parent's presence in the home.

(c) ~~Income Attributed to Assets (a)~~ "Income attributed to assets" means that ~~I~~in some situations, a parent may possess non-performing assets, primarily vacation homes, idle land and recreational vehicles which could yield a significant income stream if the assets were sold and the proceeds invested. In such cases a child is entitled to benefit from this potential income represented by the non-performing assets.

Original subsections (3)(b) and (3)(c) remain the same in text but will be recategorized as subsections (1)(c)(i) and (1)(c)(ii).

(~~4~~d) ~~Net Resources Available for Child Support (a)~~ "Net resources available for child support" are determined by subtracting from gross income, including imputed and attributed income, any of those deductions required by law or which are required as a condition of employment such as union dues, retirement contributions, ~~and~~ uniforms and other legitimate occupational or business expenses. Deductions for credit unions or merely for the convenience of the parent are not to be deducted from gross income.

~~(b) If a parent carries health or medical insurance for the child for whom support is being calculated under the guidelines, the cost of that coverage should be deducted from gross income. If coverage is provided through an employer or other organization, only the parent's portion of the premium should be deducted.~~

(i) If a parent is required by a court order to pay alimony or spousal support, the amount of the order may be deducted from gross income of the parent so paying. Support or medical insurance premiums for other children may be deducted as provided in ARM 46.30.1531.

(~~5~~e) ~~Annualized Income.~~ "Annualized income" refers to Ggross income and deductions from gross income used to derive a figure for net resources available for child support shall, to the extent possible, be annualized to provide a pattern of income producing abilities and to deter the possibility of a skewed application of the guidelines based on a temporary or seasonal aberration.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

[RULE LVII] 46.30.1525 ADJUSTMENTS TO BASIC CHILD SUPPORT (1) The basic child support obligation may be supplemented upon the following conditions:

(~~1~~a) ~~Child Care Costs. (a) Whenever~~ "Child care costs" means when a child support obligation is to be calculated based in part on the earnings of a custodial parent and that parent must incur child care expenses for that child as a prerequisite to employment, it is recommended that the reasonable costs of child care should be pro-rated between the parents and added to supplement the basic child support obligation.

(~~b~~i) Determination of reasonable monthly child care costs ~~should~~ may be based on annualized, average costs of receipted expenses, or, when the history of such expenses are not available, upon estimates based on the average necessary monthly costs of such service. The value of the federal income tax credit for child care should be subtracted to arrive at a figure for net costs which should be pro-rated between the parents on the same basis as the basic support obligation.

(b) When a parent or parents are providing health or medical insurance coverage for the child, the costs incurred for the child's portion of the premium should be allocated between the parents in proportion to income. Once the parent's share of the child's support needs is determined, the parent paying the premium shall be given a credit for the premium.

(~~2~~c) ~~Extraordinary Medical Expense (a)~~ Extraordinary medical expenses incurred on behalf of a child which are likely to reoccur on a periodic basis should be pro-rated between the parents and added to supplement the basic child support obligation. Extraordinary medical expenses include physical therapy, special education, mental disorders, and any other chronic, unusual health problems.

Original subsection (2)(b) remains the same in text but will be recategorized as subsection (1)(c)(i).

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

[RULE LVIII] 46.30.1531 DETERMINING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES (1) Child support may be determined in special circumstances as follows:

(~~1~~a) ~~Serial Family Parent. A~~ "~~s~~Serial family parent" ~~is~~ means a parent with an existing child support obligation who incurs an additional child support obligation in a subsequent family or as a result of a paternity judgment. The child support obligation for a serial family parent may be determined as follows:

Original subsections (1)(a) through (1)(c) remain the same in text but will be recategorized as subsections (1)(a)(i) through (1)(a)(iii).

~~(2) Shared Physical Custody Parent. (a) For the purpose of the guideline, shared physical custody occurs when both parents have physical custody of the children 25 percent or more of a year or 91.25 days out of every 365 days. Any lesser allotment of physical custody is deemed to be sole custody even though a decree, judgment or order may refer to the matter as joint custody. Costs incurred by a non-custodial parent in exercising traditional visitation (less than 25 percent of a year) are considered to be incidental expenditures factored into the basic child support obligation and no adjustment is necessary.~~

(b) Traditional levels of visitation are considered to be incidental expenditures which have been factored into development of the child support tables. However, when shared physical custody arrangements exceed the traditional levels of visitation costs for housing, utilities, household goods and other costs may be duplicated. When this occurs an adjustment to the basic child support obligation should be made to add a factor to compensate for the duplicate costs. The amount of the adjustment which may increase or lower the basic child support award, depends on the unique facts of each case as determined by the court or administrative hearing officer.

~~(b) To calculate a child support obligation for a shared physical custody parent, a total child support obligation is calculated for each parent without initial regard to custody. The monthly support obligation of each parent should then be multiplied by the number of months the parent has custody. If one parent's annual obligation is greater than that owed by the other, the excess amount shall be pro-rated over 12 months with the pro-rated amount to be paid over to the other parent each month, including those months when the payor parent has custody of the child.~~

~~(c) For circumstances involving shared physical custody, the guideline presumes that the child's expenses are incurred in approximate proportion to the duration of physical custody. Some expenses, however, may not be borne proportionately. For example, the parent having custody of a child during the major part of a school term may incur additional expenses for clothing, books, and recreation which the other parent does not incur. Adjustments on a case by case basis may be necessary to correct any such disparity.~~

(3c) ~~Split Custody Parent. (a)~~ "Split custody parent" means ~~occurs~~ when a parent who has two or more children by the same other parent has physical custody of one or more but not all of the children.

Original subsection (3)(b) remains the same in text but will be recategorized as subsection (1)(c)(i).

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

[RULE LX] 46.30.1543 EXCLUSIONS FROM GUIDELINE

(1) These ~~guidelines do not take into account the economic impact of the following factors~~ factors may vary the strict applications of the guidelines:

~~(a) spousal support;~~

(ba) equitable distribution of property;

(eb) tax consequences;

(dc) income derived from other household members, or step parents, or subsequent spouses;

(ed) families having more than six children; ~~and~~

(fe) educational expenses for a child (those incurred for private, parochial, or trade schools, or other schools where there is tuition or other costs beyond state/local tax contributions);

(f) specific findings of fact under MCA sections 40-5-204(2) or 40-6-116(5) which shows that application of the guideline is inequitable;

(g) shared physical custody of one or more children; and

(h) periods of extended visitation of 30 or more consecutive days.

