MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 12.6.901 pertaining to Water Safety Regulations	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 12.6.901 ESTABLISHING A NO-WAKE RESTRICTION ON TONGUE RIVER RESERVOIR

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On November 24, 1990 the Montana Fish and Game Commission proposes to amend 12.6.901 to establish a no-wake restriction on the Tongue River Reservoir.

2. The proposed rule will read as follows:

12.6.901 WATER SAFETY REGULATIONS (1)(a) through (1)(b)(ii) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County: (A) Tongue River Reservoir as buoyed in the marina area at Campers Point;

Broadwater County through (2) remain the same.

AUTH: 87-1-303, 23-1-106(1), MCA
IMP: 87-1-303, 23-1-106(1), MCA

3. This rule is being amended to establish a no-wake regulation on Tongue River Reservoir to provide for public safety.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Erv Kent, Administrator, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than November 22, 1990.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Erv Kent, Administrator, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than November 22, 1990.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be

directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

Errol T. Galt

Errol T. Galt, Chairman
Montana Fish and Game
Commission

Certified to the Secretary of State October 15, 1990.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of new and amended rules governing unemployment insurance	)))))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION OF UNEMPLOYMENT INSURANCE RULES, TITLE 24, CHAPTER 11, PARTS 4 AND 6. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 26, 1990, the Department of Labor and Industry proposes to amend and adopt rules governing the administration of unemployment insurance for the State of Montana.

2. The rules as proposed to be amended and adopted are:

24.11.441 BENEFIT CLAIMS (1) (a) through (c) remain the same.

(d) any other information the department may require for the proper administration of the claim, including, but not limited to, a statement from a licensed and practicing physician, chiropractor or osteopath verifying whether or not the claimant is medically able to work.

(2) Remains the same.

(3) A claim is effective on the first day of the calendar week for in which the claim was is filed and lasts either 52 or 53 weeks as provided in 39-51-2014 201(4), MCA. ~~When the claim is not filed within 7 days of the first day of unemployment,~~ t The claimant may request that the claim be backdated. If the department finds good cause for the claimant's delay in filing the claim, the claim will be backdated.

(4) & (5) remain the same. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2101-2410, MCA)

24.11.442 INITIAL MONETARY DETERMINATION---WAGES---REVISIONS (1) through (4) remain the same.

(5) The following payments are wages assignable in the following manner:

(a) Vacation pay. ~~Vacation pay for vacation taken is wages and is used to determine the number of weeks of work. If a lump sum for accrued vacation leave is paid to a claimant, the sum is prorated over~~ Payments made for vacation taken by the claimant are attributable to the period covered by the

payment. Payments of accumulated vacation pay made upon termination of employment are attributable to the period in which the vacation pay was is earned.

(b) Bonus. Bonus payments are attributable to the week in which the bonus payment is paid.

(c) Severance Pay. Wages in lieu of notice, for termination, dismissal pay, severance and separation, or other similar payments are attributable to the week in which the claimant's separation from employment occurs.

(d) Back Pay. Payments made for back pay are attributable to the period of time under dispute and are assigned to the period specified by the back pay award.

(e) Holiday pay. Payments made for a holiday are attributable to the week in which the holiday occurs.

(f) Sick Pay. Payments of accumulated sick pay made upon termination of employment are attributable to the period from the beginning date of the base period to the effective date of the claim. Weeks of sick leave taken by the claimant are attributable to the period of employment when the sick leave is taken.

(6) through (8) remain the same. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA;)

24.11.450 NON-MONETARY DETERMINATIONS AND REDETERMINATIONS---NOTICE (1) through (4) remain the same.

(5) When a non-monetary redetermination request is made, and the department determines that no new material evidence has been submitted with the request, the department transfers the request to an appeal referee and notifies the requesting party of its action. ~~new evidence will be considered by the department~~ The department will consider new evidence only if all interested parties are given the opportunity to comment on the new evidence, and submit rebuttal evidence, if any.

(6) Remains the same. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2301-2304, MCA)

24.11.451 SIX WEEK RULE (1) Except as provided in subsection (3), the department reviews each separation that occurred during the six weeks immediately preceding the effective date of the claim to establish whether the claimant is eligible for benefits. If the claimant was not employed during this six-week period, the department reviews the claimant's most recent separation from employment.

(2) ~~If the claimant was disqualified for gross misconduct, as defined in 39-51-2303, MCA, the 52-week disqualification in section 39-51-2303, MCA, controls the eligibility determination.~~ Except as provided in subsection (3), if the claimant was separated from employment several times, the most recent disqualification is applied. If this disqualification is removed because of a redetermination or appeal, the next most recent disqualification applies.

(3) ~~If--the--claimant--was--separated--from-employment several-times,-the-most-recent-disqualification-is-applied.-If this-disqualification-is-removed-because-of--a-redetermination or-appeal,--the-next--most-recent-disqualification-applies.~~ If the department finds that the claimant committed an act of gross misconduct, as defined in 39-51-201, MCA, at any time from the beginning of the claimant's base period to the effective date of the claim, the 52-week disqualification in section 39-51-2303, MCA, controls the eligibility determination and is applied from the date of the claimant's discharge for the act of gross misconduct. (Auth: Sec. 39-51-301, 39-51-302, 39-51-2407, MCA; IMP, Sec. 39-51-2301-2304, MCA)

24.11.452 ABLE, AVAILABLE, AND ACTIVELY SEEKING WORK A claimant is not able, available or actively seeking work within the meaning of 39-51-2104, MCA, if the claimant:

(1) through (5) remain the same.

(6) is not willing to accept work for any shift or day normally required in ~~the-occupation-suitable-for-the-claimant,~~ the claimant's customary occupation or an occupation determined by the department to be suitable for the claimant under 39-51-2304, MCA; or

(7) Remains the same. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2101, 39-51-2104, 39-51-2304, MCA)

24.11.453 VOLUNTARY AND INVOLUNTARY SEPARATIONS FROM EMPLOYMENT (1) To determine whether a claimant quit or was discharged, ~~three--factors--must-be-considered~~ the department considers three factors:

(a) through (c) remain the same.

(2) If the separation is voluntary, the claimant is disqualified unless the claimant left work for good cause attributable to employment as provided in 39-51-2302, MCA, and applicable rules. If the separation is involuntary ~~in-that the-claimant-was-discharged,~~ the claimant is disqualified if ~~he--was--discharged~~ the discharge was for misconduct as provided in 39-51-2303, MCA, and applicable rules. Any separation or reduction of hours or wages due to a lack of work is an involuntary separation and the claimant is eligible if otherwise qualified.

(3) (a) Remains the same.

~~(b)-leaving-employment-was-based-upon-a-certain-condition within-the-employer's-control-and-the-condition-has--been-met, such--as,--the--claimant--agreed--to--stay--at--work--until--a replacement-was-hired-and-this-has-been-done;~~

~~(c)~~ (b) the claimant leaves employment in anticipation of a discharge ~~not--based--on--misconduct--as--defined--in--ARM 24.11.460-24.11.462;~~ or

~~(d)~~ (c) the claimant has constructively quit as defined in this rule.

(4) Constructive Quit: (a) The following are examples of

a constructive quit. A claimant has constructively quit if the claimant accepts employment on specified conditions and the claimant fails to meet those conditions through the claimant's own fault. Such conditions may include, but are not limited to, failure to report for work due to incarceration, failing to meet license or permit requirements for employment or failing to maintain insurability.

