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OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

1991 ISSUE NO. 12
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PAGES 935-1114



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12 JUN 82 1991

The Montana Administrative Register (MAR) is a twice-monthly publication, has three sections. The first section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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.

TABLE OF CONTENTS

Page Number

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-50 Notice of Proposed Adoption - Specifying the Exact Procedures for Testing Kjeldahl Proteins on Barley, Chit and Germinations on Barley and Falling Number Determinations on Wheat. No Public Hearing Contemplated. 935-936

COMMERCE, Department of, Title 8

8-16-35 (Board of Dentistry) Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - Practice of Dentistry. 937-942

8-16-36 (Board of Dentistry) Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Practice of Dentistry. 943-955

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-382 Licensing and Certification - Notice of Public Hearing on Proposed Adoption - Licensing for Specialty Residential Mental Health Service. 956-971

JUSTICE, Department of, Title 23

23-5-10 Notice of Proposed Amendment and Adoption of Temporary Rules - Gambling. No Public Hearing Contemplated. 972-981

Page Number

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-95 Notice of Public Hearing on the Proposed
Adoption and Amendment - Class E Motor Carrier
Status (Transportation of Logs) - Accommodation of
the New Class E Motor Carrier Status. 982-988

38-2-96 Notice of Public Hearing on Proposed
Adoption and Amendment - Telecommunications Service
Standards. 989-993

RULE SECTION

ADMINISTRATION, Department of, Title 2

AMD Work Site Closure During A Localized
NEW Disaster or Emergency. 994-995

AMD (State Compensation Mutual Insurance Fund)
Method for Assignment of Classifications of
Employments. 996

AMD (State Compensation Mutual Insurance Fund)
Variable Pricing Within a Classification. 997

AGRICULTURE, Department of, Title 4

AMD Grain Fee Schedule. 998

COMMERCE, Department of, Title 8

AMD (Board of Outfitters) Licensure -
Qualifications, Licensure - Examinations -
Conduct. 999

FAMILY SERVICES, Department of, Title 11

AMD Licensing and Registering Day Care
Facilities. 1000-1002

FISH, WILDLIFE AND PARKS, Department of, Title 12

AMD (Fish and Game Commission) Water Safety
Regulations - Allowing the Use of Electric
Motors on Gartside Reservoir. 1003

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

AMD End Stage Renal Disease - Conditions for
Payment of Claims Under the End Stage Renal
Disease (ESRD) Program. 1004

Page Number

LABOR AND INDUSTRY, Department of, Title 24

AMD	Adoption by Reference of Amendments to the Prevailing Wage Rates.	1005-1006
-----	--	-----------

LIVESTOCK, Department of, Title 32

EMERG NEW	Control of Migratory Bison From Herds Affected with a Dangerous Disease.	1007-1008
--------------	---	-----------

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD	(Board of Natural Resources and Conservation) Water Right Application Fees.	1009
-----	---	------

AMD	(Board of Water Well Contractors) Fee Schedule.	1010
-----	--	------

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

AMD	AFDC Table of Assistance Standards.	1011-1014
-----	-------------------------------------	-----------

NEW AMD	Transition-to-Work Allowance - JOBS Program.	1015-1019
------------	---	-----------

NEW AMD	Food Stamp Program - Transfer of Resources.	1020
------------	---	------

NEW AMD	Health Plan Premium Payment.	1021-1024
------------	------------------------------	-----------

AMD	Inpatient Hospital Reimbursement.	1025-1026
-----	-----------------------------------	-----------

AMD	Outpatient Hospital Reimbursement.	1027-1029
-----	------------------------------------	-----------

AMD REP	Billing and Reimbursement for Physician Services - Durable Medical Equipment and Podiatry Services.	1030-1031
------------	---	-----------

NEW AMD	Licensed Professional Counselor Services.	1032-1036
------------	---	-----------

AMD	Family Planning Services.	1037
-----	---------------------------	------

AMD	Inpatient Psychiatric Services.	1038
-----	---------------------------------	------

AMD	Drug Rebates.	1039
-----	---------------	------

AMD	Ambulance Services, Reimbursement.	1040-1041
-----	------------------------------------	-----------

SOCIAL AND REHABILITATION SERVICES. Continued

NEW	Federally Qualified Health Centers.	1042-1043
AMD	Nurse Specialist Non-Covered Services.	1044
NEW	Conditional Medical Assistance.	1045
AMD	Non-Institutionalized Medical Assistance for Children.	1046-1048
AMD	Medicaid for Disabled Widows/Widowers.	1049
AMD	Medically Needy Income Standards.	1050-1051
NEW	Medicaid for Qualified Disabled Working Individuals.	1052
AMD	General Relief Assistance - General Relief Medical Assistance.	1053-1056
AMD	General Relief Assistance - General Relief Medical Income Standards.	1057

INTERPRETATION SECTION

Opinions of the Attorney General.

10	Appropriations - Private Organizations Not Under Government Control - Counties - Search and Rescue Units - Contracts with Private Organizations - County Government - Local Government - Public Funds - Search and Rescue Units - Sheriffs - Control Over Search and Rescue Units.	1058-1060
11	Consolidation - Creation of Multijurisdictional Service District Within Existing District to Increase Mill Levy - Intergovernmental Cooperation - Libraries - Local Government - Taxation and Revenue.	1061-1065

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	1066
How to Use ARM and MAR.	1067
Accumulative Table.	1068-1076
Board And Council Appointees.	1077-1083
Vacancies on Boards and Councils.	1084-1114

BEFORE THE DEPARTMENT OF AGRICULTURE

STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
adoption of New Rules speci-) ADOPTION OF NEW RULES
fying the exact scientific) RELATING TO MALTING
procedures for testing Kjeldahl) BARLEY AND WHEAT
proteins on barley, chit and)
germinations on barley and fall-)
ing number determinations on wheat

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 28, 1991 the department of agriculture proposes to adopt new rules specifying the exact scientific procedures for testing Kjeldahl proteins on barley, chit and germination on barley and falling number determinations on wheat.

2. The proposed new rules will read as follows:

RULE I BARLEY PROTEIN (1) The state grain lab will use the Kjeldahl protein method for purposes of determining the amount of protein in malt and feed barley.

(2) The lab will use, and hereby incorporate by reference, the methods stated in the "Official Methods of Analysis of the Association of Official Analytical Chemists" William Horwitz, Ed., 12th Edition 1975. Sections 2.047 thru 2.049 and Section 14.026, which may be viewed at the State Grain Lab, 821 17th Street North, Great Falls, MT 59403-1397.

AUTH: 80-4-709 MCA

IMP: 80-4-709, 710

RULE II MALTING BARLEY GERMINATION (1) The state grain lab will use either the 48 hour hydrogen peroxide or the Aubry blotter method for purposes of determining malting barley germination.

(2) The procedure for both methods are stated, and hereby incorporated by reference, in the Report of the Subcommittee on Methods of Barley Analysis, "American Society of Brewing Chemists" Proc. 1946, p. 92, Journal 35: 114 (1977). This Report may be reviewed at the State Grain Lab, 821 17th Street North, Great Falls, MT 59403-1397.

AUTH: 80-4-709 MCA

IMP: 80-4-709, 710

RULE III CHIT (1) The state grain lab will make an analysis upon request for a determination of the presence and amount of chit. For this purpose, chit is defined as the swelling of the germ end tip of the kernel; this includes the enlargement of the embryo but not any acrospire growth up the kernel or rootlet development.

(2) The procedure for analysis will be to analyze approximately 15 grams visually or by peeling the hull of the kernel if necessary, using the above definition, is hereby incorporated by reference, Montana interpretive slides B1 and B2. These slides may be viewed at the State Grain Lab, 821 17th Street North, Great Falls, MT 59403-1397.

AUTH: 80-4-709 MCA

IMP: 80-4-709, 710

RULE IV. STARCH STRENGTH (1) The lab will use what is known as the falling number method for measuring starch strength for wheat flour.

(2) The procedure used, and which is hereby incorporated by reference, is that stated under the "U.S. Agricultural Marketing Act", Program directive 918.38, adopted January 11, 1989. A copy of such Directive may be viewed at the State Grain Lab, 821 17th Street North, Great Falls, MT 59403-1397.

AUTH: 80-4-709 MCA

IMP: 80-4-709, 710

REASON: The Kjeldahl barley protein system, malt barley chit, germination and falling number determinations on wheat have been performed by the state grain laboratory for many years. This rule request is to specify by rule the exact scientific procedure for these tests.

3. Interested persons may present their data, views, or arguments either orally or in writing to Allen Williams, Unit Manager, Montana Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than July 26, 1991.

4. 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 Allen Williams, Unit Manager, Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than July 26, 1991.

5. 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 agency or subdivision or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.



EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State: June 17, 1991

12-6/27/91

MAR Notice No. 4-14-50

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption) PROPOSED AMENDMENT, REPEAL AND
of rules pertaining to the) ADOPTION OF RULES PERTAINING
practice of dentistry) TO THE PRACTICE OF DENTISTRY

TO: All Interested Persons:

1. On August 8, 1991, at 10:30 a.m., a public hearing will be held in the Rimini Room, Park Plaza, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to the practice of dentistry.

2. The rules proposed for amendment are 8.17.403, 8.17.404, 8.17.702, 8.17.801, 8.17.803 and 8.17.808. Those proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.17.403 APPLICATIONS (1) will remain the same.

(2) The application fee and required documentation must be submitted to the Board of Dentistry--1424--9th-Avenue Dentistry, Arcade Building, 111 N. Jackson, Helena, Montana 59620-0407 at least 15 20 days prior to the examination date.

(a) will remain the same."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-303, 37-29-305, 37-29-306, MCA

REASON: The proposed amendment correctly references the Board of Dentistry and provides for the correct office address. The proposed rule also extends a 15 day application filing date to 20 days which will be consistent with the filing dates established for dentists and dental hygienists.

"8.17.404 EXAMINATION (1) will remain the same.

~~(2)--The board may accept successful completion of a regional examination in lieu of its own examination.~~

~~(3) (2) Grading will be done by examiners Montana licensed dentists and denturists conducting the examination.~~

~~(3) The chief examiner shall be either a dentist or denturist currently serving on the board of dentistry.~~

(4) will remain the same.

~~(5) Examination papers may not be copied or duplicated~~
In order to guarantee security of the test papers and protect the privacy of the applicant, examination papers may not be copied or duplicated.

~~(6)--Examinations will be held in Helena on the third Friday and Saturday of January of each year, in addition to the second Monday in July as provided in section 37-29-305(2), MCA."~~

Auth: Sec. 37-29-201, 37-29-301, MCA; IMP, Sec. 37-29-305, MCA

REASON: These proposed amendments are necessary to establish examination standards for the administration of the denturist clinical and written licensing examination. The rule mandates grading of the examination by Montana licensees; that the chief examiner must be one of the licensed dentists or the denturist serving on the Board of Dentistry; establishes security measures for protection of the examination; and deletes acceptance of a regional examination. Few states (less than 7) license denturists; it is unlikely that a regional examination will ever be developed, therefore, this portion of the rule is unnecessary. Section 37-29-305, MCA, establishes the examination date; therefore subsection (6) of this rule is repetitious of the statute and unnecessary.

"8.17.702 RENEWAL - CONTINUING EDUCATION (1) Licenses must be renewed by December March 1st of each year upon payment of the annual renewal fee, proof of 12 hours continuing education and possession of a current cardiopulmonary resuscitation card.

~~(2)--A license not renewed within 90 days after December 1st will be suspended for non-renewal--A person applying for renewal whose license was suspended for failure to renew, may be required to submit to an examination as a condition of renewal for a 3-year period after suspension.~~

~~(3)--Prior approval of a course, seminar or workshop by the board must be obtained except for those programs sponsored by the Montana Denturists Association, American Academy of Dentistry or other state regulatory agency.~~

(4) through (6) will remain the same but will be renumbered (2) through (4).

~~(7)--The Board may, in individual cases involving disability, illness or family emergency, grant waivers of the continuing education requirements or grant extensions of time within which to fulfill the same or make the required reports--Request for waiver must be in written format to the board--Waivers of minimum educational requirements may be granted by the board for a period not to exceed the next renewal year.~~

~~(8)--The board has authority to make written exception for reasons of individual hardship including health, military service, retirement, inaccessibility of programs or such other emergency the board may consider.~~

(9) will remain the same but will be renumbered (5).

~~(10)--An inactive license may be issued to an individual who is not actively practicing in the state of Montana, but must be renewed by December 1st of each year by paying the fees prescribed in ARM 8-17-404.~~

(6) In case of default in payment of the annual renewal fee by a licensee, his license must be revoked by the board. The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(7) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for revocation, the license may not be revoked.