(2) The guideline tables do not apply to incomes greater than $39,500.00. When incomes exceed this amount the first $39,500.00 should first be applied in the appropriate column and line which shows the number and age of the child to arrive at a minimum support amount. The minimum support amount should be supplemented out of the remaining parental income. The amount of the supplement must be determined on a case-by-case basis.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

[RULE LXI] 46.30.1549 SUPPORT GUIDELINE TABLE/FORMS

(1) The following table and worksheets are to be used in the calculation of child support guidelines.

(a) SUPPORT GUIDELINES TABLE

	$0 - $4,499	$4,500- $8,499	$ 8,500- $12,249	$12,250- $16,499	$16,500- $19,999	$20,000- $27,999	$28,000- $39,499	$39,500+
One Child								
0-11	21.8	21.8	21.4	19.7	18.0	17.4	16.3	13.6
12-17	27.0	27.0	26.5	24.4	22.3	21.5	20.2	16.8
Two Children								
0-11	33.8	33.8	33.2	30.7	28.0	27.1	25.3	21.1
12-17	41.8	41.8	41.0	38.0	34.6	33.5	31.3	26.1
Three Children								
0-11	42.4	42.4	41.5	38.4	35.1	33.8	31.7	26.5
12-17	52.4	52.4	51.3	47.5	43.4	41.8	39.2	32.8
Four Children								
0-11	47.7	47.7	46.8	43.3	39.6	38.2	35.7	29.8
12-17	59.0	59.0	57.9	53.6	48.9	47.2	44.1	36.9
Five Children								
0-11	52.1	52.1	51.1	47.3	43.2	41.6	38.9	32.6
12-17	64.4	64.4	63.1	58.4	53.4	51.4	48.1	40.3
Six Children								
0-11	55.7	55.7	54.6	50.5	46.2	44.5	41.6	34.9
12-17	68.9	68.9	67.5	62.4	57.1	55.0	51.4	43.1

For children in different age categories, pro-rate based on total number of children. Example: for one child age 7, one age 14, annual income of $18,000; use percentages for two children, divided by two - (28.0 / 2) + (34.6 / 2) =

(b) WORKSHEET #1

GUIDELINE WORKSHEET

		Mother	Father
1.	Gross income (annualized)		
	a. wages, salaries, commissions		
	b. net earnings-self employment		
	c. pensions, social security		
	d. unearned income (interest, dividends, alimony, etc.)		
	e. imputed income		
	f. other _____		
	g. TOTAL	$	$
2.	Net value of assets		
	a. automobiles		
	b. recreational vehicles		
	c. real estate		
	d. other _____		
	e. other _____		
	f. other _____		
	g. TOTAL	$	$
3.	T-Bill interest rate as of _____		%
4.	Income attributed to assets	$	$
5.	TOTAL GROSS INCOME	$	$
6.	Allowable exemptions (annualized)		
	a. pre-existing obligations (for other families)		
	* child support		
	* health ins. premiums (adult's portion excluded)		
	b. alimony/spousal support		
	c. TOTAL	$	$
7.	Deductions (annualized)		
	a. federal taxes		
	b. state taxes		
	c. FICA		
	d. union dues		
	e. mandatory retirement		
	f. required employment exp. (tools, uniforms, etc.)		
	g. other		
	h. TOTAL	$	$
8.	Net available resources (line 5 - lines 6c + 7h)	$	$

		Mother	Father
9.	Combined net resources	$_____	
10.	Parental share of resources	_____%	_____%
11.	Percentage from table	_____%	
12.	Basic support need (line 9 x line 11)	_____	
13.	Additions to basic need (annualized)		
	a. health ins. premium (child's portion)	_____	_____
	b. child care costs	_____	_____
	c. extraordinary expenses	_____	_____
	d. other _____	_____	_____
	e. TOTAL	_____	_____
14.	Combined additions	_____	
15.	Total support need (line 12 + line 14)	_____	
16.	Parental Share of Need (line 15 x line 10)	_____	_____
17.	Adjusted parental share (line 16 - line 13 payments)	_____	_____
18.	Monthly support obligation (line 17 ÷ by 12 months)	$_____	$_____

* * * * * * * * * * * *

The non-custodial parent will pay over his/her share of line 18 to the custodial parent.

Comments, explanations, other factors:

~~WORKSHEET #1~~

~~DETERMINATION OF CHILD SUPPORT~~

	~~Mother~~	~~Combined~~	~~Father~~
1. ~~Gross Income (annualized)~~			
~~a. actual income~~			
~~b. imputed income~~			
~~c. asset derived income~~			
~~d. other~~			
~~e. TOTAL~~			
2. ~~Deductions (annulized)~~			
~~a. taxes~~			
~~b. FICA~~			
~~c. union dues~~			
~~d. mandatory retirement~~			
~~e. pre-existing child support~~			
~~f. health insurance for child~~			
~~g. other~~			
~~h. TOTAL~~			
3. ~~Net Available Resources (line 1-e minus line 2-h)~~			
4. ~~Combined Total Net Income~~			
5. ~~Percentage from Table~~			%
6. ~~Each Parent's Obligation (line 3 times line 5)~~			
7. ~~Monthly Support Obligation (line 6 divided by 12 months)~~			
8. ~~Obligation Supplement (line 6, worksheet 2)~~			
9. ~~Total Support Obligation (line 8 added to line 7)~~			

~~* * * * * * * * * *~~

~~Non-custodial parent will pay his/her monthly support obligation with supplement to the other parent.~~

~~WORKSHEET #2~~

~~CHILD CARE/EXTRAORDINARY COSTS & EXPENSES~~

	~~Mother~~	~~Combined~~	~~Father~~
~~1. Combined net expenses (less child care tax credits)~~			
~~2. Percent of Resources (line 3 divided by line 4 on Worksheet #1)~~	~~%~~		~~%~~
~~3. Pro-rated share of expenses (line 1 times line 2 for each parent)~~			
~~4. Monthly Supplemental Obligation (line 3 divided by 12)~~			