(b) A constructive quit does not occur when a claimant accepts employment of a specified duration or employment with a specified ending date and works until that date or is advised by the employer that no further employment is available. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2101, 39-51-2104, 39-51-2302, and 39-51-2303, MCA;)

24.11.457 LEAVING WORK WITH GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) (a) through (c) remain the same.

(d) the claimant left work which the department determines be unsuitable under 39-51-2304, MCA.

(2) (a) Remains the same.

(b) unreasonable actions by the employer concerning hours, wages, terms of employment or working conditions, including, but not limited to, unilaterally imposed reductions of 20% or more in the claimant's customary wages or hours;

(c) ~~the--claimant's--health--would--be--jeopardized--by remaining-employed,-as-supported--by--a--medical--statement~~ an illness or injury caused by the work environment or working conditions which would jeopardize the claimant's health if the claimant were to remain employed, if such illness or injury, its cause, and the effect of the claimant remaining employed are verified by a statement from a licensed and practicing physician, chiropractor or osteopath; or

(d) Remains the same.

(3) Remains the same. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2302, 39-51-2307, MCA)

RULE I BENEFITS BASED ON SERVICES IN EDUCATIONAL INSTITUTIONS (1) The intent of 39-51-2108, MCA, is to deny unemployment benefits during periods when the claimant's unemployment is due to school not being in session.

(2) This provision applies if all the following factors are present:

(a) the claimant is an employee of an educational institution;

(b) the claimant's benefits are based on employment for an educational institution or governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed may be in any capacity including professional employees such as teachers and principals and non-professional employees such as teachers aides and janitors;

(c) school is not in session or the claimant is on a

paid sabbatical leave; and

(d) The claimant has reasonable assurance of returning to work at an educational institution during the next regular term or year or following a holiday recess or vacation period. The educational institution is not limited to the same school where the claimant was employed during the base period and includes all elementary and secondary schools and institutions of higher education, including private and governmental schools.

(3) The phrase "reasonable assurance" as used in 39-51-2108, MCA, means a written, oral, or implied contract that a claimant will perform services in the same or similar capacity during the next academic year or following a holiday or vacation break. A claimant does not have reasonable assurance and may be eligible for benefits if:

(a) the commitment for rehire for the next academic year depends upon whether or not funding becomes available;

(b) the claimant will perform services during the next academic year as a substitute worker or the claimant's benefits are based on services as a substitute worker;

(c) the conditions and terms of the work to be performed during the next academic year are substantially less favorable than the work performed during the previous academic year;

(d) a "crossover" situation arises. This occurs when a claimant working in one capacity, such as a teacher, receives assurance of continued employment in the second academic term in another capacity, such as a teacher's aide. The claimant would not be denied benefits between academic terms but would be denied benefits during holiday or vacation breaks within terms.

(e) the claimant customarily works during a holiday or vacation break and is unemployed because funding is not available.

(f) the claimant has been advised that employment will not be offered when the next school term begins.

(5) To be an educational institution it is not necessary for the school to be non-profit or controlled by a school district, however, the instruction provided must be sponsored by an "institution" which meets all of the following conditions:

(a) participants are offered an organized course of study or training designed to give them knowledge, skills, information, doctrines, attitudes or abilities from, by, or under the guidance of an instructor(s) or teacher(s);

(b) the course of study or training offered is academic, technical, trade, or preparation for gainful employment in an occupation;

(c) the institution must be approved, licensed or issued a permit to operate as a school by the office of public instruction or other government agency authorized to issue such license or permit.

(6) All employees of an educational institution, even though not directly involved in educational activities, are subject to these provisions.

(7) Employees of a state or local government entity are subject to these provisions, if the entity is established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if the claimant is a school bus driver employed by the city, the claimant is not subject.

(8) A claimant may be denied benefits for weeks which begin during a period when school is not in session that are:

(a) between two successive academic years or terms, or

(b) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms; or

(c) during a paid sabbatical leave if the claimant has reasonable assurance of working in any capacity in the school term following the sabbatical leave.

(9) If the claimant's benefits are not based on services in an instructional, research or administrative capacity, retroactive payments may be paid if the claimant:

(a) continues to be unemployed when the second academic year or term commences;

(b) filed weekly claims in a timely manner;

(c) was denied benefits solely under 39-51-2108, MCA.

(10) A claimant who is subject to these provisions may be paid benefits based on non-school wages. If the claimant continues to be unemployed when school commences, the claimant may be entitled to benefits based on the combined school and non-school wages. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2108, MCA)

24.11.467 WAIVER OF OVERPAYMENTS (1) Remains the same.

(2) (a) & (b) remain the same.

(c) the claimant's ability to repay, including whether repayment would cause a lasting and extraordinary financial hardship on the claimant. Extraordinary financial hardship as used in this chapter means the claimant would be unable to provide the minimal necessities of food, shelter, clothing and medicine to himself/herself and immediate family as a result of the division's recovering the benefit overpayment. Lasting financial hardship means the financial hardship is expected to exist for more than 180 days.

(3) through (6) remain the same. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-3206, MCA)

RULE II LIE DETECTOR TESTS -- BLOOD AND URINE TESTING (1) A claimant will not be disqualified under this chapter solely for the reason that the claimant:

(a) is denied employment or continuation of employment for refusing to submit to a polygraph test or any form of a

mechanical lie detector test.

(b) is denied employment for refusing to submit to a blood or urine test unless the test is required for employment in a hazardous work environment or in a job the primary responsibility of which is security, public safety, or fiduciary responsibility and the test procedure conforms to the requirements of 39-2-304(2), MCA;

(c) is denied continuation of employment for refusing to submit to a blood or urine test unless the employer requiring the test can demonstrate good cause to believe that the claimant's facilities were impaired on the job as a result of alcohol consumption or illegal drug use and the test procedure conforms to the requirements of 39-2-304(2), MCA;

(d) is denied employment or continuation of employment as a consequence of a positive blood or urine test result, unless the test procedure conforms to the requirements of 39-2-304(2), MCA, and the claimant has been given the opportunity to rebut the test results as provided in 39-2-304(3) and 39-2-304(4), MCA. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-2302, 39-51-2303, 39-51-2304, MCA)

24.11.613 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS---CHARGEABLE EMPLOYERS (1) ~~Benefit--payments-are charged-to--the-experience-rated-employer-who-paid-the-largest amount-of-wages-in--the-claimant's--base-period.--A-claimant's last-employer-is-not-necessarily-the-employer-whose-account-is charged-with-the-benefits-paid--to--the--claimant.~~ Beginning with initial claims filed on or after October 1, 1989, benefit payments are charged to each employer who paid wages to the claimant during the base period. The charge will be based on the percentage of wages the employer paid to the claimant during the base period. For example; if the claimant earned 10 percent of the base period wages working for an employer, that employer would be chargeable for 10 percent of the benefits drawn by the claimant.

(2) & (3) remain the same. (Auth: Sec. 39-51-301, 39-51-302, MCA; IMP, Sec. 39-51-1214, MCA)

3. The changes proposed clarify the intent of the referenced law to assist the department in issuing consistent determinations. The adopted rules are intended to conform state regulations to federal requirements.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Administrator, Unemployment Insurance Division, Department of Labor and Industry, P. O. Box 1728, Helena, MT. 59624, no later than Friday, November 23, 1990.