(8) A license revoked for nonpayment of the renewal fee may be reinstated within 3 years of revocation if:

(a) an application for reinstatement is submitted on the form used for original license applications;

(b) the applicant states in written correspondence reasons why reinstatement should be granted;

(c) renewal fees are paid for each year they were unpaid, plus a late penalty fee for each year;

(d) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(e) the applicant produces evidence, satisfactory to the board, of good character and competence."

Auth: Sec. 37-1-411, 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

REASON: The Board proposes this amendment to establish a March 1 renewal date for denturists which will be consistent with the renewal date for dentists and dental hygienists; and to clarify that the CPR card must be a current CPR card. The proposal further deletes subsection (3) as continuing education requirements are established under section 37-29-306, MCA; deletes subsections (7) and (8) as a waiver of continuing education requirements is an improper extension of authority; and deletes subsection (10) as inactive license classification is an improper extension of authority. The Board further proposes to delete subsection (2) and add subsection (6) which will set forth administrative procedures for handling default payment of annual renewal fee and reinstatement of a licensee. The administrative procedures set forth are consistent with those procedures for dentists and dental hygienists.

"§.17.801 UNPROFESSIONAL CONDUCT (1) will remain the same.

(a) misrepresentation, fraud or deception in applying for a license, taking an examination to secure a license, or holding or renewing a license in the practice of dentistry;

(b) will remain the same.

(c) using advertising matter which that contains misstatements, falsehoods, misrepresentation or wording that may in any way reflect against a fellow licensee or other licensed health care provider;

(d) through (g) will remain the same.

(h) failing to exercise appropriate supervision over interns who are authorized to practice only under the supervision of a licensed denturist or board certified ~~prosthodontist~~ prosthodontist;

(i) and (j) will remain the same.

(k) the use of any narcotic, dangerous drug or intoxicating liquor to an extent that such use impairs the ability to safely conduct the practice of dentistry; and

(l) failing to adequately maintain complete records of

each patient:

(m) continuing to practice dentistry when the licensee's license has been suspended, revoked, or is not currently renewed;

(n) having been convicted of an offense involving moral turpitude and not having been sufficiently rehabilitated so as to warrant the public trust;

(o) having been convicted of violating a federal or state statute or rule regulating the possession, distribution, or use of a controlled substance scheduled in Title 50, chapter 32, MCA;

(p) failing to cooperate with an authorized investigation of a complaint;

(q) engaging in morally depraved conduct with patients on the licensee's office premises or under practice related circumstances;

(r) failing to exercise due regard for the safety, health, welfare, and life of the patient;

(s) engaging in conduct unbecoming to the person of the licensee, when such conduct involved the use of any device, drug, medication, or material when such use is detrimental to the best interests of the public;

(t) willfully permitting unauthorized disclosure of information relative to patient's records;

(u) obtaining a fee or other compensation, either directly or indirectly by the representation that a manifestly incurable disease, injury or condition of a person can be cured;

(v) testifying in court on a contingency-witness fee basis;

(w) conspiring to misrepresent, or willfully misrepresenting, dental conditions to increase or decrease a settlement award verdict or judgment;

(x) suspension or revocation of the dentist's license to practice dentistry by competent authority in any state, federal, or foreign jurisdiction; and

(y) fitting, attempting to fit, or advertising to fit a prosthesis on or over a dental implant."

Auth: Sec. 37-1-136, 37-29-201, 37-29-311, MCA; IMP, Sec. 37-1-136, 37-29-311, 37-29-402, 37-29-403, MCA

REASON: These additional conduct standards are being proposed to enhance the enforceability of the practice act and the board's rules and orders.

"8.17.803 GROUND FOR DENIAL OF A LICENSE (1) will remain the same.

(2) Misrepresentation of facts and information on application for licensure or renewal of license; or

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

(5) A course of conduct which would be grounds for discipline under section 37-29-311, MCA; or

(6) Failure to comply with license renewal requirements."

Auth: Sec. 37-1-137, 37-29-201, MCA; IMP, Sec. 39-29-201, 37-29-311, MCA

REASON: This amendment is being proposed to include failure to comply with license renewal requirements as grounds for license denial.

"8.17.808 PRIOR REFERRAL FOR PARTIAL DENTURES

(1) The board of dentistry interprets 37-29-403(1)(b), MCA, to mean that all patients requesting or requiring partial dentures or a reline patients shall be referred to a dentist to determine what is needed prior to the denturist starting his services."

Auth: Sec. 37-1-131, 37-29-201, MCA; IMP, Sec. 37-29-403, MCA

REASON: This proposed amendment will clarify the need for a prior referral of the patient to a dentist before the denturist provides a reline service.

3. The rules proposed for repeal are 8.17.101, 8.17.201, 8.17.202, 8.17.401, 8.17.402, 8.17.701, 8.17.703, 8.17.802, and 8.17.804 through 8.17.807. These rules can be found at pages 8-539 through 539.4 and 8-539.8 through 539.14 of the Administrative Rules of Montana.

The reason for repeal of 8.17.101, 201 and 202 is that Chapter 524, Laws of 1987 merged the Board of Dentistry and the Board of Dentistry. Therefore, these five rules are now repetitious of 37-4-202, MCA and ARM 8.16.101, 201 and 202.

The Board is proposing to repeal 8.17.701 because the standardized licenses issued by the Bureau automatically identify the licensee, license number, board name, date of issuance and practice area; and renewal license specifications in subsection (2) unduly repeat 37-29-306, MCA, and is otherwise redundant and unnecessary.

The proposed repeal of 8.17.703 is necessary because procedures for reinstatement of the license are now proposed under 8.17.702(6) and because requiring an interview before the Board in (2) is an improper extension of authority and in direct conflict with 37-29-313, MCA.

The Board is proposing to repeal 8.17.802 because it partly unduly repeats 37-29-311, MCA, and is an extension of legislative authority.

The repeal of 8.17.804 through 8.17.807 is necessary because complaint procedures are handled in accordance with the Montana Administrative Procedure Act. These rules are redundant and unnecessary.

Auth: 37-29-201; IMP, 2-4-201, 37-29-102, 37-29-201, 202 MCA

4. The proposed new rules will read as follows:

"I INSERT IMMEDIATE DENTURES (1) The board of dentistry interprets the prohibition on denturists placing and inserting immediate dentures, contained in 37-29-402(2), MCA, to mean a denturist may not insert a denture in the mouth of the intended wearer within four weeks of the date of the final extraction of teeth."

Auth: Sec. 37-1-131, 37-29-201, MCA; IMP, Sec. 37-29-402, MCA

REASON: The Board is proposing this new rule on inserting immediate dentures to clarify that the word "initially" means four weeks from the date of the last extracted tooth. The public will be protected by the rule because within four weeks the patient's oral cavity should be healed and the denturist will not be inserting a denture over an open wound.

"II CERTIFICATE OF HEALTH FOR PARTIAL DENTURE (1) A three part certificate of health form for all partial dentures shall be completed by the dentist, the denturist, and delivered to the patient. The form shall be signed by a licensed dentist verifying the health of the abutting teeth and their ability to support a partial denture and a prescription for the design of a partial denture. One copy of the form shall be retained in the dentist's permanent patient file along with the original x-rays. The second copy shall be signed by the licensed denturist verifying construction and delivery of the partial in conformance with the dentist's findings and this copy shall be retained in the permanent patient file retained by the denturist. The third copy shall be given to the patient for his or her records. Forms may be obtained by contacting the board office."

Auth: Sec. 37-1-131, 37-29-201, MCA; IMP, Sec. 37-29-403, MCA

REASON: The certificate of health requirement will assist the board in enforcing section 37-29-403, MCA, prior referral requirements. The rule provides for the use of a three part form which provides written verification by the Montana dentist that the patient's abutment teeth are healthy and able to support a partial. The rule also protects the denturist by providing him with written evidence that the referral was made prior to construction and delivery and the patient receives a copy of the certificate for his/her record. The partial denture referral is necessary to protect the public from the risk of undiagnosed periodontal diseases.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than August 8, 1991.

6. Robert P. Verdon, Esq., of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF DENTISTRY
JOHN T. NOONAN, DDS, PRESIDENT

BY: 

ANDY POOLER, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 17, 1991.

12-6/27/91

MAR Notice No. 8-16-35

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, adoption and repeal) PROPOSED AMENDMENT, ADOPTION
of rules pertaining to the) AND REPEAL OF RULES PERTAINING
practice of dentistry) TO THE PRACTICE OF DENTISTRY

TO: All Interested Persons:

1. On August 8, 1991, at 1:30 p.m., a public hearing will be held in the Rimini Room, Park Plaza, Helena, Montana, to consider the proposed amendment of ARM 8.16.401, 402, 408, 602, 605, 607, 701, 706, 707, 708, 709, 720, 722, 806; repeal ARM 8.16.403, 407, 501 through 509, 603, 704, 710 through 718, 721, 802 and 803; and adoption of new rules I through VII.

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

"8.16.401 APPROVED DENTAL SCHOOLS (1) The state of Montana will accept all candidates who are graduates of dental schools that have been accredited by the commission on ~~accreditation of the American dental association~~ accreditation (CODA)."

Auth: Sec. 37-1-131, 37-4-205, MCA; IMP, Sec. 37-4-302, MCA

REASON: The proposed amendment simply corrects the name of the accrediting commission of the American Dental Association which is the Commission on Dental Accreditation (CODA).

"8.16.402 DENTISTS EXAMINATIONS (1) through (7)(d) will remain the same.

(e) a recent photograph of the applicant; and

(f) upon successful completion of the examination, a licensure fee; and

(g) copies of all current and former licenses held in other states or territories."

Auth: 37-1-131, 37-4-205, 37-4-301, MCA; IMP, Sec. 37-4-301, MCA

REASON: This proposed amendment adds the requirement of filing copies of current and former dental licenses to the list of supporting documents to be filed with the dental application. This additional requirement will align the rules with the statutes.

"8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (b)(iii) will remain the same.

~~(c)---Any applicant for active license status who proves operative competence under this rule must also agree that the board may conduct an on-site practice review during the first two years following their re-entering practice.~~

~~(d) will remain the same but will be renumbered (c).~~

~~(e)---submits a certificate from a duly-licensed physician verifying that the applicant is not subject to any advanced physical or mental disability which impairs the applicant's ability to perform the physical tasks required by practice of the profession; or impairs the applicant's judgment as to render it impossible for the applicant to efficiently and competently practice, which may include:~~

~~(i)---paralytic malfunction;~~

~~(ii)---vision impairment;~~

~~(iii)---senility;~~

~~(iv)---arthritis;~~

~~(v)---M.S., M.D., Parkinson's~~

~~(vi)---or any other disease or condition that impairs ability to practice in an efficient and competent manner.~~

~~(f) (d) presents evidence of having previously fulfilled the licensure requirements of the Montana state board of dentistry.~~

~~(g)---submits such other information that the board or its staff deems necessary to fully evaluate the application."~~

Auth: Sec. 37-4-205, 37-4-307, MCA; IMP, Sec. 37-4-307, MCA

REASON: The Board is proposing to delete (1)(c), (e) and (g) because these requirements for an on-site practice review, physician verification of no advanced physical or mental disabilities, and other such information as the Board deems necessary are improper extensions of authority.

"8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS AND DENTAL AUXILIARIES ~~(i)---Section 37-4-401, MCA requires and authorizes the board of dentistry to define by rule what shall constitute allowable functions in the practice of dental hygiene.~~

~~(a)---Likewise section 37-4-408, MCA so authorizes the board regarding allowable functions in the practice of dental assistant. The following subsections delineate those functions which the board will permit for the hygienist and for the assistant.~~

~~(2) and (3) will remain the same but will be renumbered (1) and (2).~~

~~(a) will remain the same.~~

~~(b) root planing and soft tissue curettage, and~~

~~(c) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist; and~~

~~(d) if certified by the board of dentistry, administer local anesthetic agents.~~

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

~~(a) through (m) will remain the same.~~

~~(5) will remain the same but will be renumbered (4).~~

~~(a) through (n) will remain the same.~~

~~(o) coronal polishing of teeth only in preparation for~~

placement of orthodontic brackets and bands, or at the direction of the dentist, but not identified as, or submitted for payment as, a prophylaxis. As used herein, "coronal polishing" means a procedure limited to the removal of plaque and stain from the exposed tooth surfaces, utilizing and appropriate polishing mechanism and polishing agent.

(6) through (11) will remain the same but will be renumbered (5) through (10).