~~WORKSHEET #3~~

~~(JOINT)~~
~~SHARED PHYSICAL CUSTODY~~

		~~Mother~~	~~Combined~~	~~Father~~
~~1.~~	~~Total days with each parent (must total 365 days)~~		~~365~~	
~~2.~~	~~Percent each parent (line 1 divided by 365)~~	~~%~~		~~%~~
~~3.~~	~~Basic annual support obligation (line 6, Worksheet #1)~~			
~~4.~~	~~Mother's adjusted obligation (line 3 times line 2 of father column)~~			
~~5.~~	~~Father's adjusted obligation (line 3 times line 2 of mother column)~~			
~~6.~~	~~Adjusted monthly support obligation (lines 4 and 5 divided by 12)~~			

~~* * * * * * * * * *~~

~~7.~~	~~Amount to be paid to other parent (subtract lesser amount on line 6 from the greater~~			

(c) WORKSHEET #42

SPLIT CUSTODY

		Mother	Combined	Father
1.	Annual Child support obligation (line 4 times line 5, Worksheet #1)		_____	
2.	Percent of resources (line 3 divided by line 4, Worksheet #1)	_____%		_____%
3.	Parent's share of children (number of children with each parent divided by total children)	_____%		_____%
4.	Pro-rated basic obligation for children with each parent (multiply line 1 by line 3)	_____%		_____%
5.	Mother's adjusted obligation (line 2, times line 4, of father column)	_____		
6.	Father's adjusted obligation (line 2, times line 4, of mother column)			_____
7.	Monthly adjusted support obligation (lines 5 and 6 each divided by 12)	_____		_____
	* * * * * * * * *			
8.	Amount to be paid to other parent (subtract lesser amount on line 7 from the greater)		_____	

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

[RULE LXIII] 46.30.1603 DEFINITIONS For the purpose of this sub-chapter ~~(Rule LXII to LXV)~~, unless the context requires otherwise, the following definitions apply:

Subsections (1) through (1)(f) remain as proposed.

(g) hearing office services.

Subsection (2) remains as proposed.

AUTH: Sec. 40-5-202 and 40-5-210 MCA
IMP: Sec. 40-5-210 MCA

[RULE LXIV] 46.30.1605 FEE SCHEDULE Subsections (1) through (1)(c)(iii) remain as proposed.

(~~I~~A) paternity actions _ _ _ _ _ _ _ _ _ _ _ _ _ _ $715.00

(~~II~~B) all others _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ $240.00

Subsections (1)(d) through (1)(e)(iii) remain as proposed.

AUTH: Sec. 40-5-202 and 40-5-210 MCA
IMP: Sec. 40-5-210 MCA

[RULE LXV] 46.30.1607 WAIVER OR DEFERENCE OF FEES (1) The CSED may not waive or defer any of the foregoing fees except to encourage expedient, informal dispositions.

AUTH: Sec. 40-5-202 and 40-5-210 MCA
IMP: Sec. 40-5-210 MCA

5. The Department has repealed ARM 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.40.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 and 46.30.429 as proposed.

6. The Department has thoroughly considered all commentary received:

RULE LIV REBUTTABLE PRESUMPTION

COMMENT: One commenter requested that we add the clause "made pursuant to the guideline" to the end of the first sentence in Section (1) of the proposed rule.

RESPONSE: The commenter did not give a reason as for wanting the phrase to be added. We assume that he meant to clarify that the presumption only applied to the amount of support determined under the guidelines. We have determined the existing language in the proposed rule adequately covers this point.

COMMENT: One commenter felt the guidelines placed too much emphasis on the child's needs and that equal emphasis should

be placed on the non-custodial parent's ability to earn. The commenter suggested we add a sentence to Section (1) which would provide language essentially as follows: "...or that the guidelines are unreasonable based upon the non-custodial parent's ability."

RESPONSE: The child support guidelines are intended only to supplement the statutory requirements for setting support awards. Any one or more of the specific findings under MCA Sections 40-4-204(2)(e) or 40-6-116(5)(d) could be a reason for a variance from the guidelines based upon the financial ability of the non-custodial parent to provide support. To clarify this issue we have added a reference to these statutes in Rule LX, Exclusions From Guidelines.

RULE LV SPECIFICATION OF NET AVAILABLE RESOURCES

COMMENT: One commenter suggested that Section (1)(c) could be made clear by rewording the first sentence to read: "Gross income for those who are self-employed, or who receive profits from a business enterprise, such as a joint venture, a partnership, or a sub-chapter S Corporation or a Montana Close Corporation, includes gross receipts, minus ordinary and necessary expenses for self employment or business operation."

RESPONSE: We agree with the suggestions and we have revised Section (1)(c) accordingly.

COMMENT: Another comment suggest that we should underline or emphasize the words "accelerated component" in the second sentence of Section (1)(c).

RESPONSE: Rule drafting standards do not permit the underlining or emphasizing of particular words in a rule for the suggested purpose.

COMMENT: One comment finds the second sentence of Section (1)(c) to be confusing. The proposed rule provides for a deduction of business expenses but then goes on to exclude depreciation and tax credits. The confusion arises in that the rule purports to also exclude "other business expenses which are not related to the disposable income of the parent". The commenter suggests that a better rule would be to allow business expenses except for depreciation and tax credits.

RESPONSE: After considering the comment we find no reason to include the language which the commenter finds to be confusing. We are omitting the language from the rule.

COMMENT: Three comments were concerned with Section (2)(b) which provides that income should not be imputed to a parent who is caring for legal dependents age two and younger. One

commenter felt that the age should be raised to five years. The other two commenters felt that a rule forbidding imputation would have the undesirable social effect of encouraging the parent to stay out of the job market and to possibly become dependent on welfare.

RESPONSE: The existing guidelines which are being modified by this rulemaking do not provide for any circumstance when income should not be imputed to a parent. However, in practice the most obvious circumstance when this should not occur is when the parent is physically or mentally incapacitated. We incorporated this obvious circumstance into the proposed rule.

Another reason for not imputing income incorporated into the proposed rule is when a parent stays at home with very young children. The reason for such rule, although not specifically stated, was that the costs of infant day care services often equals the amount which could be earned by some parents. Also, public policy would best be served by not imputing income to parents taking care of infants, e.g., the parent is given the opportunity to provide greater nurturing of the child.