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

request for a hearing and submit this request along with any written comments he has to the Administrator, Unemployment Insurance Division, Department of Labor and Industry, P. O. Box 1728, Helena, MT. 59624, no later than Friday, November 23, 1990.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

By: Mario A. Micone

Mario A. Micone, Commissioner
Department of Labor and Industry

Certified to the Secretary of State October 15, 1990.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment and repeal of the rules regarding reduced reporting requirements	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 24.29.802, AND 24.29.2001; THE REPEAL OF ARM 24.29.806 PERTAINING TO REDUCED REPORTING REQUIREMENTS

TO ALL INTERESTED PERSONS:

1. On Friday, November 16, 1990, at 10:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in the First Floor Conference Room of the Beck Building, 1805 Prospect Avenue, Helena,. Montana, to consider the amendment of ARM 24.29.802 and 24.29.2001 and the repeal of ARM 24.29.806.

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

24.29.802 SUPPORT DOCUMENTS FOR REPORTING

(1) The attending physician shall within 48 hours after treatment submit to the insurer ~~or to the division~~ a completed form known as the attending physician's first report and bill for initial treatment ~~(form 39)~~.

(2) All insurers shall furnish copies of all required forms ~~not received by the insurer from the division, including forms 37, 39, and 54, and all physicians' reports~~ promptly to the ~~division~~department, including forms ERD 937 and ERD 954.

AUTH: 39-71-203 MCA
IMP: 39-71-307, 39-71-604, MCA

24.29.2001 TREATMENT AND REPORTING

(1) Treatment of an injured worker is permitted without specific prior authorization for a period not to exceed 30 days, provided the injured worker is not under the care of another doctor.

(2) The ~~form 39,~~ attending physician's first report, containing a tentative diagnosis, ~~must~~shall be submitted to the ~~division~~insurer within 48 hours after treatment.

(3) At the end of 30 days of treatment, the attending chiropractor shall submit a statement. If the patient is still recovering and a continuation of treatments is indicated as necessary, a statement shall be submitted setting forth the status of the patient, together with:

(a) a complete working diagnosis to substantiate the need for additional treatment;

(b) a report on the progress of the patient toward recovery, including an assessment of the patient's ability to work;

(c) an itemized statement for services rendered; and

(d) a request to continue treatment.

(4) No charges will be allowed for more than one treatment and modality daily. Payment shall be made for the following modalities: diathermy, ultra sound, electro therapy, and intermittent motorized traction.

(5) If special services are required for treatment of the patient, such as body supports, casts, splints and strapping, prior approval ~~should~~shall be sought from the ~~division or the~~ insurer.

AUTH: 39-71-203 MCA
IMP 39-71-604, 39-71-704 MCA

3. The rule as proposed to be repealed provides as follows:

~~24.29.806 MEDICAL EVALUATIONS~~

~~(1) The division must be advised of the results of all medical examinations. This includes all evaluations of impairment by physicians.~~

~~(2) Medical evaluations to determine physical impairment shall only be done by qualified medical physicians. No reports by examining or attending physicians shall be withheld as confidential.~~

AUTH: 39-71-203 MCA
IMP: 39-71-307, 39-71-604 MCA

4. Rationale: The Department of Labor and Industry has adopted a simplified claims reporting procedure and has established a goal of alleviating its role as a clearinghouse for claims documents. The Department will provide better service to the public by not requiring parties to file documents with the Department, but encourage filing them with the insurer/adjuster. The adjuster/insurer will then be responsible for filing the necessary documents with the Department.

These amendments are the first phase by the Department to automate its claims regulation functions, which will lower insurer/adjuster's reporting costs while increasing the Department's efficiency in its monitoring/regulation functions.

5. Interested parties may submit their data, views or arguments concerning these rules either orally or in writing at the hearing. Also, written arguments, views or data may be submitted to Jack Calhoun, Bureau Chief, Dispute Resolution Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624 no later than November 23, 1990.

6. The Hearings Unit, Legal Services Division, Department of Labor and Industry has been designated to preside over and conduct the hearing.

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State: October 15, 1990.

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

In the Matter of Proposed Adoption of Proper Accounting Treatment for Acceptable Conservation Expenditures.	NOTICE OF PROPOSED ADOPTION OF A NEW RULE REGARDING CONSERVATION ACCOUNTING NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 26, 1990 the Department of Public Service Regulation proposes to adopt a new rule regarding proper accounting treatment for acceptable conservation expenditures.

2. The rule proposed to be adopted provides as follows.

RULE I. PROPER ACCOUNTING TREATMENT FOR ACCEPTABLE CONSERVATION EXPENDITURES (1) Gas and electric utilities operating in Montana shall account for acceptable conservation expenditures in the following manner:

(a) Conservation costs in the following categories will be deferred in a subaccount of account 186, miscellaneous deferred debits, and subsequently amortized to a subaccount of account 557, other expenses (other power supply expenses):

(i) Costs of conservation assets:

(A) Customer loans;

(B) Cash payments to customers;

(C) Measures installed at company's expense.

(ii) Asset acquisition costs:

(A) Specific acquisition program development, promotion, and labor costs;

(B) Associated general supervision rents, leases, overheads.

(b) Weatherization loan balances would continue to be reflected in account 124, other investments.

(c) Conservation costs in the following categories will be expensed as they are incurred in the proper expense account:

(i) Administrative costs:

(A) Conservation planning: supply curve, demand side modeling;

(B) On-going research and development;

(C) General advertising;

(D) Program tracking and reporting;

(E) General training and staff development;

(F) Associated general supervision, rents, leases, overheads.

(ii) Other:

(A) Uncollectible accounts;

(B) Customer service activities: high bill complaints, other inquiries;

(C) Miscellaneous items not acquisition related.

(2) AFUDC-like carrying charges will be allowed to accrue on deferred balances of conservation investments.

(3) Ratemaking may modify charges and balances made to and contained in the above accounts. AUTH: Sec. 69-3-102, MCA; IMP, Sec. 69-3-103, MCA

3. Rationale: On January 22, 1990 the Commission issued in Docket No. 90.1.3 a Notice of Inquiry inviting all gas and electric utilities under its jurisdiction and all other interested persons (including water utilities) to submit within 45 days a proposed accounting treatment for conservation expenditures. In addition, the Commission directed the attention of interested parties to Title 69, Chapter 3, Part 7, MCA, particularly 69-3-712, MCA. The Notice of Inquiry stated that the Commission would issue a proposed rule describing the proper accounting for conservation investments.

The Commission received a number of comments in response to its Notice of Inquiry. Several of the comments relate to conservation policy issues that are beyond the scope of Docket No. 90.1.3. In a Notice of Service List, dated February 20, 1990, the Commission stated that, "Docket [No. 90.1.3] is for the purpose of determining accounting treatment for conservation expenditures only. Responses should be limited to this issue. Responses on broader conservation policy issues will not be considered in this Docket." Pursuant to that direction the Commission, following a review of the pertinent comments, proposes this rule in order to ensure consistent accounting treatment for conservation expenditures by gas and electric utilities. The Commission will address conservation policy issues in future proceedings.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Mr. Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than November 26, 1990.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than November 26, 1990.

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

been determined to be two based upon the number of electric and gas utilities operating in Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

DANNY OBERG, Vice Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 15, 1990.