(12) -- Section 37-4-405, MCA, exempts the functions of dental hygiene instruction from the supervision requirements where such instruction is given in a public or private institution or under a board of health or in a public clinic authorized by the board. Inherent in the board's authorization under this section is the expectation that while the customary supervisory relationship is not required, the dentist who may be responsible to the institution and the hygienist performing the instruction shall meet, confer and review as they may determine the need dictates. Further inherent in the authorization is the obligation of the hygienist to comply with any instructions from the dentist as may be derived from any such consultation.

(11) A dental hygienist shall be exempted from the direct supervision requirements when the hygienist provides instruction in oral hygiene in a public or private institution, under a board of health, or in a public clinic as authorized by the board, pursuant to section 37-4-405(1), MCA. Hygienists authorized to instruct on oral hygiene in this fashion shall meet and confer with the dentist responsible for the facility and review cases as the need dictates. The hygienist is further responsible for complying with any directions or instructions issued by the dentist."

Auth: Sec. 37-1-131, 37-4-205, 37-4-408, MCA; IMP, Sec. 37-4-401, 37-4-405, 37-4-408, MCA

REASON: The Board is proposing to delete subsections (1) and (a) because the language contained in this section is meaningless and not necessary. The proposal also will specifically clarify that a Montana board certified dental hygienist may administer local anesthetic agents. On October 12, 1990, the Montana Dental Hygienists' Association brought to the Board's attention the fact that subsection (5)(c) had been adopted incorrectly 12/22/89. When the Board adopted MAR Notice 8.16.32 in December, 1989, it did not intend to expand the orthodontic assistants' function regarding coronal polishing; however, when the rule was adopted new language "or at the direction of the dentist" was added which, in effect, expanded the duty of coronal polishing by orthodontic assistants upon direction of the dentist and not just for teeth preparation for placement of orthodontic brackets and bands. The Board's intent was to allow coronal polishing only for teeth preparation for placement of orthodontic brackets and bands. Therefore, the Board is amending this rule to allow orthodontic assistants to perform coronal polishing only for teeth preparation for placement of orthodontic brackets and bands. Lastly, the amendment to subsection (12) changes interpretative language to specific rule language. This

section provides for an exemption to direct supervision of the dental hygienist in a public or private institute, under a board of health, or in a public clinic. Thus, under general supervision, a hygienist may be allowed to provide instruction in oral hygiene in a board authorized facility.

"8.16.605 DENTAL HYGIENIST EXAMINATION (1) through (6)(e) will remain the same.
(f) copies of current and former licenses held in other states or territories;

(f) and (g) will remain the same but will be renumbered (g) and (h)."

Auth: Sec. 37-1-131, 37-4-205, 37-4-402, 37-4-403, MCA; IMP, Sec. 37-4-402, 37-4-403, 37-4-404, MCA

REASON: These proposed amendments add the requirement of filing copies of current and former dental hygiene licenses to the list of supporting documents to be filed with the dental hygiene application. This additional requirement will align the rule with the statute.

"8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (b)(iii) will remain the same.

~~(c)--Any applicant for active license status who proves operative competence under this rule must also agree that the board may conduct an on-site practice review during the first two years following their re-entering practice.~~

~~(d) will remain the same but will be renumbered (c).~~

~~(e)--submits a certificate from a duly licensed physician verifying that the applicant is not subject to any advanced physical or mental disability which impairs the applicant's ability to perform the physical tasks required by practice of the profession, or impairs the applicant's judgment as to render it impossible for the applicant to efficiently and competently practice, which may include:~~

~~(i)---paralytic malfunction,~~

~~(ii)---vision impairment,~~

~~(iii)---senility,~~

~~(iv)---arthritis,~~

~~(v)---H.S., H.D., Parkinson's,~~

~~(vi)---or any other disease or condition that impairs ability to practice in an efficient and competent manner.~~

~~(f) (d) presents evidence of having previously fulfilled the licensure requirements of the Montana state board of dentistry.~~

~~(g)--submits such other information that the board or its staff deems necessary to fully evaluate the application."~~

Auth: Sec. 37-1-131, 37-4-205, 37-4-406, MCA; IMP, Sec. 37-4-406, MCA

REASON: The Board is proposing to delete subsections (1)(c), (e) and (g) which require an on-site practice review, physician verification of no advanced physical or mental disabilities, and other such information as the Board deems

necessary. These subsections represent improper extensions of authority.

"8.16.701 SERVICE TO THE PUBLIC AND QUALITY OF CARE

(1) The dentist's primary obligation of in service serving to the public shall ~~include~~ be the delivery of quality care; in a competently and timely fashion, within the bounds of the clinical circumstances presented by the patient. ~~Quality of care shall be a primary consideration of the dental practitioner."~~

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

REASON: The proposed amendments to this rule are to specifically state the dentist's primary obligation shall be quality care to the public. The rule is currently written in the form of an opinion.

"8.16.706 CONSULTATION AND REFERRAL (1) Dentists shall ~~be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge and experience with those licensees or other health care professionals who have special skills, knowledge and experience whenever needed to safeguard the welfare of the patient.~~

(2) When a patients visits or are is referred by his dentist to specialists or consulting dentists for consultation:

(a) The specialists or consulting dentists upon completion of ~~their~~ the patient's care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentists, or if none, to the dentists of record for future care.

(b) will remain the same."

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

REASON: Current rule language states an opinion of the Board. Therefore, the Board is proposing to amend the language to specifically state that dentists shall seek consultations when the patient will benefit.

"8.16.707 RESTRICTION ON USE OF AUXILIARY PERSONNEL

(1) Dentists shall ~~be obliged to protect the health of their patient by only assigning to qualified auxiliaries those duties which can be legally delegated.~~ ~~Dentists shall be further obliged to prescribe and supervise the work of all auxiliary personnel working under their direction and control refrain from assigning to dental auxiliaries any duties or responsibilities regarding patient care that cannot be delegated to auxiliaries under section 37-4-401, et seq., MCA and these rules. In addition, the dentists shall prescribe and supervise the work of all auxiliaries operating under his supervision."~~

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, 37-4-405, 37-4-408, MCA

REASON: Current language states an opinion of the Board. Therefore, the Board is proposing to amend the language to specifically state that dentists shall not delegate duties that cannot be delegated to auxiliaries and that they shall prescribe and supervise the work of all auxiliaries operating under his supervision.

"8.16.708 JUSTIFIABLE CRITICISM AND EXPERT TESTIMONY

(1) ~~Dentists shall be obliged to report to the appropriate reviewing agency instances of gross and/or continual faulty treatment by other dentists. If there is evidence of such treatment, the patient should be informed. Dentists shall be obliged to refrain from commenting disparagingly without justification about the services of other dentists. Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action. Dentists shall report to the board or to a peer review network instances of gross mistreatment by other dentists or evidence of continual faulty treatment by other dentists. If there is evidence of such treatment, the patient should be informed of his present oral health status. Dentists shall not comment disparagingly about the services of other dentists, however, if they have reasonable cause to believe their concerns are well founded, they should address them to the board or to peer review. Dentists may provide expert testimony in a judicial or administrative action so long as they are not paid a contingent fee."~~

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

REASON: Current language states an opinion of the Board. Therefore, the Board is proposing to amend the language to specifically state that dentists shall report to the state board or peer review network instances of gross mistreatment.

"8.16.709 REBATE AND SPLIT FEES (1) Dentists shall not accept or tender "rebates" or "split fees" refrain from accepting or tendering "rebates" or "split fees" which are commissions paid to others for referral of business."

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

REASON: The Board is proposing to amend this rule because current language is in the form of a Board opinion.

"8.16.720 STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS

(1) will remain the same.

(2) ~~Dentists who completed their advance education in programs listed by the council on dental education prior to the initiation of the accreditation process in 1967 and who are currently ethically announcing as a specialist in the recognized area may announce in additional areas provided they~~

~~are educationally qualified or are certified diplomates in each area for which they wish to announce. Documentation of successful completion of the educational program(s) must be submitted to the appropriate constituent society. The documentation must assure that the duration of the program(s) is a minimum of 2 years except for oral and maxillofacial surgery which must have been a minimum of 3 years in duration."~~

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

REASON: The Board is proposing to delete subsection (2) because general standards for announcing specialties is already covered in ARM 8.16.719 and 37-4-502, MCA.

"8.16.722 UNPROFESSIONAL CONDUCT (1) through (1)(v) will remain the same.

(w) failing to supervise and monitor the actions of all dental auxiliaries in regard to patient care;

(x) engaging in false or misleading advertising as defined by ARM 8.16.501, et seq.; and

(y) violating the regulations concerning the administration of anesthesia."

Auth: Sec. 37-4-205, 37-4-321, 37-4-405, MCA; IMP, Sec. 37-4-321, 37-4-405, MCA

REASON: The Board is proposing these amendments to expand grounds for unprofessional conduct and to align the rule with appropriate statutes.

"8.16.806 REQUEST FOR HEARING (1) The applicant or licensee is entitled to a hearing before the board which is requested by depositing in the mail 20 30 days after receipt of notice, a certified letter addressed to the department and containing such request."

Auth: Sec. 37-1-136, 37-1-137, 37-4-205, MCA; IMP, Sec. 37-1-136, 37-1-137, MCA

REASON: The Board proposes to amend 20 days to 30 days simply to extend the time frame for requesting a hearing before the Board.

3. The rules proposed for repeal can be found at pages 8-504 through 520, and 8-525 of the Administrative Rules of Montana.

The Board is proposing to repeal ARM 8.16.403 because it is repetitive of ARM 8.16.405 Fee Schedule and serves no real purpose - Auth: Sec. 37-1-134, MCA; IMP, Sec. 37-4-202, MCA; 8.16.407 because identification of dentures is already required by 37-4-503, MCA, and requiring that the dentist permanently place his license number in the denture is an improper extension of authority - Auth: Sec. 37-4-205, IMP, Sec. 37-4-205, 37-4-503, MCA; 8.16.501 through 8.16.509 because the rules are interpretative rules and are vague, ambiguous and in some cases an improper extension of authority - Auth: Sec. 37-4-205, IMP, Sec. 37-4-322, MCA

ARM 8.16.603 is being proposed for repeal because all board meetings are open to the public and anyone may attend

the open meetings. This rule is unnecessary - Auth: Sec. 37-4-202, MCA; IMP, Sec. 2-3-103, MCA.

The Board is also proposing to repeal ARM 8.16.704 because the rule is repetitive of ARM 8.16.722 - acts constituting unprofessional conduct, Auth: Sec. 37-4-205, 37-4-321, MCA, IMP, Sec. 37-4-321, MCA; 8.16.710 because current language states an opinion of the Board and implies continuing education is required when in fact it is not; 8.16.711 because membership requirement in any association is an improper extension of authority; 8.16.712 because limiting or controlling research and development is an improper extension of authority; 8.16.713 because failure to exercise due regard for the safety, health, and welfare of a patient constitutes unprofessional conduct as defined in ARM 8.16.722 - Auth: Sec. 37-4-205, 37-4-321, MCA, IMP, Sec. 37-4-321, MCA.

ARM 8.16.714 is being proposed for repeal because state Board regulation of patents and copyrights is an improper extension of authority - Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA.

The Board is proposing to repeal ARM 8.16.715 through 8.16.718 because they conflict with the advertising restrictions as authorized by 37-4-502, MCA. In addition to advertising regulation by the board as allowed by 36-4-502, the Board is proposing new advertising rules in this notice similar to those that have been approved by the Federal Trade Commission - Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA.

ARM 8.16.721 is being proposed for repeal because general practitioner announcement of services is already covered by ARM 8.16.719 and 37-4-502, MCA - Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA.

Also proposed for repeal are ARM 8.16.802 and 8.16.803 because the existing rule on license probation and reprimand or censure of a licensee poses conflicts with the unprofessional conduct rules as established by the Board. Also the existing rules are vague and are somewhat repetitious of 37-4-321, MCA - Auth: Sec. 37-1-136, 37-4-205, MCA; IMP, Sec. 37-1-136.