After considering the comments we have concluded the rule could have adverse social impacts as well as positive. In an attempt to reconcile this matter we examined at the suggestion of one of the commenters the guidelines used by the State of Utah. These guidelines expressly provide that income will not be imputed to a parent when the cost of day care approach or equal the amount of income the custodial parent can earn. Unlike our proposed rule, this provision does not consider the age of the child. The Utah guidelines also provide that income shall not be imputed when the emotional and/or physical needs of the child require the parent's presence in the home. The Utah guidelines include one other provision which we think would more closely follow public policy. That is, income is not imputed to a parent engaged in education or retraining to establish basic job skills. This policy would encourage the parent to move out into the work force rather than, as one commenter put it, encourage the parent to drop out of the work force. The Utah guidelines provide for exemptions from the imputation of income. Those exceptions are not based on the child's age and, as a compromise, the Utah provisions should satisfy the commenter who wanted the age of the children raised from the proposed two years up to five years. For these reasons, we are revising Section (2)(b) commensurate with the Utah provision for exclusions from imputed income.

COMMENT: Two commenters disagreed with the provision of Section (3) which attributes income to assets. They argue that this provision penalizes conduct which should be applauded. By way of example the comments compare two non-

custodial parents. One parent spends his income on partying, and other frivolous pursuits. Another parent invests his income in acquiring personal property. By attributing income to the assets the commenters feel that the second parent is penalized.

Another commenter expressed dissatisfaction with the percentage assigned to the value of the assets. The commenter claims that the 2% under the old, existing guidelines is more fair than the T-Bill percentage under the proposed rule.

RESPONSE: As stated in proposed Rule LIII(2), the purpose of the guideline is to maintain children, to the extent possible, at the same standard of living that would have been available if the parents were living in an intact household with the children. Thus, if the parent in the intact household makes wise use of his or her income by acquiring assets, the children would benefit from the use or availability of those assets. We see no reason why this situation should change because the family is no longer intact.

Under the old, existing guidelines the value of the assets is to be amortized at the rate of 2 percent per month. For example: the value of the assets is equal to $25,000.00, so that the added value would thus be the amount of $500.00 per month. Under the new proposed rule, the asset value would be treated as if invested in long-term treasury bills. Assuming such bills are invested at 8 percent annual interest, the added value would be $167.00 per month compared to the $500.00 per month under the old guidelines. We feel that this treatment is more equitable to the parent on this issue than the prior guideline. It should be noted that the proposed rule does not preclude the Court from assigning another value to the assets.

COMMENT: Three comments were received with regard to Section (4) of Rule LV. The first comment expressed concern with the deduction for health insurance premiums. Under the proposed rule, only a partial credit is given for the premium. The commenter suggests that the premium should be either deducted from the child support award or divided equally between the parents.

The second comment claims that the proposed rule should not have omitted "legitimate business expenses" which is found in the existing guidelines.

The third comment suggested that because child support payments are taxable to the parent making the payments that the taxes paid should operate as a deduction against the net amount of support to be paid to the custodial parent.

RESPONSE: We have also been concerned over the problem of credits for insurance premiums. We have, however, until now, not been able to arrive at a satisfactory solution. We do not feel it would be equitable to deduct the full premium from the support obligation. To do so would, in many cases, drastically reduce the amount of cash support available for the purchase of basic essentials, such as food, clothing and housing. On the other hand, the existing procedure, which these rules originally proposed to amend, only gives an insignificant credit for often high premiums. One person, commenting on a different rule, suggested that we examine the Utah guidelines. Those guidelines propose that the insurance premiums are to be added to the basic child support obligations and then be prorated between the parents the same as the support obligation would be. The parent actually paying the premium would then be given a credit for his or her prorated share. We feel this compromise is more equitable than the existing procedure and we have revised the proposed rule and the forms accordingly.

With regard to the second comment, we did not intend to omit the phrase "legitimate business expenses" from the proposed rule. The omission was inadvertent error and we will revise the proposed rule to include the phrase.

The third comment is concerned with tax policy. The proposed rule at Rule LX provides that the rules do not take into consideration the economic impact of tax consequences. If these consequences are significant, the affected party does have an opportunity to show that a variance from the guideline is appropriate. As with all requests for a variance from the guideline, the case must be determined upon its own facts. We do not propose to revise the rule to add an across the board adjustment for taxes, which in most cases will have very little impact upon the typical non-custodial parent.

RULE LVII ADJUSTMENTS TO BASIC CHILD SUPPORT

COMMENT: One comment is addressed to Section (1) of the proposed rule. The commenter questions whether there should be a requirement that a parent claiming child care costs should be required to furnish evidence of those costs on a continuing basis to the non-custodial parent. The commenter also questions whether it would be acceptable for the non-custodial parent to claim child care costs during the period when he or she has extended visitation with the child.

RESPONSE: The purpose of the proposed rules is merely to provide a guideline for meeting the financial needs of children. The guidelines do not intend to suggest or infer how the support payments are to be used or accounted for. These issues are beyond the scope of the guidelines. As to

the second part of the comment, under some circumstances it could be possible for a non-custodial parent to claim child care costs. The guidelines are not limited in this respect to only the custodial parent. The needs of the child are controlling in the determination of this issue.

RULE LVIII (1) SERIAL FAMILY PARENT

COMMENT: One comment expressed concern over the treatment of serial families by the proposed rules. The commenter thought that, the "first mortgage" approach to child support as found in the original guideline was being diluted by the proposed rule. The commenter felt that the proposed rule favored the family in a serial family situation that gets to the Courthouse first for a support order. If that family is a second family, the non-custodial parent would have that obligation subtracted from gross income with the result that less money is available for the first family when a support order for that family is subsequently determined. According to the comment, the proposed rule sets up a race between competing families which weakens the message of the "first mortgage" approach.

RESPONSE: We do not believe the proposed rule creates a race to the Courthouse. Subsection (b) provides that when the second family support obligation is being determined and an obligation for the first family has not been determined, then in this determination process the guidelines must first be applied to the first family. After this determination is made, the amount is deducted from the non-custodial parent's gross income for the purpose of determining the second family obligation. This process perpetuates the "first mortgage approach".

RULE LVIII (2) SHARED PHYSICAL CUSTODY

COMMENT: Eight comments were directed to this Subsection. The comments were virtually unanimous that the proposed rule would cause unnecessary trouble. Non-custodial parents would argue for increased shares of time with the children in order to get the shared custody credit factor. They would do so solely for the purpose of a reduced support obligation with no intent to actually take the children for the allotted time.