Reviewed By

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

In the matter of the amendment of Rules 46.12.575 and 46.12.577 pertaining to family planning services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.575 AND 46.12.577 PERTAINING TO FAMILY PLANNING SERVICES

TO: All Interested Persons

1. On November 29, 1990, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.575 and 46.12.577 pertaining to family planning services.

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

46.12.575 FAMILY PLANNING SERVICES (1) Family planning services ~~are available without limitation and may include prescribed drugs, the services of a physician, or services~~ may be provided by a physician in accordance with ARM 46.12.2001 through 46.12.2003, a nurse-practitioner in accordance with ARM 46.12.2010 through 46.12.2013 or a local delegate agency~~ies~~ of the family planning program of the department of health and environmental sciences in accordance with subsection (2). ~~These services are~~ Family planning services provided by a local delegate agency may include:

(a) annual visit; ~~Contraceptive clinic services that include comprehensive history, physical examination, counseling, ordering of laboratory tests, prescription of supplies, and other medically necessary and appropriate family planning services;~~

(b) comprehensive history; ~~Laboratory services ordered by a physician that are medically necessary and appropriate for family planning services;~~

(c) initial physical examination; ~~Contraceptive supplies prescribed by a physician that are appropriate for an individual's family planning needs.~~

(d) initial visit;

(e) laboratory services;

(f) medical counseling; and

(g) routine visit.

(2) "Annual visit" means a return visit at least once per year, following the initial visit, for a physical examination, laboratory services, and health history. The physical will include all examinations required for the initial physical and the laboratory services will include a urinalysis, hematocrit, and PAP test.

(3) "Comprehensive history" means a complete history of obstetrical/gynecological conditions, significant illnesses, disease, hospitalization, problems relating to previous contraceptive use, and relevant family health, psychiatric or social information which is recorded and maintained in the recipient's medical record.

(4) "Contraceptive supplies" means contraceptive pills, foams, IUDs, condoms, sponges, jellies and creams.

(5) "Local delegate agency" means a clinic receiving funding through the department of health and environmental sciences under Title X, the Family Planning Services and Population Research Act of 1970, under the Public Health Services Act, 42 U.S.C. 300 et seq.

(6) "Initial physical examination" means an examination that may include the following procedures conducted at the initial visit of the recipient:

(a) thyroid palpation;

(b) inspection and palpation of breasts and axillary glands, with instruction to the recipient for self-examination;

(c) auscultation of heart and lungs;

(d) blood pressure;

(e) weight and height;

(f) abdominal examination; and

(g) pelvic, including speculum, bimanual and recto vaginal examination.

(7) "Initial visit" means the first contact of the recipient and may include:

(a) initial comprehensive review of medical history;

(b) physical examination;

(c) information and education regarding contraceptive methods;

(d) ordering of laboratory services;

(e) prescription for contraceptive supplies;

(f) post examination interview; and

(g) any counseling rendered the day of the visit.

(8) "Laboratory services" means the delegate agency ordered tests with specimen collection carried out by the provider.

(9) "Medical counseling" means counseling services provided by a physician, nurse practitioner, or registered nurse under the supervision of the clinic's medical director regarding:

(a) pre-conceptual problems;

(b) problem pregnancies;

(c) HIV sexuality issues;

(d) sexually transmitted diseases;

(e) abnormal pap smears;

(f) sexuality and developmental delay; and

(g) sterilization.

(10) "Routine visit" means a visit to provide contraceptive follow-up and monitoring and to correct any problems associated with utilization of medical services (including treatment for vaginal infections). Medical revisit may be

used for a return visit for a diaphragm or IUD and includes the insertion, fitting or removal of the device.

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

46.12.577 FAMILY PLANNING SERVICES, REIMBURSEMENT

(1) Reimbursement for family planning services is as follows:

(a) for physicians and nurse practitioners those fees provided for in 46.12.2003 and 46.12.2013 respectively;

(~~1~~b) ~~The department will pay~~ for local delegate agencies the lowest of the following ~~for family planning services not covered by medicare~~: the medicare fee, the provider's actual (submitted) charge for this service or the department's fee schedule ~~contained in this rule~~.

(2) The fee schedule for the local delegate agencies is calculated as follows:

(a) the fee for a supply item or procedure is the average of the charges for that item or procedure submitted by the delegate agencies during the preceding fiscal year;

(b) the fees in the fee schedule for fiscal year 1991 may not exceed 2% of the fee schedules provided in fiscal year 1990; and

(c) the fees in the fee schedule may not exceed those for physicians and nurse practitioners.

(3) The procedure billing codes and department fee schedules are available from the department's fiscal agent.

~~(2) Contraceptive clinic services~~
~~Initial visit $30.30~~
~~Routine visit $22.00~~
~~Annual visit $27.50~~
~~(3) Laboratory services~~
~~Pap smear $ 7.30~~
~~Hematocrit $ 3.60~~
~~Urinalysis $ 3.60~~
~~Serology $ 4.80~~
~~G.C. culture $ 6.60~~
~~Chlamydia $ 6.60~~
~~HAI/rubella $ 4.80~~
~~Pregnancy test $ 6.10~~
~~Wet mount $ 6.10~~
~~Herpes $ 6.60~~
~~(4) Contraceptive supplies~~
~~Progestasert IUD $31.00~~
~~Diaphragm $ 8.00~~
~~Contraceptive foam, jelly, creme $ 4.50~~
~~Condoms, 1 dozen $ 4.00~~
~~Oral contraceptives, 1 cycle, pills $ 4.00~~
~~Contraceptive sponge $ 1.00~~

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

3. The proposed amendments provide a set of needed definitions for the principle terms of the rules, clarify which criteria and reimbursement systems are applicable to the different types of providers, and replace the set schedule of fees for reimbursement with a formula that will provide a more reasonable reimbursement system. These changes will improve administration of the program to better meet the needs of recipients.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than December 8, 1990.

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

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

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

In the matter of the amendment of Rules 46.12.514, 46.12.515, 46.12.516 and 46.12.2013 pertaining to early periodic screening and diagnosis (EPSDT)	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.514, 46.12.515, 46.12.516 AND 46.12.2013 PERTAINING TO EARLY PERIODIC SCREENING AND DIAGNOSIS (EPSDT)

TO: All Interested Persons

1. On November 29, 1990, at 1:00, a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.514, 46.12.515, 46.12.516 and 46.12.2013 pertaining to early periodic screening and diagnosis (EPSDT).

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

46.12.514 KIDS COUNT/EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT SERVICES (EPSDT), DEFINITIONS (1) Kids count provides for preventive health ~~Early periodic~~ screening and diagnosis ~~and treatment~~ services ~~(EPSDT) includes the screening and diagnosis services of~~ to eligible medicaid recipients ~~individuals~~ under ~~the~~ age ~~of~~ 21 to ascertain ~~their~~ physical ~~or~~ and mental defects and ~~the full range of~~ to provide treatment services ~~provided by the medicaid program~~ to ~~treat,~~ correct~~,~~ or ~~alleviate~~ improve defects ~~in~~ and chronic conditions ~~discovered~~ identified during screening.

Subsection (2) remains the same.

(3) The periodicity screening schedule has been developed which meets reasonable standards of medical and dental practice. The screening services, vision services, hearing services and dental services schedules are contained in the kids count provider manual.

(4) Interperiodic screenings may occur when considered medically necessary to determine the existence of suspected physical or mental illnesses or conditions.