4. The proposed new rules will read as follows:

"I POLICY (1) The lack of sophistication by many persons concerning dental services, the importance of the interests affected by the selection of a dentist and the foreseeable consequences of unrestricted advertisement by dentists, which is recognized to pose distinct possibilities for deception, require that dentists take special care to avoid misleading the public about the services they provide. The benefits of advertising depend upon its reliability and accuracy. Because advertising by dentists is calculated and not spontaneous, the imposition of reasonable regulation to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-4-322, MCA

"II DEFINITIONS The following definitions apply for purposes of these regulations governing the practice of advertising as well as regarding the rules of professional conduct:

(1) "Advertisement" is any communication made or disseminated to the public in any manner designed to attract public attention to the practice of a dentist who is licensed to practice dentistry in Montana;

(2) "Licensee" is any person holding a license to practice dentistry in the state of Montana;

(3) "Material fact" is any fact that an ordinary, reasonable, and prudent person would need to know or rely upon in making an informed decision concerning dental care or the selection of a dentist to serve his or her particular needs;

(4) "Bait and switch advertising" is an alluring but insincere offer to sell a product or provide a service that the advertiser, in truth, does not intend or want to sell and which is designed to switch the consumer from purchasing the advertised product or service to another product or service, usually at a higher fee or on a basis more advantageous to the advertiser;

(5) "Discounted fee" is a fee offered or charged by a person or organization for any dental product or service that is less than the fee the person or organization usually offers or charges for the product or service but does not include products or services explicitly offered free of charge."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-4-322, MCA

"III FEE INFORMATION (1) Fixed fees may be advertised for any service. It is presumed, however, that unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professionally recognized components within generally accepted standards that are required to complete the service.

(2) A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception to the public.

(3) Discounted fees may be advertised if the discounted fee is actually lower than the licensee's customary or normal fee charged for the service and the licensee provides the same quality and components of service and material that he or she provides at the normal, nondiscounted fee for that same service.

(4) Related services that may be required in conjunction with the advertised services for which additional fees will be charged must be identified in any advertisement.

(5) Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time. If there is no time period stated in the advertisement of fees, the advertised fee shall be honored for 30 days from the last day of publication or until the next scheduled publication, whichever is later."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-4-322, MCA

"IV ADVERTISING CONTENT The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct and shall subject the licensee to disciplinary action pursuant to section 37-4-321, MCA, and ARM 8.16.701, et seq.:

(1) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.

(2) The misleading use of an unearned or non-health degree in any advertisement.

(3) Promotion of a professional service that the licensee knows or should know is beyond the licensee's ability to perform.

(4) Use of advertising techniques that intimidate, exert undue pressure or undue influence over a prospective patient.

(5) Any appeal to an individual's anxiety in an excessive or unfair manner.

(6) Use of personal testimonials attesting to a licensee's competence in service or treatment that is not reasonably verifiable.

(7) Use of statistical data or other information based on past performances or other prediction of future services that creates an unjustified expectation about results that the licensee can achieve.

(8) Communication of personally identifiable facts, data, or information about a patient without first obtaining patient consent.

(9) Any misrepresentation of a material fact.

(10) Knowingly suppressing, omitting, or concealing any material fact or law without which the advertisement would be deceptive or misleading.

(11) Making statements concerning the benefits or other attributes of dental products or services involving significant risks without including an assessment of the safety and efficiencies of the products or services as well as detailing the availability of alternatives, if any, and if needed to avoid deception, an assessment of the benefits or other attributes of those alternatives.

(12) Any communication that creates an unjustified expectation concerning the potential results of any dental treatment.

(13) Failure to comply with the rules governing advertisement of dental fees and services, specialty advertisement and advertising records.

(14) The use of "bait and switch" advertisements. In investigating complaints of "bait and switch" advertising, the board may require the licensee to furnish to the board or its representative data or other evidence pertaining to sales made at the advertised fee as well as other sales.

(15) Misrepresentation of a licensee's credentials, training, experience or ability.

(16) Failure to include the corporation, partnership or

individual licensee's name and address and telephone number in any advertisement. Any dental corporation, partnership or association that advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall provide a list of all licensees practicing at that location upon request and conspicuously display in the licensee's office a directory listing all licensees practicing at that location.

(17) Failure to disclose providing compensation or other consideration to representatives of the press, radio, television or other medium in return for any advertisement unless the nature, format or medium of such advertisement makes the fact of compensation or consideration evident.

(18) Use of the name of any licensee formerly practicing at or associated with any advertised location more than 30 days after that licensee has left the practice. This rule shall not apply to a retired or deceased former associate who practiced dentistry in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.

(19) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.

(20) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-4-322, MCA

"V. SPECIALTY ADVERTISING (1) The special areas of dental practice approved by the American dental association and the designation for ethical specialty announcement limitation of practice are:

- (a) dental public health;
- (b) endodontics;
- (c) oral pathology;
- (d) oral and maxillofacial surgery;
- (e) orthodontics;
- (f) pedodontics (dentistry for children);
- (g) periodontics; and
- (h) prosthodontics.

(2) A licensee may not advertise using the terms "specialist", "specializing" or "practice limited to" unless the licensee has met the board standards for specialization as set forth in ARM 8.16.719 and 8.16.720 and the branch of dentistry advertised as a specialty branch of dentistry is sanctioned as a specialty branch of dentistry by (1) above.

(3) A licensee who possesses a verifiable combination of education and experience is not prohibited from including in his practice one or more branches of dentistry. Any advertisement of such practice shall not make use of the terms "specialty", "specializing", "specialist" or "practice limited to" and must contain the statement "the services are being performed or provided by a general dentist," or words to that effect, and such statement must appear or be expressed in the advertisement as conspicuously as the branch of dentistry

advertised."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-4-322, MCA

"VI ADVERTISING RECORDS AND RESPONSIBILITY (1) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision also shall include any licensed professional employees acting as an agent of such firm or entity.

(2) All advertisements are presumed to have been approved by the licensee named therein.

(3) A recording of every advertisement communicated by electronic media and a copy of every advertisement communicated by print media, as well as a copy of any other form of advertisement, indicating the date, place and duration of the advertisement shall be retained by the licensee for a period of two years from the last date of broadcast or publication and shall be made available to the board or its representative upon request.

(4) When placing advertising, the licensee must possess such information which, when produced, would substantiate the truthfulness of any assertion or representation of material fact made in the advertisement."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-4-322, MCA

"VII SEVERABILITY It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance."

Auth: Sec. 37-4-205, MCA; IMP, 37-4-322, MCA


REASON: These new rules permit public access to a wider range of truthful information about the availability of dental services. The new rules will stimulate competition among dentists, and, in the process, improve the efficiency with which dental services are delivered, while protecting the public from deceptive advertising. These proposed rules are similar to rules that have been approved by the Federal Trade Commission.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson,

Helena, Montana 59620-0407, no later than August 8, 1991.

6. Robert P. Verdon, Esq., of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF DENTISTRY
JOHN T. NOONAN, DDS, PRESIDENT

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 17, 1991.

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

In the matter of the adoption of) NOTICE OF PUBLIC HEARING
new rules I through XXVI dealing) FOR PROPOSED ADOPTION
with licensing for specialty) OF NEW RULES
residential mental health service)

(Licensing & Certification)

To: All Interested Persons

1. On August 26, 1991, at 9:00 a.m., the Department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules, which establish licensure standards for a new class of health care facility offering mental health services to those afflicted with addictive disorders.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The rules, as proposed, appear as follows:

RULE I SPECIALTY MENTAL HEALTH FACILITY--APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in this chapter conflict with the terms of [Rules II through XXVI], the terms of [Rules II through XXVI] will apply to specialty mental health facilities.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE II SPECIALTY MENTAL HEALTH FACILITY--DEFINITIONS

(1) As used in [Rules I through XXVI], the following definitions apply:

(a) "Specialty mental health facility" means a health care facility that provides specialty mental health services in a residential setting to patients with mental health conditions associated with addiction and may include a specialty unit attached to another type of licensed health care facility.

(b) "Addiction" means habituation, and psychological dependence upon a substance or behavior for the purpose of achieving euphoria or temporary relief from painful stimuli, whether or not the stimuli are internal or external in origin.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE III SPECIALTY MENTAL HEALTH FACILITY--REQUIRED TREATMENT SERVICES (1) A specialty mental health facility must:

(a) Provide an individually planned regime of 24-hour professionally directed evaluation, care, and treatment for each patient with mental health conditions associated with addiction that it serves, pursuant to a defined set of written policies and procedures;

(b) Have permanent facilities that include, at least, inpatient beds;

(c) Utilize a multi-disciplinary staff appropriate and sufficient to care for patients whose emotional/behavioral problems are severe enough to require residential services; and

(d) Provide 24-hour observation to residents, and have medical monitoring and treatment available to them on a 24-hour basis.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE IV. SPECIALTY MENTAL HEALTH FACILITY--PROHIBITIONS

(1) A specialty mental health facility may not admit as a patient any person who:

(a) does not voluntarily seek admission;

(b) requires physical or chemical restraints;

(c) is non-ambulatory or bedridden;

(d) may have impaired judgement or is incapable of appropriate physical action for self-preservation under emergency conditions;

(e) requires a medication regime to orient him or her to reality, or for stabilization or any other purpose related to behavior modification;

(f) requires intensive supervision or specialized therapeutic interaction;

(g) requires a treatment that focuses on management of a psychiatric condition that may endanger the person, facility staff, or others;

(h) requires electro-convulsive therapy;

(i) requires a locked environment; or

(j) requires treatment for a mental health condition other than one associated with an addiction related to eating disorders, gambling, or sexual behavior.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE V. SPECIALTY MENTAL HEALTH FACILITY--ORGANIZATIONAL STRUCTURE; GOVERNING BODY (1) A specialty mental health facility must have a governing body that is legally responsible for the conduct of the facility and that:

(a) Ensures that the medical and professional staff of the facility:

(i) are appointed by the governing body to the medical staff after the governing body considers the recommendations of the existing members of the medical staff;

(ii) have bylaws and written policies that are approved by the governing body;

(iii) are accountable to the governing body for the quality of care provided to patients; and

(iv) are selected on the basis of individual character, competence, training, experience, judgment, and professional qualifications according to the specific areas in which they are to provide medical treatment.

(b) Appoints a chief executive officer who is responsible for managing the facility.

(c) In accordance with a written policy ensures that:

- (i) Every patient is under the care of a psychiatrist;
and
- (ii) Whenever a patient is admitted to the facility, the admission procedures required by [Rule XI] are followed.
- (d) Prepares, adopts, reviews, and updates annually an overall institutional plan that includes the following:
 - (i) a system of financial management and accountability;
and
 - (ii) a system that assures that members of the governing body and appropriate administrative and professional staff have adequate and comprehensive liability insurance.
- (e) Maintains a list of all contracted services, including the scope and nature of the services provided, and ensures that a contractor providing services to the facility:
 - (i) furnishes services that permit the facility, including the contracted services, to comply with all applicable licensure standards; and
 - (ii) provides the services in a safe and effective manner that will ensure that a patient may be able to return to a community setting as soon as possible.
- (f) Ensures that the medical and nursing staff of the facility are licensed, certified, or registered in accordance with Montana law and rules and that each staff member provides health services within the scope of his or her license, certification, or registration.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE VI SPECIALTY MENTAL HEALTH FACILITY--MEDICAL AND PROFESSIONAL STAFF (1) A specialty mental health facility must:

- (a) Have a single, organized professional staff with overall responsibility for the quality of all clinical care provided to patients and the professional practices of its members;
- (b) Employ or contract with the numbers of qualified professional and support staff necessary to adequately evaluate patients; formulate written, individualized, and comprehensive treatment plans; provide active treatment measures; and engage in discharge planning.
- (c) Ensure that the medical staff adopts and enforces bylaws approved by the governing body that include:
 - (i) a description of the qualifications a medical and professional staff candidate must meet in order to be recommended to the governing body for appointment;
 - (ii) a statement of the duties and privileges of each category of medical and professional staff.
 - (iii) a requirement that a physical examination be made and medical history taken of a patient by a member of the medical staff no more than 7 days before or 24 hours after the patient's admission to the facility.
- (d) Ensure that the medical staff includes at least one Montana-licensed psychiatrist.
- (e) Ensure that a staff psychiatrist does the following:
 - (i) Provides medical direction for the facility's resi-

dential mental health care activities and consultation for, and medical supervision of, non-physician health care staff; and

(ii) Reviews and signs the records of each patient admitted by a physician or non-physician health care staff no later than 24 hours after admittance to the facility.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE VII. SPECIALTY MENTAL HEALTH FACILITY--NURSING SERVICES (1) A specialty mental health facility must provide 24-hour nursing services and meet the following standards:

(a) The director of nursing services must be a licensed registered nurse and must:

(i) determine the types and numbers of nursing personnel and staff necessary to provide nursing care; and

(ii) schedule adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care as needed.

(b) A registered nurse must be on duty at least 8 hours per day, and the director of nursing or another registered nurse designated as the director's alternate must be on call and available within 20 minutes at all times.

(c) The nursing service must have a procedure to ensure that all nursing personnel have valid and current nursing licenses.

(d) The nursing staff must develop and keep current a nursing care plan for each patient when a nursing care plan is required.

(e) Upon admission of a patient to the facility, a registered nurse must assign the nursing care of that patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(f) All drugs and biologicals must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state law and rules, including applicable licensing requirements, and in accordance with medical staff policies and procedures which have been approved by the governing body.