The comments also expressed concern over the 25 percent breaking point upon which the credit is to begin. Why not 24 percent or 26 percent or any other figure? The comments also suggested that the arguments would persist, no matter what the percentage, by the non-custodial parent attempting to get a reduced support obligation.

Other comments also expressed concern that the reduction or credit for shared physical custody would drastically reduce the flow of money to the children. They conclude that the practical effect of the proposed rule would be contrary to the "best interest" of the children. The comments, expressly or implicitly suggest that this matter is best left to the discretion of the Court.

RESPONSE: We agree with the comments and are therefore deleting this subsection from the proposed rule. We are amending Rule LX to show shared physical custody as a factor which could lead to a variance from the guideline. Because periods of extended visitation share many of the same problems associated with shared physical custody cases, we are also amending Rule LX to add extended visitation as another factor to be considered on a case by case basis. Extended visitation occurs whenever the non custodial parent has the child for 30 or more consecutive days.

In considering the comments and our possible response to the comments, reference to certain literature came to our attention. That literature suggests that in shared custody cases, the costs of raising children are greater than in single custody cases. For example, Thomas Espinshade upon whose economic studies the guideline tables are based, suggests that the costs of rearing children in a shared custody situation may increase by as much as 50 percent. Consequently, the proposed rule which creates a credit may in fact be creating a disservice to the children. The Court or Administrative Hearing Officer must determine adjustments to the guidelines, either higher or lower, on a case by case basis.

With the elimination of shared physical custody from the Rule, we have deleted worksheet #3 from Rule LXI and have renumbered the remaining worksheets accordingly.

RULE LX EXCLUSIONS FROM GUIDELINES

COMMENT: Two commenters stated that they did not understand the purpose of the six factors set out in this proposed rule. They requested clarification.

RESPONSE: The purpose of the proposed rule is to show some of the more common factors which could lead to a variation from the guideline determined amount of support. For example, property may be substituted for the cash child support payment. These factors are also in addition to the factors set out in MCA Sections 40-4-204(2) and 40-6-116(5). We have revised the proposed rule to provide the requested clarification.

COMMENT: One comment observed that the proposed rule does not take into consideration the effect of dependent exemptions from income taxes. The commenter asked who the exemptions should be awarded to.

RESPONSE: Under applicable tax law, dependent exemptions automatically go to the custodial parent unless the Court or the parties agree or the Court orders to the contrary. The guidelines are based upon this norm. If the non-custodial parent is given the exemptions, the income available for child support under the guidelines may be increased. We believe the guidelines are flexible enough to provide for this occurrence and it should not be listed as an exception under the proposed rule.

COMMENT: One commenter suggested that the guidelines should take into consideration the income of new spouses.

RESPONSE: The Montana Supreme Court has ruled on several occasions that a parent's new spouse cannot be held liable for the support of prior children. However, in one limited situation a current spouse's income might be counted as reducing the non-custodial parent's living expenses and might therefore increase the amount of child support ordered on a case-by-case basis. Should this occur it would be a variation from the guideline rather than part of the general rule. Consequently, to allow for such a possibility we have revised the proposed rule to indicate that income of a new spouse may be a factor for varying from the strict application of the guidelines.

COMMENT: One comment indicated that the guidelines do not take into consideration how temporary maintenance will or will not affect child support. The example given is of a case where the Court first determined child support under the guideline. At a later date the custodial parent moved for and was awarded spousal maintenance. The non-custodial parent immediately moved for a modification of child support. In calculating the new child support obligation the amount of maintenance was added to the custodial parent's gross income. However, because the payment of spousal support is not an allowable deduction under the guidelines, the effect of the order was to artificially inflate the amount of income available for support. The commenter requested that the proposed rule address this problem.

RESPONSE: The guidelines are to establish the basic needs for children. We do not feel that those needs should be increased or decreased merely because there is a later award of spousal maintenance. The availability, however, of spousal maintenance may effect how the child's basic needs are allocated between the parents. That is why the proposed rule mentions that maintenance may be a reason to vary from the guideline

determined support amount. The practical effect of the example given in the comment was not to vary the proration of the basic needs between the parents but to skew those needs artificially. We do not believe that this should occur. Therefore, we are revising this proposed rule and proposed Rule LV Subsection (1) and Subsection (2) and the forms, to provide that maintenance should be treated as gross income, but if the non-custodial parent is paying the maintenance then that parent should be entitled to a deduction for that amount. In this way, the child support needs as originally calculated will remain constant. Only the proration of those needs between the parents will be changed.

RULE LXI SUPPORT GUIDELINE TABLE/FORMS

COMMENT: Two comments were received which indicated that the guideline tables were not logically applied to high income parents and suggested the table be capped at the $39,500 income level. One comment would oppose any attempt to limit the upward end of the tables.

RESPONSE: The tables are based on the economic principal that the proportion of parental income expended on children declines as income increases. Consequently, the principle tells us that the percentage applicable to incomes of $39,500 is most likely greater than the percentage which would be applicable to incomes of $60,000. For this reason we agree with the comment that the tables are not logically applied to high income parents. We also agree with the comment that support for high income parents should not be limited.

We do not, however, have available to us sufficient data upon which new percentages can be calculated for use in high income support determination. That being so, we propose to revise the table and Rule LVI in a more limited manner than the comments suggest. For high income families, the appropriate percentage in the $39,500 column of the table shall be applied to the first $39,500 of the parental income. The amount so calculated must then be supplemented out of the remaining parental income. The amount of the supplement must be determined on a case by case basis by the Court.

COMMENT: No commenter directly expressed a concern over the adequacy of the worksheets provided under this Rule. However, the general tenor running through out the comments is that the worksheets would be more useful if they were more detailed and/or definitive.

RESPONSE: In our response to Rule LVIII(2) we stated that we are omitting worksheet #3. It is no longer needed for shared custody situations. In addition to necessary renumbering of the remaining worksheets, because of the perceived need for

more information in the worksheets, we added several new information areas. One of the added areas deals with income attributed to assets. The change to the worksheet will show the net values of the assets and the percentage rate which is used in calculating the attributed value of the assets. Another addition is that we provided a block for listing or writing in comments; explanations or factors which may be useful in either calculating the support obligation, e.g., how and why income was imputed or in showing any reason for varying from the guideline determinations. We also decided that the worksheets would be made more useful by consolidating worksheet #1 and worksheet #2. By this consolidation we were able to group all of the child's supplemental needs to the basic support obligation.