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

46.12.515 KIDS COUNT/EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT, ~~REQUIREMENTS~~ALLOWABLE SERVICES (1) ~~These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.~~ The following are allowable services under this program subject to the requirements contained in subsection (9):

~~(2) Early and periodic screening and diagnosis and treatment services shall be provided only to persons under the age of 21 who are eligible for medicaid.~~

~~(3) At a minimum, screenings must include, but are not limited to:~~

~~(a) comprehensive health and developmental history;~~

~~(b) comprehensive unclothed physical examination;~~

~~(c) appropriate vision and hearing testing;~~

~~(d) appropriate laboratory tests;~~

~~(e) dental screening furnished by direct referral to a dentist for children age 3 and over.~~

~~(4) The following services must be provided to EPSDT recipients when the need is indicated by screening:~~

~~(a) optometric services including eyeglasses;~~

~~(b) dental services including dentures;~~

~~(c) appropriate immunizations;~~

~~(d) hearing aids;~~

~~(e) eyeglasses and those services required for the dispensing of eyeglasses when provided by a physician.~~

(2) Screening services to include all of the following:

(a) a comprehensive health and developmental history to include assessment of both physical and mental health development;

(i) The Denver prescreening developmental questionnaire (PDQ) or the Denver developmental screening test (DDST) must be administered to a child under age six.

(ii) The DDST must be administered to a child whose score on the PDQ is below the age norms for that test.

(iii) The use of alternative developmental screening tests in place of the PDQ or DDST must be approved by the department.

(iv) A child 6 to 20 years must be screened for fine and gross motor development; speech and language development; social development and cognitive development.

(b) a comprehensive unclothed physical exam to include assessment of pulse, respiration, blood pressure, head, eyes, ears, nose, mouth, pharynx, neck, chest, heart, lungs, abdomen, spine, genitals, extremities, joints, muscle tone, skin and neurological conditions;

(c) appropriate immunizations according to age, health history and in accordance with state immunization laws;

(i) Immunization status must be reviewed and must be offered in accordance with the recommended schedule for active immunization of normal infants and children, September 1987 American academy of pediatrics.

(d) laboratory tests to include lead blood level assessment appropriate to age and risk; and

(e) health education to include anticipatory guidance.

(3) Vision services to include:

(a) for children under the age of three years:

(i) a family history of maternal and neonatal infection and ocular abnormalities;

(ii) pupillary reflexes;

(iii) the presence of nystagmus;

(iv) muscle balance which includes an examination for esotropia, exotropia, phoria, and extraocular movements;

(v) physical examination of the lids, conjunctiva, cornea, iris and pupils; and

(vi) the child's parent or the child must be asked if they have concerns about the child's vision.

(b) children age three and older must have the screening defined in subsection (2)(a) as well as a visual acuity test using the screening test for young children and retardates (STYCAR) or the Snellen alphabet chart; and

(c) any child over the age of three may be referred directly to an optometrist or ophthalmologist through a preschool or school vision screening program or self referral.

(4) Dental services to include:

(a) at a minimum, annual dental examination by a licensed dentist is required for children age 3 to 21 years;

(b) an oral examination of a child's mouth must be performed to detect deterioration of hard tissue, and inflammation or swelling of soft tissue. Counseling about the systemic use of fluoride must be given to a child when fluoride is not available through the community water or school programs; and

(c) dental screening for children over the age of three may be initiated to a dentist through general public health/school screens or self referral.

(5) Hearing services to include:

(a) for children under the age of three years:

(i) assessment for a family history of hearing loss, disability, delay of language acquisition or history of such delay;

(ii) assessment of ability to determine the direction of a sound; and

(iii) assessment for a history of repeated otitis media.

an exam of children between 3 and 20 years includes the services outlined in subsection (2)(a) plus a pure tone audiometric test or referral for the test if the examination described above indicates the test is needed; and

children identified as having a possible hearing problem through preschool/school hearing screening programs should be referred to a physician for additional evaluation of the identified problem.

(6) Nutritional services when the child's physical growth performance indicates a problem. The nutritional services must be performed by a nutritionist or dietitian licensed or registered in accordance with the laws of the state in which he or she is practicing.

(a) Nutrition services may include screening, assessment, counseling, consultation, education and related services.

(i) Nutrition screening means the collection of subjective and objective nutritional and dietary data about the individual.

(ii) Nutrition assessment means to use information obtained in a nutrition screening to evaluate the individual's nutritional problems, and to design a plan to prevent, improve or resolve the identified nutritional problems, based upon the health objectives, resources and capacity of the individual.

(iii) Nutrition counseling means counseling directly with and to an individual, or to a responsible caregiver, to explain the nutrition assessment and to implement a plan of nutrition care.

(iv) Nutrition consultation means consultation with or for health professionals, to research or resolve special nutrition problems or to refer an individual to other services, pertaining to the nutritional needs of an individual.

(v) Nutrition education means routine education for normal nutritional needs.

(b) Nutrition services must be performed according to accepted standards of nutrition-dietetic practice.

(7) Necessary health care services to include:

(a) diagnostic and treatment services necessary to correct or improve physical or mental illnesses, defects or conditions;

(i) Diagnostic and treatment services to correct or improve physical or mental illnesses, defects, or conditions will be reimbursable if they are services covered under the federal medicaid program and if:

(A) such illness, defect or condition was identified or discovered to have increased in severity by the screening service; and

(B) such diagnostic or treatment service is medically necessary as defined in ARM 46.12.102(2).

(b) pharmaceutical drugs approved for use under investigational drug status by the federal drug administration and provided under specific controlled medically supervised programs under the supervision of a physician licensed to practice medicine.

(8) Any limitations which normally apply as to amount or duration of medicaid-covered health care services may be waived if:

(a) the service is necessary to correct or improve a physical illness or mental illness, defect or condition which was identified or was discovered to have increased in severity by the screening service; and

(b) the service is medically necessary as defined in ARM 46.12.102(2).

(9) Services identified under the home and community based waiver, ARM 46.12.1401 through 46.12.1482, are not reimbursable under this rule.

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

46.12.516 KIDS COUNT/EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT,REIMBURSEMENT Subsections (1) through (1)(b) remain the same.

(c) ~~the department's fee schedule contained in this rule~~ reimbursement for screening and treatment services under kids count will utilize the most current medicaid reimbursement schedules established for each type of service.

(d) medicaid reimbursement for nutrition services will be the lowest of:

(i) medicaid fee;

(ii) billed charges; or

(iii) the medicare fee.

(e) medicaid reimbursement for services not regularly covered under the medicaid program will pay at a negotiated rate for the service.