(g) Each order for drugs and biologicals must be consistent with federal and state law and be in writing and signed by the practitioner who is both responsible for the care of the patient and legally authorized to prescribe.

(h) When an oral or telephonically-transmitted order must be used, it must be:

(i) accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and

(ii) signed or initialed by the prescribing practitioner as soon as possible and in conformity with state and federal law.

(i) The facility must adopt a procedure for reporting to the attending practitioner adverse drug reactions and errors in administration of drugs.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE VIII SPECIALTY MENTAL HEALTH FACILITY--ADMINISTRATOR

(1) A specialty mental health facility must have an administrator who has formal training and/or experience which demonstrates an ability to perform the functions and duties required by these licensure rules.

(2) The facility must ensure that the administrator is on the premises the number of hours necessary to manage and administer the facility in compliance with these licensure rules.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE IX SPECIALTY MENTAL HEALTH FACILITY--PHARMACEUTICAL SERVICES

(1) A specialty mental health facility must have pharmaceutical services that meet the needs of the patients and include either a pharmacy directed by a registered pharmacist or a drug storage area under the supervision of a consulting pharmacist who develops, supervises, and coordinates all the facility's pharmacy services.

(2) The facility must ensure that:

(a) The pharmacy or drug storage area is administered in accordance with accepted professional principles.

(b) When a pharmacist is not available, drugs and biologicals are removed from the pharmacy or storage area solely by the personnel designated in writing in medical staff and pharmaceutical services policies, and in a manner consistent with federal and state law.

(c) All compounding, packaging, and dispensing of drugs and biologicals is under the supervision of a pharmacist and performed in a manner consistent with federal and state law and rules.

(d) Drugs and biologicals are kept in a locked storage area.

(e) Outdated, mislabeled, or otherwise unusable drugs and biologicals are removed from the facility and destroyed.

(f) Drug administration errors, adverse reactions, and incompatibilities are immediately reported to the attending practitioner.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE X SPECIALTY MENTAL HEALTH FACILITY--TREATMENT TEAM

(1) A specialty mental health facility must have a multi-disciplinary treatment team supervised and directed by the admitting psychiatrist, and consisting of individuals licensed, registered, or certified in the professional disciplines appropriate to the condition of each patient.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XI SPECIALTY MENTAL HEALTH FACILITY--ADMISSION PROCEDURES

(1) A specialty mental health facility must develop, maintain, and implement admission procedures designed to ensure that no client is admitted prior to the facility's determination of its ability to meet the needs of the client

based on an appraisal of the client's individual service needs.

(2) The facility must assign a licensed psychiatrist to admit all patients according to a defined set of admission criteria based upon the Diagnostic and Statistical Manual III-R (DSM III-R) of the American Psychiatric Association and may admit patients whose mental health conditions are associated with addictions related to eating disorders, gambling, or sexual behavior.

(3) Whenever a patient is admitted to the facility by a physician other than a psychiatrist, the facility must assure that the physician consults with the facility psychiatrist, by phone or otherwise, within 12 hours after admission and that a written notation of that consultation and the psychiatrist approval of the admission for a mental health condition or suspected mental health condition is made and kept in the patient's records.

(4) Each patient must receive a psychiatric evaluation that must be completed within 60 hours of admission; include a medical history; contain a record of mental status; note the onset of illness and the circumstances leading to admission; describe attitudes and behavior; estimate intellectual functioning, and orientation; and include an inventory of the patient's assets in descriptive rather than interpretive fashion.

(5) When indicated, a complete neurological examination must be conducted within 72 hours of admission.

(6) A licensed physician must conduct a physical examination of each patient within 24 hours after or 7 days prior to that patient's admission.

(7) The department hereby incorporates by reference the DSM III-R of the American Psychiatric Association, which contains descriptions of various diagnoses of mental disorders. A copy of each manual may be obtained from the American Psychiatric Association, 1700 18th Street NW, Washington, D.C. 20009.
AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XII SPECIALTY MENTAL HEALTH FACILITY--CLINICAL PROGRAM (1) Each patient must have an individual comprehensive treatment plan that must be based on an inventory of the patient's strengths and disabilities or mental impairment as defined by the multi-disciplinary treatment team and approved by the evaluating psychiatrist.

(2) A multi-disciplinary treatment team must provide:

(a) daily clinical services to each patient to assess and treat the person's individual needs, services including appropriate medical, psychological, and health education services; and

(b) individual, family and group counseling.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XIII SPECIALTY MENTAL HEALTH FACILITY--STAFF DEVELOPMENT (1) A staff development program must be provided for administrative, professional, and support personnel, and must be supervised and directed by a staff committee or qualified

person.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XIV SPECIALTY MENTAL HEALTH FACILITY--FOOD AND DIETETIC SERVICES (1) A specialty mental health facility must have dietary services that are directed and staffed by adequate personnel and meet the following standards:

(a) The facility must assign an employee or contract with a consultant who is qualified by experience and training as a food service supervisor to direct the food and dietetic service and to be responsible for the daily management of the dietary service.

(b) The facility must utilize a qualified dietitian, on a full-time, part-time, or consultant basis.

(c) Any therapeutic diet for a patient must be prescribed by the practitioner responsible for the care of that patient.

(d) Nutritional needs must be met in accordance with recognized dietary practices and, at a minimum, the recommended daily dietary allowances established by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, 8th edition, 1974.

(2) The department hereby incorporates by reference the recommended daily dietary allowances established by the Food and Nutritional Board of the National Research Council, National Academy of Sciences, 8th edition, 1974, which set minimum nutrition requirements for human beings. A copy of the above dietary allowances may be obtained from the department's Licensing and Certification Bureau, Cogswell Bldg., Helena, Montana 59620 [444-5401].

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XV SPECIALTY MENTAL HEALTH FACILITY--OUTPATIENT SERVICES (1) If the specialty mental health facility provides outpatient services, each outpatient must be examined by a practitioner and the services must meet the standards contained in ARM 16.32.355.

(2) The department hereby incorporates by reference ARM 16.32.355, which contains minimum licensure standards for outpatient facilities. Copies of ARM 16.32.355 may be obtained from the department's Licensing and Certification Bureau, Cogswell Bldg., Helena, Montana 59620 [444-5401].

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XVI SPECIALTY MENTAL HEALTH FACILITY--MEDICAL RECORDS (1) A specialty mental health facility must maintain a medical records system in accordance with written policies and procedures, as well as meet the following standards:

(a) Employ adequate personnel to ensure prompt and systematic completion, filing, and retrieval of records.

(b) Create and maintain a record for each person receiving health care services from the facility that includes, if applicable:

- (i) identification and social data;
- (ii) admitting diagnosis;

- (iii) pertinent medical history;
- (iv) properly executed consent forms;
- (v) reports of physical examinations, diagnostic and laboratory test results, and consultation findings;
- (vi) all physician's orders, nurses' notes, and reports of treatments and medications;
- (vii) final diagnosis;
- (viii) discharge summary; and
- (ix) any other pertinent information necessary to monitor the patient's prognosis.

(c) Include in each record the signatures of the physician or other health care professional authoring the record entries.

(d) Complete records of a discharged patient within 30 days after the discharge date and include, in addition to the information cited in (b) above, a recapitulation of the patient's period of treatment, a recommendation of the appropriate follow-up or aftercare services for the patient, and a brief summary of the patient's medical and mental condition on discharge.

(e) Have written policies and procedures ensuring the confidentiality of patient records, and safeguards against loss, destruction or unauthorized use, in accordance with applicable state and federal law and including policies and procedures which:

(i) govern the use and removal of records from the record storage area;

(ii) specify the conditions under which information may be released and by whom;

(iii) specify when the patient's consent is required for release of information, in accordance with Title 50, chapter 16, part 5, of the Uniform Health Care Information Act.

(f) In addition to the above, adhere to the provisions of ARM 16.32.308.

(2) The department hereby adopts and incorporates by reference ARM 16.32.308, which contains medical records requirements for types of health care facilities other than hospitals. Copies may be obtained from the department's Licensing and Certification Bureau, Cogswell Bldg., Helena, Montana 59620 [444-5401].

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XVII SPECIALTY MENTAL HEALTH FACILITY--QUALITY ASSURANCE

(1) The governing body of the facility must ensure that there is an effective, on-going, facility-wide written quality assurance program and implementation plan in effect which ensures and evaluates the quality of the patient care provided there and which includes the following:

(a) Periodic review, not less than semi-annually, in order to determine whether utilization of services was appropriate, established policies were followed, and any changes are needed of the following:

(i) the utilization of facility services, including at least the number of patients served and the volume of services;

(ii) a representative sample consisting of not less than 10% of both active and closed patient records; and

(iii) the facility's health care policies.

(b) Consideration by the facility's medical staff of the findings of the evaluation and the taking of subsequent remedial action, if necessary.

(c) Evaluation of all services provided by contractors.

(d) Implementation of a discharge planning program that facilitates the provision of post-discharge care and:

(i) Ensures that discharge planning for each patient is initiated in a timely manner; and

(ii) Ensures that each patient, along with the necessary medical information, is transferred or referred to appropriate facilities, agencies, or outpatient services, as needed, for continued, follow-up, or ancillary care.

(e) The taking and documentation of appropriate remedial action to address deficiencies found through the quality assurance program, as well as documentation of the outcome of the remedial action.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XVIII SPECIALTY MENTAL HEALTH FACILITY--UTILIZATION REVIEW (1) A specialty mental health facility must:

(a) Have in effect a utilization review plan to review services furnished by the facility to patients, both through contracted services and by members of its medical staff to patients.

(b) Contract with the state peer review organization (PRO) or its department-approved equivalent to do the following:

(i) certify whether all admissions to the facility were medically necessary; and

(ii) periodically sample facility cases and review them to determine the medical necessity of the professional services furnished, including drugs and biologicals.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XIX SPECIALTY MENTAL HEALTH FACILITY--INFECTION CONTROL (1) A specialty mental health facility must ensure that:

(a) the facility has an effective facility-wide infection control surveillance program developed for the identification, investigation, prevention and control of nosocomial infections.

(b) the facility has written policies and procedures that describe the types of surveillance carried out to monitor the rates of nosocomial infections, the systems used to collect and analyze data, and the activities carried out to prevent and control infection.

(c) A staff member is designated as a manager of the infection control program who has education, training or experience related to infection control, that facility records contain documented evidence of the manager's qualifications, and that the manager participates in continuing education in the area of infection control.

(d) A multi-disciplinary committee oversees the program for surveillance, prevention, and control of infection, a committee that includes the designated infection control manager and representatives from the professional staff; administration; and housekeeping, laundry, dietary, maintenance and pharmacy services; and meets whenever the committee members determine the facility needs such a meeting.

(e) Each department, including housekeeping, laundry, dietary, maintenance, pharmacy, and nursing/medical, develops and implements policies and procedures which reflect current and accepted infection control standards of practice, and that these policies are updated and reviewed annually by the infection control committee.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XX SPECIALTY MENTAL HEALTH FACILITY--PHYSICAL ENVIRONMENT (1) The facility must maintain adequate facilities for its services, the extent and complexity of facilities being determined by the services offered.

(2) The facility must be constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public.

(3) The facility must be constructed to prevent vermin problems.

(4) The facility must be kept clean and free of odors.

(5) Daily housekeeping services must be provided.

(6) Walls, ceilings, floors, and furniture must be kept clean and in good repair.

(7) Electrical, mechanical, plumbing, and heating systems must be in good, safe condition.

(8) Facilities, supplies, and equipment must be maintained to ensure an acceptable level of safety and quality.

(9) The facility must establish a written preventative maintenance program to ensure that all equipment is operative.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XXI SPECIALTY MENTAL HEALTH FACILITY--EMERGENCY SERVICES (1) The facility must ensure that patients have access to emergency services and to more intensive levels of care, including acute psychiatric care, whether or not such care is provided by the facility.

(2) If emergency medical services or more intensive psychiatric care are not available within the facility, the facility must have an agreement with an outside source for these services to ensure that they are immediately available to those who may need them.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XXII SPECIALTY MENTAL HEALTH FACILITY--ENVIRONMENTAL CONTROL (1) A specialty mental health facility must be constructed and maintained so as to prevent entrance and harborage of rats, mice, insects, flies or other vermin.

(2) Hand cleansing soap or detergent and individual towels must be available at each lavatory in the facility. A

waste receptacle must be located near each lavatory.

(3) The facility must develop and follow a written infection surveillance program describing the procedures that must be utilized by the entire facility staff in the identification, investigation, and mitigation of infections acquired in the facility.