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 2, 1990.

VOLUME NO. 43 OPINION NO. 62

INVESTMENTS, BOARD OF - Applicability of environmental impact statement requirements to loan participation decisions;
LAND USE - Applicability of environmental impact statement requirements to loan participation decisions by Board of Investments;
MONTANA ENVIRONMENTAL POLICY ACT - Applicability of environmental impact statement requirements to loan participation decisions by Board of Investments;
NATURAL RESOURCES - Applicability of environmental impact statement requirements to loan participation decisions by Board of Investments;
PUBLIC FUNDS - Applicability of environmental impact statement requirements to loan participation decisions by Board of Investments;
STATE AGENCIES - "Major action of" for purpose of environmental impact statement requirements;
ADMINISTRATIVE RULES OF MONTANA - Sections 8.2.301 to 8.2.326, 8.97.407 to 8.97.409;
CODE OF FEDERAL REGULATIONS - 40 C.F.R. § 1508.18(a);
MONTANA CODE ANNOTATED - Sections 17-6-301 to 17-6-331, 17-6-302 to 17-6-304, 17-6-306, 17-6-308 to 17-6-310, 17-6-312, 75-1-101 to 75-1-324, 75-1-102, 75-1-103, 75-1-105, 75-1-201, 82-4-301 to 82-4-362, 82-4-337;
MONTANA LAWS OF 1983 - Chapter 677;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 62 (1988);
UNITED STATES CODE - 42 U.S.C. §§ 4321-4347, 42 U.S.C. § 4332.

HELD: The Montana Board of Investments must comply with the environmental impact statement requirements of the Montana Environmental Policy Act when the Board considers whether to enter into a loan participation agreement where the underlying project benefiting from the agreement may significantly affect the quality of the human environment.

June 21, 1990

Michael J. Mulroney
P.O. Box 1144
Helena MT 59624

Dear Mr. Mulroney:

On behalf of the Montana Board of Investments, you have requested my opinion concerning the following question:

Is the Montana Board of Investments obligated to comply with the environmental impact statement requirements of the Montana Environmental Policy Act before entering into loan participation agreements pursuant to section 17-6-312, MCA?

I conclude that decisions to enter into loan participation agreements by the Board of Investments constitute "major actions of state government" within the scope of section 75-1-201(1)(b)(iii), MCA, of the Montana Environmental Policy Act and that environmental impact statements therefore must be prepared to the fullest extent possible in connection with such decisions when the financed project may significantly affect the quality of the human environment.

In 1982 Montana voters approved Initiative No. 95. The initiative directed that, in addition to other income, 25 percent of all revenue deposited after June 30, 1983 into the permanent coal tax trust fund "be invested in the Montana economy with special emphasis on investments in new or expanding locally-owned enterprises." Mont. Initiative No. 95 § 3(1) (Nov. 1982). The initiative further provided that such revenue could not be used to make "direct loans." Id. at § 3(3). A second component of the initiative was creation of the Montana Economic Development Fund, but expenditures from that fund are not at issue here.

In response to Initiative No. 95 the Legislature adopted the Montana In-State Investment Act of 1983 ("Investment Act"). 1983 Mont. Laws, ch. 677 (codified as amended at §§ 17-6-301 to 331, MCA). The Investment Act established the Montana In-State Investment Fund financed substantially by the 25 percent permanent coal tax trust fund revenue allocation under Initiative No. 95 and principal payments made on investments from the fund. § 17-6-306, MCA. The Montana Board of Investments ("Board") is responsible for investing the fund's assets (§ 17-6-308(1), MCA) but, consistent with the provisions of Initiative No. 95, the Investment Act proscribes use of the fund "to make direct loans to individual borrowers" (§ 17-6-310(2), MCA). It does authorize agreements for "loan participation," defined in section 17-6-302(6), MCA, as "loans or portions thereof bought from a financial institution[,]" and limits such participation to 80 percent of the outstanding loan unless the loan is one guaranteed by a federal agency. § 17-6-312(1), MCA; see §§ 8.97.407 to 8.97.409, ARM. The financial institution issuing the underlying loan is responsible for servicing the loan and remitting to the Board its proportionate share of principal and interest payments.

The Montana Environmental Policy Act ("MEPA"), §§ 75-1-101 to 324, MCA, was adopted in 1971, and its purpose is to "encourage productive and enjoyable harmony between man and his

environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, [and] to enrich the understanding of the ecological systems and natural resources important to the state." § 75-1-102, MCA. Among its express policies is use of "all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans." § 75-1-103(1), MCA. MEPA's policies and goals supplement those otherwise existing for state agencies. § 75-1-105, MCA.

The core substantive provision in MEPA is section 75-1-201, MCA, and subsection 1(b)(iii) of that provision mandates the preparation of environmental impact statements under certain conditions:

> (1) The legislature authorizes and directs that, to the fullest extent possible:
>
> ....
>
> (b) all agencies of the state, except as provided in subsection (2), shall:
>
> ....
>
> (iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:
>
> (A) the environmental impact of the proposed action;
>
> (B) any adverse environmental effects which cannot be avoided should the proposal be implemented;
>
> (C) alternatives to the proposed action;
>
> (D) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
>
> (E) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented[.]

The only state agency expressly excluded from the requirements of section 75-1-201, MCA, is the Department of Public Service

Regulation in the exercise of its regulatory authority over rates and charges of railroads, motor carriers and public utilities. § 75-1-201(2), MCA.

The Board has adopted no regulations to implement any responsibilities it may have under MEPA and does not prepare environmental impact statements prior to determining whether to enter into a loan participation agreement--even where the private borrower activity giving rise to the agreement may significantly affect the quality of the human environment.