~~(2) Early periodic screening diagnosis and treatment services which are reimbursable under the Montana medicaid program include the following:~~

~~Code~~	~~Service~~	~~Rate~~
~~New Patient~~		
~~90751~~	~~Adolescent (age 12 through 17 years)~~	~~47.08~~
~~90752~~	~~Late Childhood (age 5 through 11 years)~~	~~37.66~~
~~90753~~	~~Early Childhood (age 1 through 4 years)~~	~~28.24~~
~~90754~~	~~Infant (age under 1 year)~~	~~23.54~~
~~90755~~	~~Infant care to one year, with maximum of 12 office visits during regular office hours, including tuberculin skin testing and immunization of DPT and oral polio~~	~~By Report~~

~~Code~~	~~Service~~	~~Rate~~
~~Established Patient~~		
~~90761~~	~~Adolescent (age 12 through 17 years)~~	~~37.66~~
~~90762~~	~~Late Childhood (age 5 through 11 years)~~	~~28.24~~
~~90763~~	~~Early Childhood (age 1 through 4 years)~~	~~23.54~~
~~90764~~	~~Infant (age under 1 year)~~	~~18.84~~
~~90774~~	~~Administration and medical interpretation of developmental tests (e.g. Denver, Sprigle)~~	~~32.02~~

~~* * *~~

~~90701~~	~~Immunization, active; diphtheria and tetanus toxoids and pertussis vaccine (DTP)~~	~~15.96~~

~~90702 Diphtheria and tetanus toxoids (DT) 10.64~~

~~90703 Tetanus toxoid 5.32~~

~~90704 Mumps virus vaccine, live 16.64~~

~~90705 Measles virus vaccine, live attenuated 16.64~~

~~90706 Rubella virus vaccine, live 16.64~~

~~90707 Measles, mumps and rubella virus vaccine, live 16.64~~

~~90708 Measles and rubella virus vaccine, live 16.64~~

~~90709 Rubella and mumps virus vaccine, live 16.64~~

~~90712 Poliovirus vaccine, live, oral (any type(s)) 16.64~~

~~90713 Poliomyelitis vaccine 16.64~~

~~90719 Diphtheria toxoid 5.32~~

~~90724 Influenza virus vaccine 16.64~~

~~90726 Rabies vaccine 16.64~~

~~90731 Hepatitis B vaccine 16.64~~

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

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT

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

(d) nurse practitioner or nurse midwife employed by a single physician or by a physician clinic and under the direction of physician(s).

(i) The employer obtains from the department or its fiscal agent a provider number for the nurse specialist(s).

(ii) Nurse practitioner or nurse midwife employed by a physician(s) may retain a copy of their protocol with their employer.

Subsections (4) through (7)(h) remain the same.

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

3. The proposed changes are to comply with the requirements for the Early Periodic Screening, Diagnosis and Treatment program mandated in OBRA 1989.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office

of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than December 9, 1990.

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

Julia E. Rollins

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

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

In the matter of the amendment of Rule 46.10.512 pertaining to AFDC earned income disregards policy	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.512 PERTAINING TO AFDC EARNED INCOME DISREGARDS POLICY

TO: All Interested Persons

1. On November 29, 1990, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.10.512 pertaining to AFDC earned income disregards policy.

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

46.10.512 EARNED INCOME DISREGARDS Subsection (1) remains the same.

(a) $90 from each person's earned income except for individuals whose income must be deemed, as in subsection (2). The standard work expense for these individuals is $75.

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

(2) ~~In the case of stepparent households, the income of the natural or adoptive parent's children is deemed to include any income of the stepparent not otherwise disregarded below, plus all of the natural or adoptive parent's income with no disregards, whether or not such income is available to the natural or adoptive parent's children.~~ Individuals whose income must be deemed when determining eligibility are stepparents, sponsors of aliens, parents and legal guardians of minor parents or pregnant minors, and spouse to spouse in family groups living together. Income of these individuals less disregards listed below must be counted as unearned income to the assistance unit whether or not such income is available.

(a) Disregard ~~the~~ a $75 standard work expense ~~provided in ARM 46.10.512 (1)(a)~~.

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

AUTH: 53-4-212 MCA
IMP: 53-4-231, 53-4-241 and 53-4-242 MCA

3. The Department of Social and Rehabilitation Services through the Family Support Act of 1988 revised requirements related to earned income disregards. The earned income disregards are standard amounts deducted from an individual's gross income in determining eligibility for AFDC and computing

the grant. One provision amended Section 402(a)(8)(A)(ii) of the Social Security Act by increasing the amount of the standard work expense disregard from $75 to $90 effective October 1, 1989. This increase was applicable to any individual whose needs must be taken into account in determining eligibility. However, the new law amended the disregard for some members of the AFDC household but not others. Certain household members not included in the AFDC assistance unit who must have their income deemed to the assistance unit members should not have the increased work expense disregard applied to their income. The work expense disregard should have remained $75 for these members.

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 December 8, 1990.

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

Julia E. Robinson

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

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

In the matter of the amendment of Rule 46.10.403 pertaining to suspension of AFDC for one month	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.403 PERTAINING TO SUSPENSION OF AFDC FOR ONE MONTH

TO: All Interested Persons

1. On November 29, 1990, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.10.403 pertaining to suspension of AFDC for one month.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) through (3)(a)(iii) remain the same.

(b) If net monthly income in excess of the net monthly income standard is caused by a regular and periodic extra pay~~check~~ment from a recurring income source, assistance will be suspended rather than terminated when ineligibility would be for only one benefit month.

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

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

3. The current policy of suspending assistance payments for receipt of an "extra paycheck" (earned income) is not consistent with federal regulation. The federal regulation states "...as caused by income...", not differentiating earned or unearned income. Households that have received the extra unemployment compensation or workers' compensation payment have had their assistance terminated and have had to reapply after 30 days. These households have also been ineligible for medical coverage during the suspension month. The inclusion of unearned income extra payment would allow the AFDC recipient to continue to receive medical coverage and other related benefits during the suspension month. The AFDC client would not have to reapply for assistance at the end of the suspension month.

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 December 8, 1990.

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

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 2.21.5008 relating to Reduction in Work Force and on the amendment of ARM 2.21.3712, relating to Recruitment and Selection	)))))	NOTICE OF THE ADOPTION OF ARM 2.21.5008 RELATING TO REDUCTION IN WORK FORCE AND THE AMENDMENT OF ARM 2.21.3712, RELATING TO RECRUITMENT AND SELECTION

TO: All Interested Persons.

1. On July 26, 1990, the department of administration published notice of the proposed adoption of ARM 2.21.5008 relating to Reduction in Work Force and the amendment of ARM 2.21.3712 relating to Recruitment and Selection at page 1417 of the Montana Administrative Register, issue number 14.

2. The rules have been adopted and amended as proposed.

3. No comments or testimony were received.

/s/ Dave Ashley 10/4/90
Dave Ashley, Acting Director
Department of Administration

Certified to the Secretary of State October 15, 1990

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule 32.18.101 pertaining to Hot Iron Brands	)	NOTICE OF ADOPTION OF AMENDMENT OF RULE 32.18.101 PERTAINING TO HOT IRON BRANDS

TO: ALL INTERESTED PERSONS

1. On July 12, 1990 the Board of Livestock published a Notice of a Proposed Amendment of Rule 32.18.101 at pages 1315 and 1316, Montana Administrative Register, issue number 13.

2. The Board has adopted this amendment exactly as proposed.

3. The only comment received was that freeze brands are "probably" more humane than hot iron brands. No testimony was received.

BOARD OF LIVESTOCK
NANCY ESPY, CHAIRMAN

BY: Lon Mitchell
LON MITCHELL, Staff Attorney
Department of Livestock

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

In the matter of the amendment of Rules 46.12.802 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.802 AND 46.12.806 PERTAINING TO PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES

TO: All Interested Persons

1. On May 31, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.802 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies at page 987 of the 1990 Montana Administrative Register, issue number 10.

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS Subsections (1) through (2)(b) remain as proposed.