(4) Cleaning devices used for lavatories, toilet bowls, urinals, showers, or bathtubs may not be used for other purposes, and those utensils used to clean toilets or urinals must not be allowed to contact other cleaning devices.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XXIII SPECIALTY MENTAL HEALTH FACILITY--DISASTER

PLAN (1) A specialty mental health facility must develop a disaster plan in conjunction with other emergency services in the community which includes a procedure that will be followed in the event of a natural or man-caused disaster.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XXIV SPECIALTY MENTAL HEALTH FACILITY--LAUNDRY AND BEDDING

(1) If a specialty mental health facility processes its own laundry on the facility site, it must:

(a) Set aside a room for laundry and utilize it solely for that purpose.

(b) Equip the laundry with a mechanical washer and dryer (or additional machines if necessary to handle the laundry load), handwashing facilities, mechanical ventilation to the outside, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 160 degrees fahrenheit (71 degrees celsius) during each use for 25 minutes, or, if lower temperatures are used, with chemicals suitable for low temperature washing.

(c) Sort and store soiled laundry in an area separate from that used to sort and store clean laundry.

(d) Provide well-maintained carts or other containers impervious to moisture to transport laundry, keeping those used for soiled laundry separate from those used for clean laundry.

(e) Dry all bed linen, towels, and washcloths in a mechanical dryer.

(f) Protect clean laundry from contamination.

(g) Ensure that facility staff use hygienic techniques while handling soiled and clean laundry, including:

(i) covering their clothing while working with soiled laundry;

(ii) using separate clean covering for their clothes while handling clean laundry; and

(iii) washing their hands both after working with soiled laundry and before they handle clean laundry.

(2) The facility must maintain a linen supply adequate to provide changes of bed and bath linens at appropriate intervals.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XXV SPECIALTY MENTAL HEALTH FACILITY--LIFE SAFETY

AND BUILDING CODE (1) A specialty mental health facility must be in compliance with the provisions of:

(a) the 1991 National Fire Protection Association (NFPA) 101 Code, Chapter 21, residential occupancy; and

(b) the 1988 Uniform Building, Electrical, and Mechanical Codes.

(2) The department hereby adopts and incorporates by reference the 1991 NFPA 101 Code, Chapter 21, residential occupancy, and the 1988 Uniform Building, Electrical, and Mechanical Codes, which set national building and safety standards for various types and uses of buildings. Copies of the codes may be obtained from the department's Licensing and Certification Bureau, Cogswell Bldg., Helena, Montana 59620 [444-5401].

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE XXVI SPECIALTY MENTAL HEALTH FACILITY--PHYSICAL PLANT

(1) Each patient room in a specialty mental health facility must meet the following standards:

(a) No more than four patients may be housed in a room.

(b) Patient room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, must be at least 100 square feet (9.29 square meters) in single-bed rooms and 80 square feet (7.43 square meters) per bed in multiple-bed rooms; minor encroachments, including columns and lavatories, that do not interfere with functions, may be ignored when determining space requirements for patient rooms.

(c) Multiple-bed rooms must allow a minimum clearance of 3 feet 8 inches (1.12 meters) at the foot of each bed to permit the passage of equipment and beds.

(d) Each room must have a window in accordance with section 7.28A(11) of the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 edition) published by the American Institute of Architects.

(e) In new construction, handwashing facilities must be provided.

(f) If a room is renovated and/or modernized, the lavatory must be added if it does not already exist, unless, in the case of a single bed room or a two-bed room, a water closet and lavatory are provided in a toilet room designed to serve that room.

(g) Each patient must have access to a toilet room without having to enter the general corridor area.

(h) Each patient must have within his/her room a separate wardrobe, locker, or closet suitable for hanging full-length garments and for storing personal effects.

(2) A toilet room must:

(a) serve no more than four beds and not more than two patient rooms.

(b) contain a water closet and a door that either swings outward or is double-acting.

(c) contain a lavatory unless each patient room served by that toilet contains a lavatory for handwashing.

(3) Service areas must meet the following standards:

(a) The services noted below must be located in or readily available to each nursing unit:

- (i) Administrative center or nurses' station.
- (ii) Nurses' office for floor staff.
- (iii) Administrative supplies storage.
- (iv) A lavatory for handwashing.
- (v) Charting facilities.
- (vi) Toilet room(s) for staff.
- (vii) Staff lounge facilities; these may be on another floor so long as they are centrally located.

(viii) Closets or cabinet compartments for the personal effects of nursing personnel; however, coats may be stored in closets or cabinets on each floor or in a central staff locker area.

(ix) Multipurpose room(s) for staff and patient conferences, education, demonstrations, and consultation; such a room may be on another floor if convenient for regular use and may serve several nursing units and/or departments.

(x) Examination and treatment room(s), unless all rooms in the facility are single-bed patient rooms; the room(s) may serve several nursing units and may be on a different floor if conveniently located for routine use.

- (xi) Clean workroom or clean holding room.
- (xii) Soiled workroom.
- (xiii) Drug distribution station.
- (xiv) Clean linen storage in each nursing unit.
- (xv) Nourishment station.
- (xvi) An ice machine in each nursing unit to provide ice for treatments and nourishment.

- (xvii) Equipment storage room.
- (xviii) Showers, bathtubs, and sitz baths.
- (xix) Emergency equipment storage space.
- (xx) At least two separate social spaces, one appropriate for noisy activities and one for quiet activities.

- (xxi) Space for group therapy.
- (xxii) Occupational therapy unit.

(b) The size and location of each service area will depend upon the numbers and types of beds served.

(c) Identifiable spaces are required for each of the service areas listed in (a) above, but where the area is described as a room or office, a separate, enclosed space for the area is required; otherwise, the described area may be a specific space in another room or common area.

(d) Each service area may be arranged and located to serve more than one nursing unit but, unless noted otherwise in this subsection, at least one of each type of service area must be provided on each nursing floor.

(e) Examination rooms must have a minimum floor area of 120 square feet (11.2 square meters) excluding space for vestibule, toilets, and closets, and contain a lavatory or sink equipped for handwashing, storage facilities, and a desk, counter, or shelf space for writing.

(f) A clean workroom or clean holding room used must contain:

(i) a work counter and handwashing and storage facilities if it is used for preparing patient care items.

(ii) storage facilities alone if the room is used only for storage and holding as part of a system to distribute clean and sterile supply materials.

(g) A soiled work room must contain:

(i) a clinical sink or equivalent flushing-rim fixture, a sink equipped for handwashing, a work counter, waste receptacles, and a linen receptacle. Rooms used only for temporary holding of soiled material need not contain handwashing sinks or work counters. However, if the flushing-rim sink is omitted, other provisions for disposal of liquid waste at each unit may be added.

(h) A drug distribution station must:

(i) be made for 24-hour distribution of medications, for example, by distributing medications from a medicine preparation room or unit or utilizing a self-contained medicine dispensing unit, or by another system;

(ii) if a medicine preparation room or unit, be under visual control of nursing staff; contain a work counter, sink, refrigerator, and locked storage for controlled drugs; and have a minimum area of 50 square feet (4.65 square meters);

(iii) if a self-contained medicine dispensing unit, be located at the nurses station, in the clean work room, or in an alcove.

(iv) have convenient access to handwashing facilities; handwashing facilities do not include cup-sinks.

(i) Clean linen storage must:

(i) be located either within the clean work room, a separate closet, or some other distribution system on each floor that is approved by the department; and

(ii) if a closed cart system is used, be out of the path of normal traffic, e.g. in an alcove.

(j) A nourishment station must:

(i) contain a sink, work counter, refrigerator, storage cabinets, and equipment for serving nourishment between scheduled meals;

(ii) include provisions and space for separate temporary storage of unused and soiled dietary trays not picked up at meal time; and

(iii) have convenient access to a laboratory.

(k) Ice-making equipment must:

(i) either be located in the clean work room or at the nourishment station under staff control; and

(ii) if producing ice for human consumption, be a self-dispensing ice maker.

(l) Showers, bathtubs, and sitz baths must meet the following standards:

(i) Each must be in an individual room or enclosure that provides privacy for bathing, drying, and dressing;

(ii) When individual bathing facilities are not provided in patient rooms, there must be at least one shower and/or bathtub for each 12 beds or a fraction thereof.

(m) Emergency equipment storage space must meet the

following standards:

- (i) The space, such as a cardiopulmonary resuscitation (CPR) cart, must be under direct control of the nursing staff;
- (ii) The space must be directly accessible from the unit or floor and may serve more than one nursing unit on a floor;
- (iii) In addition to separate janitor's closets that may be required for the exclusive use of specific services, at least one janitor's closet per floor must contain a service sink or receptor and provisions for storage of supplies.

- (n) Social spaces:

- (i) must contain at least 40 square feet (3.72 square meters) per patient in their combined area;

- (ii) must contain at least 120 square feet (11.1 square meters) in each; and

- (iii) may share space with dining activities.

- (o) Group therapy space may be combined with the social space designated for quiet activities when the treatment unit accommodates no more than 12 patients, and when the space in question contains at least 225 square feet (21 square meters) in an enclosed private area.

- (p) An occupational therapy unit:

- (i) must contain 15 square feet (1.39 square meters) of separate space per patient in a treatment unit for occupational therapy, with a minimum total area of at least 200 square feet (18.6 square meters), whichever is greater;

- (ii) must provide handwashing facilities, work counters, and storage;

- (iii) may serve more than one nursing unit; and

- (iv) may perform its functions within the noisy activities area, if at least an additional 10 square feet (0.9 square meters) per patient served is included and the treatment unit contains less than 12 beds.

- (q) One laboratory may serve the nurses' station, drug distribution station, and nourishment center so long as it is convenient to each.

- (r) Closets or cabinets for the personal effects of nursing personnel must be securable and, at a minimum, large enough for purses and billfolds.

(4) The department hereby adopts and incorporates by reference section 7.28A(11) of the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 edition) published by the American Institute of Architects, a manual which specifies architectural requirements to ensure comfort, aesthetics, and safety in hospital and medical facilities. A copy of section 7.28A(11) or the entire manual may be obtained from the American Institute of Architects Press, 1735 New York Avenue NW, Washington, D.C. 20006.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

4. The rules proposed to be adopted are necessary to establish licensure standards for an essentially new category of health care facility offering specialized mental health services to persons with addictive disorders, a category for which the existing mental health facility rule is inappropriate.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Eleanor Parker, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than August 26, 1991.

6. Eleanor Parker of the above address has been designated to preside over and conduct the hearing.


DENNIS IVERSON, Director

Certified to the Secretary of State June 17, 1991.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Adoption)	NOTICE OF PROPOSED AMENDMENT
of Temporary Rules)	AND ADOPTION OF TEMPORARY
on Gambling)	RULES ON GAMBLING
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons.

1. On July 27, 1991, the Department of Justice proposes to adopt new and amended temporary rules on gambling, adopted pursuant to sec. 2-4-303(2), MCA. On July 1, 1991, ch. 427, L.1991, becomes effective. That act generally revises the public gambling laws of Montana. Among other things, the act: 1) legalizes sports tab games (sections 43 through 45), 2) substantially changes the statutes governing sports pools (sections 43 through 45), and establishes a license application processing fee (section 6). The department finds it necessary to adopt temporary rules in these three areas in order to implement the statute as nearly as possible to its effective date.

2. A standard rulemaking process with full public participation will be initiated prior to the expiration of these rules.

3. The text of the proposed and amended rules is as follows (new rules are indicated by roman numerals, amended rules by three-part arabic numbering):

23.16.1701 DEFINITIONS as used throughout this subchapter, the following definitions apply: (1) "Authorized agent" means a person, designated by a manufacturer licensed under 23-5-152, MCA, who is employed by the manufacturer or has entered into an agreement with the manufacturer for the purpose of selling sports tabs on the manufacturer's behalf.

(2) "Chance" means an opportunity to participate in a sports pool.

(1)(3) "Master square" means that portion of the sports pool card used in a traditional, series, multiple way, or progressive sports pool that is divided into spaces representing the chances purchased by the participants and containing the name or initials of the participant in the sports pool.

(4) "Series of sports events" means two or more sports events involving the same sport that determines a champion among a group of competitors, such as a tournament or a playoff or championship series.

(2)(5) "Space" means one of the smaller squares into which the master square is divided, which represents an opportunity to participate a chance in a traditional, series, multiple way, or progressive sports pool, and which contains the name or initials of the participant in a sports pool who has purchased that space.

(6) "Sponsor" means a person conducting a sports tab game.
~~(3)(7)~~ "Sports event" means a game, race, or athletic contest involving competitors who are natural persons or animals.