As a preliminary matter, I am constrained to reject any claim that the Board has a blanket dispensation from the obligations imposed under MEPA. First, as stated, the only agency excluded from the statute's requirements is the Department of Public Service Regulation with respect to one aspect of its responsibilities. Second, unlike the Department of State Lands which, when processing permit applications under a prior version of section 82-4-337, MCA, in the Hard Rock Mining Act, §§ 82-4-301 to 362, MCA, was permitted to proceed without an environmental impact statement, the Board has no legislatively prescribed time limits in its decisionmaking under the Investment Act which "preclude[] the statutory duty of preparing an EIS." Kadillak v. Anaconda Company, 184 Mont. 127, 136, 602 P.2d 147, 153 (1979). Third, such a blanket exception would be inconsistent with provisions governing use of the investment fund. That fund is substantially financed by monies from the permanent coal tax trust fund whose statutory purposes include under section 17-6-303(2), MCA, developing "a stable, strong, and diversified economy which meets the needs of Montana residents both now and in the future while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution." Accord § 17-6-304, MCA. Section 17-6-309(4), MCA, further provides that, "[i]n deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments" which, inter alia, "maintain and improve a clean and healthful environment, with emphasis on energy efficiency." The Board's independent obligation under the Investment Act to consider the environmental effects of the use of monies from the investment fund, therefore, is not only entirely complementary with application of MEPA, but is also directly facilitated by compliance with it.

Nonetheless, the mere applicability of MEPA generally to the Board does not determine whether decisions to enter into loan participation agreements constitute "major actions of state government" and are consequently subject to the environmental impact statement requirements in section 75-1-201(1)(b)(iii), MCA. In answering that question, the Montana Supreme Court has

made it clear that I must be guided by decisions applying the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347. See Kadillak, 184 Mont. at 135-37, 602 P.2d at 152-53 (relying upon federal interpretations of NEPA in construing MEPA); 42 Op. Att'y Gen. No. 62 (1988), slip op. at 3. The term "major Federal action," as used in section 102 of NEPA, 42 U.S.C. § 4332, has been interpreted to include most forms of direct or indirect assistance to otherwise private activity. E.g., 40 C.F.R. § 1508.18(a) (1989) (federal actions include "projects and programs entirely or partly financed" by government); Proetta v. Dent, 484 F.2d 1146 (2d Cir. 1973) (loan to finance private company's construction costs); San Francisco Tomorrow v. Romney, 472 F.2d 1021 (9th Cir. 1973) (grant to community redevelopment agency); Wilson v. Lynn, 372 F. Supp. 934 (D. Mass. 1974) (mortgage guaranty insurance to secure loan made by financial institution to private developer); see generally D. Mandelker, NEPA Law and Litigation § 8.17 (1984) ("In most cases in which a federal agency makes a direct categorical grant for a nonfederal project, the use of federal funds for the project is sufficient to bring it under NEPA. The courts reach the same result when the federal agency makes a loan to a nonfederal entity or makes federal mortgage insurance available"). Such financial assistance will be deemed major federal action for environmental impact statement purposes when "it enable[s] a private party to act so as to significantly affect the environment." South Dakota v. Andrus, 614 F.2d 1190, 1194 (8th Cir. 1980). Thus, "[m]ost courts agree that significant federal funding turns what would otherwise be a local project into a major federal action." Alaska v. Andrus, 591 F.2d 537, 540 (9th Cir. 1979); accord National Association for Advancement of Colored People v. Medical Center, Inc., 584 F.2d 619, 634 (3d Cir. 1978).

The prohibition of loans to individual borrowers in section 3(3) of Initiative No. 95 and section 17-6-310, MCA, is presumably intended to remove the Board from the process of directly soliciting or administering those loans and to ensure active involvement of financial institutions in any extension of credit. The loan participation provisions of the Investment Act accordingly are aimed at fostering development of a credit market, financed from both private and governmental sources, to encourage in-state business growth; i.e., the Investment Act envisions a tripartite functional relationship between the Board, the lending institution and the borrower, where the Board acts to facilitate private financing of selected projects by the infusion of state monies at commercially favorable interest rates. Singularly reflective of this tripartite relationship is the application form used in the Board's loan participation decisionmaking. The form consists of two parts, the first of which must be completed by the private borrower and the second by the financial institution originating the loan. The borrower is required to "[i]nclude both a physical description of the

project and a description of the uses of the project" and, under a section designated "Preferences," to describe "any potential environmental impacts occurring as a result of the proposed project[] and [to] specify any environmental permits that will be necessary." The form thereby mirrors the Investment Act's directive that the Board not only consider the environmental impact of projects which are proposed to be financed through loan participation agreements but also give preference under certain conditions to those projects which are environmentally beneficial. Consequently, while proceeds from a loan participation agreement do not constitute a direct loan from the Board to the private borrower, they are nonetheless used to facilitate financing of particular projects, or to "enable" the initiation of those projects, the purposes of which the Board wishes to advance.

It is therefore clear that loan participation agreements constitute a mechanism whereby the State, through the Board, seeks to encourage development of carefully selected private projects. The device used to achieve this result is purchase of a portion of a loan between a lending institution and its private borrower. The Board's financial commitment under these circumstances directly enables, and thereby substantially benefits, the borrower's activity. In light of the indisputable applicability of MEPA generally to the Board and the decisional or other authority discussed above construing the term "major Federal action" in NEPA, a determination to enter into a loan participation agreement must be deemed a "major action[] of state government" under section 75 1-201(1)(b)(iii), MCA.

My conclusion that decisions to enter into loan participation agreements constitute "major actions of state government" should not be viewed as mandating preparation of environmental impact statements before entry into all such agreements, since the requirements of section 75-1-201(1)(b)(iii), MCA, apply only where the involved project may "significantly affect the quality of the human environment." The Board's attention is directed to the pattern rules adopted by other state agencies to discharge their responsibilities under MEPA. E.g., **$$** 8.2.301 to 8.2.326, ARM (Department of Commerce). These regulations contain substantial procedural flexibility when conducting environmental assessments or, if appropriate, preparing environmental impact statements. The Board may wish to consider adoption of comparable regulations to assist in efficiently discharging its statutory obligations under the Investment Act and MEPA.

Finally, my holding should also not be construed as limiting in any way the Board's substantive decisionmaking power with respect to the propriety of a particular loan participation agreement. The requirements of MEPA, including those in section 75-1-201(1) (b)(iii), MCA, are procedural in nature and designed

only to ensure that an agency, to the fullest extent possible, takes otherwise authorized action with reasonably complete understanding of its environmental consequences. See Robertson v. Methow Valley Citizens Council, 109 S. Ct. 1835, 1846 (1989) ("[A]lthough [NEPA] procedures are almost certain to affect the agency's substantive decision, it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process. ... If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs").