(c) A statement of medical necessity for the rental of DURABLE medical equipment, excluding oxygen equipment, shall indicate the length of time the equipment will be needed. All prescriptions shall be signed and dated.

Subsections (2)(d) through (3)(c) remain as proposed.

~~(d) Electric wheelchairs for nursing home residents.~~

Original subsection (3)(c) remains the same in text but is recategorized as subsection (3)(d).

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

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE Original subsection (1) remains deleted as proposed.

(1) The Montana medicaid program effective ~~July~~ NOVEMBER 1, 1990 will reimburse prosthetic devices, durable medical equipment and medical supplies in accordance with the codes and fees in the pricing manual for prosthetic devices, durable medical equipment, and medical supplies. The Montana medicaid program for payment for prosthetic devices, durable medical equipment, and medical supplies adopts and incorporates by reference the pricing manual for prosthetic devices, durable medical equipment and medical supplies adopted and published by the department on ~~July~~ OCTOBER 1, 1990. Copies of the pricing manual may be obtained from the Department of Social

and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

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

3. The Department has thoroughly considered all commentary received:

COMMENT: When and how will the Medicaid pricing manual be available.

RESPONSE: The pricing manual is being adopted by reference in this rule. The pricing manual has been recently published by the department and is being sent to all affected providers. The manual as published incorporates the changes noted in the responses of the department to these comments.

COMMENT: Adoption of Medicare rates for orthotics and prosthetics is not reasonable.

RESPONSE: The department has reviewed the information submitted by the association for the prosthetic and orthotic providers. After considering the comments of the association and reviewing the Medicare reimbursement system, the department has decided not to adopt the Medicare rates for prosthetics and orthotics. The department will develop a system of rates for orthotics and prosthetics over the next year.

COMMENT: The department should restrict the use of L codes to those providers who are certified by the American Board for Certification in Orthotics and Prosthetics, Inc. or the Board for Certification in Pedorthics, Inc.

RESPONSE: The department does not believe that the proposed restrictions are necessary to assure the quality of the services delivered.

COMMENT: Orthotics and prosthetics should be separated from durable medical equipment and medical supplies for the purpose of negotiating rates.

RESPONSE: The department is willing to review such a separation with interested parties.

COMMENT: The rates for L codes 3000 to 3599 (shoes and foot related devices attached to a brace) should be by report at 100% of the billed charges instead of 90% of billed charges.

RESPONSE: Currently, the department sets rates for items at a specific price or by report at 90% of the billed charges. The department's computer system in using the by report method can only accept one percentage calculation for the services in a

program. For the DME program the department has set the by report rate at 90% of the billed charges.

COMMENT: The department should not eliminate electric wheelchairs for nursing home patients.

RESPONSE: After review of this issue, the department has decided not to implement this portion of the proposed rule. The department will establish specific and uniform criteria for electric wheelchairs for all Medicaid recipients regardless of their place of residence and will contact interested parties in developing the criteria.

COMMENT: The department should adopt Medicare criteria for blood glucose monitors.

RESPONSE: This will be done in the provider manual.

COMMENT: The department should not adopt the Medicare rates for medical supplies. The Medicare rates for items such as catheters and ostomy supplies do not cover the cost of the product to the provider.

RESPONSE: The department has reviewed the comments received on the proposed rates for medical supplies and adjusted the rates where it was determined appropriate to do so.

COMMENT: Medicaid should adopt a local code for test strips since Medicare does not reimburse these items.

RESPONSE: The department will not adopt a local code for test strips but the Medicare indicator on the current code has been removed so the claims will be paid without the requirement that Medicare be billed first.

COMMENT: Medicaid should provide a miscellaneous or unlisted item code for each supply sub category to facilitate billing. The miscellaneous code should be reimbursed by report at 90% of the billed charges.

RESPONSE: This has been done.

COMMENT: There are many different types of condom catheters and the prices vary from $.50 to $1.65.

RESPONSE: The department has set the rate for these items on a by report basis at 90% of the billed charges.

COMMENT: Medicaid should not adopt the Medicare rate of $.25 for Glucose test strips because the prices range from $.49 to $.53 per strip (A4253).

RESPONSE: The department will continue the current rate for these items which is on a by report basis at 90% of the billed charges.

COMMENT: The Medicare rates for ostomy supplies (A5061 through A5073) are 50% lower than the suggested retail prices of these items and do not cover the cost of the item.

RESPONSE: The department has set the rate for these items on a by report basis at 90% of the billed charges.

COMMENT: Medicaid should not adopt the Medicare rates for enteral and parenteral supplies and equipment. These items are reimbursed at the twenty-fifth percentile which does not reflect the cost of doing business in Montana. The formulas should at least be set at the fiftieth percentile.

RESPONSE: Currently, the department pays for enteral and parenteral services on a by report basis at 90% of the billed charges. The formulas are billed in various units either by the can or by the case. The department is adopting a uniform unit of billing and decided to use hundred calorie units which Medicare uses. The department has set the rate for the formulas at the Medicare's fiftieth percentile until the program can gather further information to evaluate reimbursement by.

COMMENT: Medicaid should not adopt Medicare's documentation requirements for enteral formula, especially for children whose prescription may change drastically in a short time.

RESPONSE: The department is required by federal regulations to control utilization of services. If a change in the amount of enteral formula is prescribed by the physician, there should be documentation of the change. The Medicaid program will establish a certificate of medical need for enteral and parenteral services as a means of meeting utilization control requirements.

COMMENT: Many of the Medicare rates for equipment are not reasonable and in some cases do not cover costs.

RESPONSE: The department has reviewed comments on medical equipment and adjusted them where it was determined appropriate to do so.

COMMENT: Medicaid should adopt Medicare's codes for wheelchairs and codes E1350 for labor and E1399 for miscellaneous.

RESPONSE: This has been done.

COMMENT: Medicaid should adopt a local code for light weight wheelchairs and a code for three wheeled carts.

RESPONSE: The department has adopted the Medicare codes for wheelchairs. The department has adopted a code for three wheeled carts. The rate for three wheeled carts has been set on a by report basis at 90% of the billed charges.

COMMENT: Medicaid should adjust the rate for canes and crutches to the amount allowed by Medicare.

RESPONSE: This has been done.

COMMENT: Medicaid should establish one miscellaneous code for DME items not covered by Medicare.

RESPONSE: The department has adopted the Medicare miscellaneous code E1399. The department can not unilaterally exclude items from being billed to Medicare without specific information that they are not covered by Medicare. However, once an item is denied by Medicare that denial may be used for future Medicaid claims.

COMMENT: Medicaid should retain codes E0188 and E0189 for sheep skin pads and pay them on the by report basis at 90% of the billed charges because of the many different sizes.

RESPONSE: This has been done.

COMMENT: There should be different codes for wheelchair batteries because of the different sizes.

RESPONSE: The department has maintained the current code and the rate has been set on the by report basis at 90% of the billed charges.

COMMENT: The Medicare rate of $73.24 for battery chargers does not cover the cost which is at least $150.00. In one catalog a 24 volt AMP battery charger is listed at $254.70.

RESPONSE: The rate for this item has been set by report at 90% of the billed charges.

COMMENT: Medicaid should establish a code for such medically necessary accessories as crutch attachments for walkers.

RESPONSE: This has been done and the rate has been set on the by report basis at 90% of the billed charges.

COMMENT: The rate for folding walkers (E0135) is inadequate.