(4)(8) "Sports pool" means a gambling activity based on a sports event or series of sports events that is conducted on using a sports pool card with a master square which is subdivided into spaces, for which consideration, in money, is paid by the participant for the a chance to win money or other item of value.

(9) "Sports pool card" means a board, chart, or table used to conduct a sports pool and record the information required in ARM 23.16.1702.

(10) "Sports tab" means a ticket as defined in 23-5-501. MCA.

(11) "Sports tab card" means the card to which the 100 sports tabs are randomly attached by the manufacturer.

(12) "Sports tab game" means a gambling enterprise as defined in 23-5-501, MCA.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

RULE I DESIGN AND CONDUCT OF SPORTS TAB GAME (1) A sports tab game may be conducted only in conjunction with a single sports event with two competitors. A sponsor may conduct more than one sports tab game for each event.

(2) A winner or winners of a sports tab game are determined by matching the appropriate numbers on a participant's sports tab with the only or last digit of competitor's score at the end of the sports event, and if designated before the event by the sponsor, at intervals during the sports event.

(3) Before the sale of any sports tabs in a sports tab game, the sponsor shall describe the game by prominently displaying the following information on the sports tab card or on a board to which the card is attached:

- (a) name of the competitors in the sports event;
- (b) date of the sports event;
- (c) notification of which competitor's score corresponds to the first and second numbers on the sports tab;
- (d) name of the sponsor;
- (e) cost of a sports tab;
- (f) total dollar value of all prizes to be awarded to winners;
- (g) total amount to be retained by the sponsor;
- (h) dollar amount or type and value of merchandise to be awarded to each winner; and
- (i) intervals during the sports event for which prizes are to be awarded, if any.

(4) After sale of the sports tabs begins, the sponsor:
(a) may not cancel the sports tab game or alter the game in any manner; and

(b) shall award all prizes at the end of the sports event in accordance with the description required under subsection (3), regardless of whether all tabs on the sports tab card are

sold to participants before the start of the sports event.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE II PURCHASE AND SALE OF SPORTS TABS BY SPONSOR

(1) A sponsor may purchase a sports tab card only from a person licensed under 23-5-152, MCA, as a manufacturer of gambling devices that are illegal in Montana or the manufacturer's authorized agent. The sports tab card must contain a sports tab decal as provided for in [rule VI].

(2) A sponsor may sell sports tabs only on a premises licensed to sell alcoholic beverages for consumption on the premises.

(3) The total cost of each sports tab on the same sports tab card must be identical and may not exceed \$5. A participant shall pay cash for the sports tab at the time the tab is selected.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE III PRIZES

(1) For the purposes of this rule, "cost of the sports tabs" means an amount that is equal to the amount paid by a participant for a single sports tab multiplied by 100.

(2) If a prize is awarded for scores attained at a predetermined interval during a sports event, the value of the prize awarded at the interval may not exceed the value of the prize awarded for the score at the end of the event.

(3) Except as provided in subsection (4), a sponsor shall pay to the winners of a sports tab game at least 90% of the cost of the sports tabs. The sponsor may retain up to 10% of the cost of the sports tabs.

(4) The total value of all prizes awarded in a sports pool may not exceed \$500. Prizes must be in cash or merchandise.

(5) If merchandise is awarded, the purchase price paid for the merchandise is considered to be the value of the prize. Except as provided in subsection (6), if the value of the merchandise is less than 90% of the cost of the sports tabs the difference must be awarded to the winners in cash.

(6) A sponsor who is a nonprofit organization may retain up to 50% of the cost of the sports tabs if the organization meets the requirements of 23-5-503, MCA.

(7) All prizes must be available for distribution to winners immediately at the end of the sports event.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

RULE IV SPONSOR RECORDKEEPING REQUIREMENTS

(1) After a winning sports tab is submitted to the sponsor and a prize is awarded, the sponsor shall cancel the tab, by whatever means chosen, and attach the cancelled tab to the sports tab card or board. A sports tab that was not sold to a participant must remain attached to the sports tab card.

(2) The sponsor shall retain a sports tab card or board to which the card is attached for at least 1 year after the date of the sports event.

(3) If merchandise is awarded as a prize, the sponsor

shall retain proof of the purchase price of the merchandise for 1 year after the date of the sports event.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

RULE V SALE OF SPORTS TAB CARDS BY MANUFACTURER -- COLLECTION OF TAX (1) A sports tab card used in conducting a sports tab game in Montana may be sold only by a person licensed under 23-5-152, MCA, as a manufacturer of gambling devices that are illegal in Montana or by the manufacturer's authorized agent.

(2) Before a sports tab card may be sold to a sponsor, the manufacturer shall:

(a) remove any concealed numbers from the sports tab card other than those concealed by the 100 sports tabs;

(b) affix a sports tab decal provided by the department on the bottom portion of the front of the card. Once affixed, the decal may not be tampered with by any person; and

(c) affix or print a permanent, unduplicated serial number on each sports tab card.

(3) The manufacturer may obtain sports tab decals by submitting a request to the department on a form provided by the department. The completed form must list the names of the manufacturer's authorized agents. Upon receipt of the form, the department shall issue decals to the manufacturer at no cost.

(4) If a sports tab card is sold to a sponsor who is a licensed gambling operator, the manufacturer or authorized agent shall collect at the time of sale a tax of \$1 for each card sold. The tax may not be collected from a sponsor who is not a licensed gambling operator.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE VI REMITTAL OF TAX TO DEPARTMENT (1) Within 15 days following the end of each fiscal year quarter, the manufacturer shall submit to the department a report on a form provided by the department and the tax proceeds collected by the manufacturer and his authorized agent under [rule VI].

(2) Failure to file the form and remit the required tax will result in assessment of the following penalties:

(a) 0-30 days late = 10% of tax due;

(b) 31-60 days late = 25% of tax due;

(c) 61-90 days late = 50% of tax due; and

(d) 91 days or more late = 100% of tax due.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE VII MANUFACTURER RECORDKEEPING REQUIREMENTS -- DECAL INVENTORIES (1) A manufacturer shall maintain records documenting the total number of sports tab cards sold, number sold to licensed gambling operators by operator, and number of sports tab decals in his possession.

(2) A manufacturer may not transfer a sports tab decal to any person. If a manufacturer wishes to reduce his decal inventory, he may return the decals to the department. If a manufacturer ceases to sell sports tab cards, he shall file, within 15 days following the date upon which he terminated

sales, a report on a form provided by the department, remit any tax due, and return unused decals.

(3) A manufacturer shall return any sports tab decals to the department upon request of the department.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE VIII USE OF SPORTS TABS RESTRICTED (1) A sports tab may be used only in conducting a sports tab game as described in statute and rule. A sports tab used for any other purpose is an illegal gambling device.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

23.16.101 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) - (7) remain the same.

(8) "Manufacturer of gambling devices not legal in Montana" means a person who:

(a) assembles a completed or uncompleted piece of equipment intended for use as a gambling device which is not specifically authorized in Montana but is lawful in another jurisdiction; or

(b) manufactures sports tab cards for sale in Montana to be used in conducting a sports tab game. For the purposes of this subsection (b), the manufacturer need not be located in Montana.

(9) - (10) remain the same.

AUTH: Sec. 23-5-115 MCA.

IMP: Sec. 23-5-112 MCA.

RULE IX AUTHORIZED SPORTS POOLS (1) Authorized sports pools described in this rule are identified by a title to distinguish one pool type from another. The controlling factor as to the legality of a sports pool is not the pool's title but the method and manner in which the pool is conducted.

(2) The conduct of an authorized sports pool is subject to the provisions of 23-5-501 through 23-5-503, MCA, and department rules.

(3) The following sports pools are authorized under 23-5-501 through 23-5-503, MCA:

(a) A "traditional sports pool" involving a single sports event involving two competitors that is conducted on a sports pool card containing a master square with 25, 50, or 100 spaces. Each space is randomly assigned a unique pair of numbers from the vertical and horizontal axis of the master square. A winner is determined by matching the numbers assigned to a space with the only or last digit of the score of each competitor in the sports event at predetermined intervals during the event or at the end of the event.

(b) A "tournament sports pool" conducted on a master square as in a traditional sports pool but is not limited to a single sports event. This pool generally involves a tournament and is conducted in the same manner as a traditional sports pool except that competitors for each sports event in the series may be changed before the start of that event. All chances must be sold before the tournament begins. Spaces must be sold for all

events in the series of sports events and may not be sold for individual events.

(c) A "multiple way sports pool" conducted on a master square as in a traditional sports pool but has multiple sets of numbers randomly assigned to the horizontal and the vertical axis representing certain intervals of a single sports event or individual sports events in a series of events.

(d) A "progressive series sports pool" conducted on a master square as in a traditional sports pool but involves a series of events (e.g., National Basketball Association playoffs or finals, baseball pennant playoffs, World Series). For the second and subsequent events in a series of events the winners are determined by combining the scores generated by each competitor in the previous events.

(e) A "selected point sports pool" in which the winner is the participant whose assigned competitor is the first to attain a final score that matches a predetermined number (e.g. 28, 39). If in a given week none of the competitor's score match the predetermined number, the prize is carried over to the next and subsequent weeks until a match occurs. The number of participants in a selected point sports pool is limited to the number of competitors in an established league. Teams or competitors are randomly assigned to the participants and may be assigned for a single week or the duration of the pool.

(f) A "blackout sports pool" in which the winner is the participant who holds the randomly assigned competitor that first accumulate scores on succeeding weeks whose only or final digit corresponds to all of the numbers zero through nine. A variation of this pool tallies only those scores in which the competitor is the winner of a sports event. The number of participants is limited to the number of competitors in an established league.

(g) A "weekly sweepstakes sports pool" in which a different competitor or competitors are randomly assigned to participants for each week. The winner is determined based on the total points scored by the competitor or competitors' assigned. Generally the winner is the participant whose competitor's or competitors' scores represent the highest or lowest total. The number of participants is limited to the number of competitors in a league or to the maximum combination of competitors in a league.

AUTH: Sec. 44, ch. 647, L.119. IMP: Sec. 44, ch. 647, L.1991.

RULE X. PROCEDURES FOR APPROVING VARIATIONS OF AUTHORIZED POOLS (1) A variation of an authorized sports pool may not be conducted unless approved by the department.

(2) A person requesting approval from the department for conducting a variation of an authorized sports pool shall submit the following information to the gambling control division:

(a) a detailed description of the operation of the pool, which verifies that:

(i) there would be at least one winner from among the participants in the sports pool;

(ii) each participant would have an equal chance to win;

and

(iii) competitors would be randomly assigned to each participant.

(b) a description of the method of choosing a winner; and

(c) an illustration or sample of the card used to conduct the pool.

(3) The department may request additional information, including a demonstration of the sports pool variation submitted for approval.

(4) After reviewing the proposed sports pool variation, the department shall notify in writing the person submitting the variation of its intended action. If the person desires a hearing he shall submit a written request to the department within 20 days. Upon receipt of the request, all proceedings must be conducted according to the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-501, MCA.

23.16.1702 SPORTS POOL CARD (1) A traditional, series, multiple way, or progressive sports pool must be conducted on a sports pool card containing a master square.

(a) The master square of the card must be divided into spaces arranged in horizontal rows and vertical columns.

(a) There may be no more than one sports event per master square.

(b) The numbers for each horizontal row and vertical column must be randomly assigned after all spaces have been sold and the person conducting the pool closes the pool to additional sale of spaces but prior to the beginning of the sports event or the first event in a series of sport events. Any unsold spaces at the time the numbers are assigned are considered purchased by the person conducting the sports pool and must be marked in a manner indicating that they may not be sold to another person.

(c) Each space must be represented by a number from both the horizontal row and vertical column.

(d) Each competitor in a sports pool must be assigned to either the horizontal or vertical axis of the master square before the beginning of each sports event.

(2) A sports pool card used to conduct an authorized sports pool must be of adequate size to be easily read by participants and observers.

(2)(3) The sports pool card shall, in advance of any sale of any space chance, clearly indicate:

(a) the rules for conducting the sports pools;

(b) the name of the sports event or series of events covered by the card;

(c) the name of the competitors in the sports event or series of events, if known;

(d) the date of the sports event or dates of the series of sports events;

(b)(e) the total number of spaces that must be sold in order to fill in all the spaces chances available in the pool;

- ~~(c)(f)~~ the cost to the participant for each chance to participate in the sports pool;
- ~~(d)(g)~~ the total amount to be paid to each winner;
- ~~(e)(h)~~ the intervals that a pay-out will be made and the amount of each pay-out;
- ~~(f)(i)~~ the name of the person conducting the sports pool;
- ~~(j)~~ the name or initials of participants who have purchased chances in the pool;
- ~~(g)(k)~~ the amount or value of each individual prize and the total value of all prizes.
- ~~(3)(4)~~ After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card.
- ~~(4)(5)~~ After the A sports pool card is prominently and visibly displayed for the sale of a chance to play, it must not be removed from the premises retained by the person conducting the sports pool until all prizes are awarded or for 30 days after the event or last event in a series of events, whichever occurs first.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

23.16.1703 SALE OF SPACES CHANCES (1) The total cost of a chance to participate in a sports pool shall not exceed five dollars ~~(5)~~ per chance \$5 and must be paid in full and in cash at the time the space chance is selected.