THEREFORE, IT IS MY OPINION:

> The Montana Board of Investments must comply with the environmental impact statement requirements of the Montana Environmental Policy Act when the Board considers whether to enter into a loan participation agreement where the underlying project benefiting from the agreement may significantly affect the quality of the human environment.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 63

COUNTY GOVERNMENT - Requirement to levy port authority tax;
LOCAL GOVERNMENT - Requirement to levy port authority tax;
MUNICIPAL GOVERNMENT - Requirement to levy port authority tax;
TAXATION AND REVENUE - Requirement of local governing bodies to levy tax certified by port authorities;
MONTANA CODE ANNOTATED - Title 7, chapter 14, part 11; section 67-10-402;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 91 (1986), 39 Op. Att'y Gen. No. 5 (1981).

HELD: Sections 7-14-1131 and 7-14-1132, MCA, mandate the governing body to levy the amount of tax certified annually to the governing body by the port authority.

June 29, 1990

James L. Tillotson
Billings City Attorney
P.O. Box 1178
Billings MT 59103

Dear Mr. Tillotson:

You have requested my opinion on the following question:

> Does a local governing body have authority to refuse to levy and collect a tax, not exceeding two mills, which has been duly certified by a legally constituted port authority created by that governing body?

Counties and municipalities are conferred the authority to create a local port authority, which becomes a separate public entity, corporate and politic, with its own governing body of commissioners. § 7-14-1101(1), MCA. The governing body of the city or county may, by resolution, determine to exercise any of the powers set forth by Title 7, chapter 14, part 11, MCA, or may confer some or all of those powers upon a port authority. Id. The port authority may be granted the power, through its commissioners, to "certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for port purposes." § 7-14-1111(1), MCA. Tax levies are addressed in sections 7-14-1131 and 7-14-1132, MCA, in pertinent part as follows:

> Municipal tax levy. The port authority may certify annually to the governing bodies the amount of tax to

> be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes. The levy made may not exceed the maximum levy permitted by 67-10-402 .... The municipality shall collect the taxes certified by a port authority in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of such taxes when and as paid to the port authority must be deposited in a special account[.] [Emphasis added.]
>
> In counties supporting ports of port authorities, a levy authorized in 67-10-402 may be made for such purposes. [Emphasis added.]

Section 67-10-402, MCA, establishes a maximum levy of two mills for ports, which is in addition to the annual levy for general administrative purposes or to the all-purpose levy. Your question is whether the governing bodies are permitted to levy the tax or are mandated to levy the tax. Due to the term "may," which can be interpreted as either mandatory or permissive, see State ex rel. Griffin v. Greene, 104 Mont. 460, 469, 67 P.2d 995 (1937), an ambiguity exists in the statutes. My opinion assumes that the governing body has not reserved the power to certify the amount of tax to be levied.

Similar ambiguities have been addressed in prior Attorney General Opinions with respect to county libraries and conservation districts. In 41 Op. Att'y Gen. No. 91 (1986), it was held that the board of county commissioners did not have the discretion to levy no millage for the funding of the county library. It was stated:

> Finally, use of the permissive "may" in section 22-1-304(1), MCA, does not, in view of the trustees' independent budgetary authority, grant the county commissioners discretion not to levy any millage, since the existence of such discretion would effectively supersede the trustees' express powers. Section 22-1-304(1) MCA, must instead be read together with the trustees' broad control over library operations and, if so construed, does not permit an interpretation which leaves within the county commissioners' determination whether some or none of the millage necessary to meet library budget demands should be assessed. See 39 Op. Att'y Gen. No. 5 (1981).

In 39 Op. Att'y Gen. No. 5 (1981), although the statute used the term "may," construction in harmony with the other provisions of the act resulted in the determination that the county

commissioners' duty to levy a proper assessment for the conservation district was mandatory.

Likewise, I find that the other provisions in Title 7, chapter 14, provide evidence of the Legislature's intent that, if the governing body has granted a local port authority the power to certify the amount of tax to be levied, then the governing body's duty to levy the millage certified by the commissioners of the port authority is mandatory. The port authority may be granted the power to issue bonds and pledge port authority revenues, including revenues raised from a tax levy, as security for the repayment of those bonds. § 7-14-1133, MCA. Such grant of power would be meaningless if the governing body which created the port authority had the residual power to deny or reduce a tax levy certified by the port authority. In addition, section 7-14-1131, MCA, specifically provides that a port authority may, prior to issuance of bonds, resolve that the total amount of taxes authorized by law will be certified, levied and deposited annually until the bonded debt is retired. It must be assumed that the Legislature would not adopt meaningless language. Crist v. Segna, 191 Mont. 210, 622 P.2d 1028 (1981). Therefore, if the resolution creating the port authority confers plenary budgetary powers, the duty of the governing body to levy the millage certified by the port authority commissioners must be mandatory.

Further support for this conclusion is found in the minutes of the House Local Government Committee of March 7, 1985, which recommended passage of the bill. Although somewhat confusing, the following excerpt shows that the intent was to authorize a separate levy for the port authority:

> Rep. Brown asked Mr. Monaghan whether on page 16 they are not adding more levies and sharing the 2 mill levy as used by airports. Mr. Monaghan said he believes it is a separate levy. Rep. Brown said he thought that is how it was meant to be and Mr. Monaghan replied it should be a separate levy. Rep. Wallin said that is the same question he asked and Mr. Monaghan told him it was the same levy that had been split another way.

Apparently there was some confusion because section 67-10-402, MCA, also provides for a two-mill levy for airports; however, the language of that section as codified makes it clear there are authorizations for two separate two-mill levies. It is clear from the statutory scheme that the governing bodies are authorized to levy any amount of millage not to exceed two mills for port authority purposes. However, the amount of levy within that maximum is to be determined by the commissioners of the port authority and certified to the governing body. The governing body then must collect the tax and pay it to the port authority.

THEREFORE, IT IS MY OPINION:

Sections 7-14-1131 and 7-14-1132, MCA, mandate the governing body to levy the amount of tax certified annually to the governing body by the port authority.

Sincerely,

Marc Racicot

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.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1989 and 1990 Montana Administrative Registers.

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