RESPONSE: The department's records indicate that the average amount billed for folding walkers is $70.00 which is slightly higher than the Medicare rate. The department has set a rate

of $70.00 for the purchase of a walker under code E0135 and $17.50 for the rental of a walker.

COMMENT: The Medicare rates for walkers (E0141 and E0143) are not adequate. Medicare has a rate for E0141 of $91.81 while the suggested retail price is $102.15 with wheels. The Medicare rate for E0143 is $91.81 while the suggested retail price is $118.00.

RESPONSE: The department's records indicate the average amount billed for code E0141 is $133.57 and the amount for code E0143 is $106.14. The department has set the rates for these codes on the by report basis at 90% of the average billed amount or $120.21 for code E0141 and $95.53 for code E0143. The rate for rentals has been set at one fourth of the rental amount.

COMMENT: Medicare uses code E0192 for Roho and Jay cushions with a rate of $300.02 while Medicaid uses code E0183.

RESPONSE: The department has adjusted its coding system and adopted the Medicare rate.

COMMENT: Moist heat pads (E0215) has a suggested retail price of $74.00 and a Medicare rate of $46.16.

RESPONSE: The department's records indicate that the average amount billed for moist heat pads is $69.70 which is slightly more than ninety percent of the suggested retail amount. The department has set the rate at $69.70 for the purchase of a moist heating pad.

COMMENT: Blood glucose monitors have various prices depending on the manufacturer or distributer. The Medicare allowable rate is $150.00 which does not cover cost.

RESPONSE: The department's data indicates that the average charge for a blood glucose monitor is $200.00. The department has retained its current rate on the by report basis at 90% of the billed charges.

COMMENT: The Medicare rate for hoyer type lifts is not adequate. The Medicare rate for hydraulic lift (E0630) is $788.19 while the suggested retail price with sling is $1,050.00. The Medicare rate for electric lift (E0635) is $747.50 while the suggested retail price is $1,900.00.

RESPONSE: The department has set the rate for these codes on the by report basis at 90% of the suggested retail price.

COMMENT: The Medicare rate for seat lifts (E0620) is not adequate. The new Medicare rate for seat lifts is $840.39.

RESPONSE: The department's data indicates that the average charge for E0620 is $934.99. The department has adopted $934.99 as the Medicaid rate.

COMMENT: The Medicare rate for wheelchair accessories such as trays, toe loops, and hook on headrests are not adequate.

RESPONSE: The department has retained the rates for these items on the by report basis at 90% of the billed charges.

COMMENT: The Medicare rates for electric hospital beds are not adequate. The cost of the bed varies depending on the type of bed and the extent of repositioning required.

RESPONSE: The department has retained for hospital beds the current Medicaid rate.

COMMENT: The price for specially sized wheelchairs (E1220) varies by the type or size of the chair.

RESPONSE: The department has set the rate for this item on the by report basis at 90% of the billed charges.

COMMENT: Medicaid should provide higher reimbursement for oxygen patients who are disabled or who are in nursing homes. These patients require more care by oxygen provider's than other patients.

RESPONSE: The department believes that patients who are disabled or are nursing home residents should not be given more service by oxygen providers. These patients should receive any necessary additional care through home care staff or through nursing home staff.

COMMENT: Is Medicaid going to adopt the capped rental for patients who only have Medicaid?

RESPONSE: Not at this time. Patients covered under Medicare will be limited to the amount allowed under Medicare. If the person is only covered by Medicaid, a decision will be made to either rent or purchase the equipment. The Medicaid program is currently in the process of developing a system which limit rental payments to the purchase price of the item.

COMMENT: The date of service should be the date the item is ordered for the patient.

RESPONSE: The department's policy is that the date of service is the date the item is delivered to the patient. If the patient is not eligible on the date of service Medicaid cannot make payment. A patient may have other financial resources by which to cover a service after it is ordered.

COMMENT: Medicaid should provide in its rates for payment of a provider's travel to deliver and service equipment. This is a necessary cost of doing business and should be covered.

RESPONSE: The department believes that travel costs are a normal part of business and are generally included in the providers usual and customary charge for the item. Travel costs will not be reimbursed as a separate item.

COMMENT: Will the Medicaid program consider reimbursement on special depth shoes for diabetics who have special needs because of the swelling caused by the diabetes.

RESPONSE: Current rules allow the department to cover special depth shoes for diabetics under the podiatry program.

COMMENT: By adopting the Medicare rate schedule for Medicaid equipment and supplies, the proposed rule will have an adverse effect on handicapped and disabled people. Where Medicare's rates are low or inadequate, the provider will not want to supply those items for the recipient.

RESPONSE: The department believes that the fees provided for in the pricing manual with the various revisions discussed in these responses will not have an adverse impact on persons with disabilities. The program has considered all of the comments regarding equipment and has made modifications where appropriate in the Medicare-based pricing system being adopted by Medicaid.

COMMENT: What will happen to services covered by Medicaid such as diapers which Medicare does not cover?

RESPONSE: These items will continue to be covered.

COMMENT: Will Medicaid automatically change the maximum rates whenever Medicare's rates change?

RESPONSE: No. The Medicare rates adopted by this rule remain in effect until the department takes specific action through the rulemaking process to change them.

4. These rule changes will become effective November 1, 1990.

Julia E. Rollins

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

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

In the matter of the amendment of Rules 46.13.106, 46.13.303, 46.13.304, 46.13.401 and 46.13.502 pertaining to the low income energy assistance program (LIEAP)	)))))	NOTICE OF THE AMENDMENT OF RULES 46.13.106, 46.13.303, 46.13.304, 46.13.401 AND 46.13.502 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM (LIEAP)

TO: All Interested Persons

1. On August 30, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.13.106, 46.13.303, 46.13.304, 46.13.401 and 46.13.502 pertaining to the low income energy assistance program (LIEAP) at page 1672 of the 1990 Montana Administrative Register, issue number 16.

2. The Department has amended Rules 46.13.106, 46.13.303, 46.13.304, 46.13.401 and 46.13.502 as proposed.

3. No written comments or testimony were received.

Julia G. Robinson

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

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

In the matter of the amendment of Rule 46.14.402 pertaining to low income weatherization assistance program	))))	NOTICE OF THE AMENDMENT OF RULE 46.14.402 pertaining to low income weatherization assistance program

TO: All Interested Persons

1. On August 30, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.14.402 pertaining to low income weatherization assistance program at page 1669 of the 1990 Montana Administrative Register, issue number 16.

2. The Department has amended Rule 46.14.402 as proposed.

3. No written comments or testimony were received.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

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

In the matter of the amendment of Rule 46.15.102 pertaining to refugee cash assistance	)))	NOTICE OF THE AMENDMENT OF RULE 46.15.102 PERTAINING TO REFUGEE CASH ASSISTANCE

TO: All Interested Persons

1. On September 13, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.15.102 pertaining to refugee cash assistance at page 1766 of the 1990 Montana Administrative Register, issue number 17.

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

46.15.102 REFUGEE CASH ASSISTANCE Subsections (1) through (6) remain as proposed.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. ~~53-3-302~~ 53-2-201 MCA

3. No written comments or testimony were received.

Julia E Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 15, 1990.

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 June 30, 1990. This table includes those rules adopted during the period July 1, 1990 through September 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 June 30, 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 1990 Montana Administrative Register.

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