(2) If the actual number of sports events conducted as part of a series of events is less than the number of events for which chances were sold, the sponsor shall refund to each participant the money paid for chances on those events that were not conducted.

~~(2) If, at the time of the event, all spaces on the sports pool card are not sold, the persons who have paid for a chance to participate shall be entitled to a full refund or must be allowed to transfer the space to another sports pool currently advertised on the same premise where they purchased the space on the uncompleted sports pool. If a participant cannot be located for a refund or transfer of the space to another sports pool card prior to the event, the full purchase price of the spaces purchased shall be retained by the premise for refund to the participant.~~

(3) The sports pool shall not be conducted if any space remains unsold at the time the sports event is commenced.

~~(4) The sports event must not be changed to another sports event in order to allow the sale of all available chances. After sale of the chances begins, the person conducting the sports pool:~~

~~(a) may not cancel the sports pool or alter it in any manner; and~~

~~(b) shall award all prizes at the end of the sports event or series of events in accordance with the information displayed under ARM 23.16.1702.~~

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

23.16.1704 PRIZES (1) There must be at least one winner

from among the participants in a sports pool.

(2) The prizes awarded to the winner or winners of a sports pool may be cash or merchandise but must not exceed a total value of \$500.

(1)(a) and (b) remain the same and are renumbered (2)(a) and (b).

(3) All prizes must be available for distribution to winners immediately at the end of the sports event or at the end of each sports event in a series of events.

(4) A nonprofit organization may retain up to 50 percent of the value of a sports pool if the amount retained is used to support charitable activities, scholarships or educational grants, or community service activities. However, the nonprofit organization must maintain and open to inspection upon reasonable demand records to verify that the use of the retained portion of the sports pool is used to support charitable activities.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

RULE XI APPLICATION PROCESSING FEE (1) An applicant submitting an application for a gambling operator license on or after July 1, 1991 shall pay a license application processing fee in the following amount:

- (a) \$50 if the applicant is a nonprofit organization;
- (b) \$400 if the applicant is a sole proprietorship;
- (c) \$600 if the applicant is a partnership; and
- (d) \$1,000 if the applicant is a corporation.

(2) The applicant shall submit the fee required under subsection (1) in the form of a check or money order at the time the operator license application is submitted to the department.

(3) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the fee or collect an amount sufficient to reimburse the department for any underpayment of actual costs.

(4) If an applicant withdraws the application after the department has begun processing the application, the department shall refund any amount not expended as of the date of withdrawal.

AUTH: Sec 23-5-115, MCA.

IMP: Sec. 23-5-177, MCA.

4. RATIONALE: These temporary amended and new rules are needed in order to implement the sections of SB 427 (effective July 1) dealing with sports pools, sports tabs, and the operator license application fee.

5. Interested persons are invited to submit their data, views, or arguments concerning the proposed amendments and rules in writing to the Gambling Control Division, 2687 Airport Road, Helena, Montana 59620, no later than July 25, 1991. A standard rulemaking proceeding with full public participation will be initiated for the final rules which will include and replace these Temporary Rules.

6. 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 the Gambling Control Division, 2687 Airport Road, Helena, Montana 59620, no later than July 25, 1991.

7. 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 200 based on the number of licensees affected.

BY:

Judy Browning

for

MARC RACICOT
ATTORNEY GENERAL

Certified to the Secretary of State, June 14, 1991.

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

In the Matter of Proposed)	NOTICE OF PUBLIC HEARING
Adoption of New Rules Pertain-) ON THE PROPOSED ADOPTION	
ing to the New Class E Motor) OF NEW RULES I THROUGH XV	
Carrier Status (transportation) AND AMENDMENT TO RULES	
of logs) and Amendment of) 38.3.401, 38.3.402	
Existing Rules to Accommodate) 38.3.702 AND 38.3.2001	
the New Class E Motor Carrier)	
Status.)	

TO: All Interested Persons

1. On Wednesday, July 31, 1991 at 10:00 a.m. in the auditorium of the Montana Department of Highways building at 2701 Prospect Avenue, Helena, Montana, the Public Service Commission will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to new Class E motor carrier status.

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

RULE I. APPLICATION FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS (1) The provision of this rule and (Rules II and III) apply only to applications based on proof of being engaged in the business of transporting logs within the identified period and filed with the commission before October 1, 1992.

(2) An application made under this rule shall be made on the most current form approved by the commission for this purpose and available from the commission on request.

(3) An application must be legibly and fully completed, signed, notarized, and accompanied by the required fee of \$100. Incomplete applications will not be processed by the commission.

(4) Information required by the commission shall include general information sufficient for the commission to fully identify, categorize, locate, and communicate with the applicant and specific information sufficient for the commission to verify and determine that at a time within the period between April 1, 1990 and October 1, 1991, the applicant was engaged in the business of transporting logs. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 9, ch. 481, L. 1991), Sec. 69-12-423, MCA.

Rationale: This new rule and new rules II and III are necessary to provide the procedure and establish the criteria upon which applicants qualifying under the "grandfather" provision for Class E motor carriers may apply for and receive authority. The reduced fee for statewide applications is necessary as the costs of administration are reasonably anticipated to be less.

RULE II. APPLICATIONS FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS -- DEFINITIONS (1) For purposes of this rule and (Rules I and III) "engaged in the business

of transporting logs" shall mean the conducting of activity requiring legal control over motor vehicle power units through ownership, lease, rent or other legal means, undertaking the characteristic burdens of motor carrier operations, and actually and directly providing the service with such power unit personally or through employees as a regular activity.

(2) "Engaged in the business of transporting logs" shall not include being employed by another so engaged, leasing of power unit to one so engaged, buy and sell of logs whether or not transportation is included, brokerage of the services of those so engaged, or the transportation of logs incidental to a primary business. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 9, ch. 481, L. 1991)

Rationale: Please see rationale for Rule I.

RULE III. APPLICATIONS FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS -- MINIMUM PROOF REQUIRED

(1) Proof requisite for the commission to grant a class E motor carrier authority on the basis of being engaged in the business shall, at the minimum include, for any time between April 1, 1990 and October 1, 1991, proof to enable the commission to determine that the applicant was so engaged and not merely an employee, lessor, buyer, broker, or incidentally engaged.

(2) The following are minimum filing requirements to demonstrate being engaged in the business:

(a) control of power units through ownership, lease, rent, or other recognized means;

(b) payment of GVW fees at the appropriate rate;

(c) workers' compensation coverage or an exemption from workers' compensation coverage; and

(d) contracts, verified statements of shippers, bills of lading, or trip tickets.

(3) If any of the minimum filing requirements are not met, the applicant may attach an explanation as to why the same should not be required and additional proof that should be accepted as substitute proof. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 9, ch. 481, L. 1991)

Rationale: Please see rationale for Rule I.

RULE IV. CONTRACT FOR CLASS E SERVICES (1) The provisions of this rule and (Rules V, VI, VII and VIII) apply only to contracts with class E motor carriers for transportation of logs under class E authority.

(2) Except as provided in paragraph 3 a contract made under this rule shall be made on the most current form approved by the commission for this purpose and available from the commission on request.

(3) A contract not made on a form approved by the commission shall be in writing and have all required provisions and additional provisions shall not conflict with required provisions. AUTH: Sec. 69-12-201, MCA; IMP, (Secs. 7 and 8, ch. 481, L. 1991)

Rationale: This new rule and new rules V, VI, VII and VIII are necessary to establish and provide the minimum Class E motor carrier contract requirements and the basis for forms mandated by the legislature and a means of enforcement.

RULE V. CONTRACT FOR CLASS E SERVICES -- DEFINITIONS

(1) For the purposes of this rule "special conditions" shall mean any condition including but not limited to speed restrictions, weight limitations, laws of any federal or state agency applicable to an area, weather, closed routes, which:

(a) are not reasonably known or expected as customary and usual conditions in the industry;

(b) are or cause a deviation from standard or usual conditions from that which is ordinary; or

(c) any demanded expectation that proscribes a deviation from that which would be normally accepted in the industry as appropriate. AUTH: Sec. 69-12-201, MCA; IMP, (Secs. 7 and 8, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IV.

RULE VI. CONTRACT FOR CLASS E SERVICES -- REQUIRED PROVISIONS

(1) A contract for class E services shall be in writing and shall include:

(a) a title designating the document as a contract for class E services;

(b) language of contract stating that the parties promise and agree as contained in the contract;

(c) the name, address, and phone number of the class E motor carrier providing the services;

(d) the name, address, and phone number of the party engaging the services of the class E carrier;

(e) the duties of the class E motor carrier including the place of loading, any special conditions of loading, the route demanded for transportation, any special conditions of the route demanded, the place of unloading, and any special conditions of unloading;

(f) the rate to be charged, the method in which the rate to be charged is to be calculated, the time at which payment of the rate will be made, and the method in which payment will be made;

(g) the time of performance; and

(h) signatures of the parties and dates signed. AUTH: Sec. 69-12-201, MCA; IMP, (Secs. 7 and 8, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IV.

RULE VII. CONTRACT FOR CLASS E SERVICES -- CONTINUING PERFORMANCE, MULTIPLE LOADS

(1) So long as the contract for class E services is between the same class E carrier and the same shipper engaging the class E carrier and includes the required provisions, the contract may in time of performance contemplate a continuing performance of duties through time and for multiple loading sites, routes, and unloading sites. AUTH: Sec. 69-12-201, MCA; IMP, (Secs. 7 and 8, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IV.

RULE VIII. CONTRACT FOR CLASS E SERVICES -- DOCUMENTATION (1) Evidence of the existence of a written contract for class E services must be carried in the power unit or power units operating under such contract at all times.

(2) Evidence acceptable shall include:

(a) a completed and signed contract or a copy of the same; or

(b) a contract record card approved by the commission for this purpose. AUTH: Sec. 69-12-201, MCA; IMP, (Secs. 7 and 8, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IV.

RULE IX. CLASS E USUAL BUSINESS OPERATION (1) A motor carrier who possesses a class E motor carrier certificate conducts its class E activities "as part of the motor carrier's usual business operation" if the carrier actually transports class E commodities and holds itself out to the public as a carrier willing to serve the public within the area authorized by the commission, provided the carrier offers the class E service for the payment of charges intended to exceed the costs of providing such service and further provided that such service is not merely incidental to any other service provided. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 6, ch. 481, L. 1991)

Rationale: This new rule and new rules X, XI, XII, XIII, XIV and XV are necessary to establish and express the procedure and criteria upon which Class E motor carriers may retain Class E motor carrier status pursuant to the "use it or lose it" provision of law. The rules are needed to make the process and criteria uniform with other classes of motor carriers subject to similar provisions of law and provide a means of enforcement.

RULE X. CLASS E REGULAR BASIS (1) A motor carrier who possesses a class E certificate conducts its class E activities "on a regular basis" if the carrier actually transports class E commodities on a recurring basis. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 6, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IX.

RULE XI. RETAINING CLASS E CERTIFICATE (1) A motor carrier who possesses a class E motor carrier certificate and who can show that its class E service is at least 20 loads during the calendar year, or can show that its class E service generates not less than \$5,000 gross revenue per calendar year, is presumed to meet the requirements of actually engaging in the transportation of class E materials on a regular basis as part of the motor carrier's usual business operation and is, therefore, further presumed to be entitled to possess a class E motor carrier certificate. No further showing will be required from such carrier unless the Commission specifically requests additional information pursuant to (Rule XIV).

(2) Failure of any class E motor carrier to show either at least 20 loads per year or at least \$5,000 in annual gross

revenues raises no presumption either in favor of or against that carrier retaining its certificate. Rather, each such carrier will be evaluated on a case-by-case basis as set out in (Rule XII). AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 6, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IX.

RULE XII. OTHER CIRCUMSTANCES ALLOWING RETENTION OF CLASS E CERTIFICATE (1) A motor carrier who possesses a class E motor carrier certificate but who because of seasonal operations or other circumstances cannot meet either of the conditions stated in (Rule XI), must submit to the commission a signed and verified statement describing in detail those circumstances which lead the carrier to believe that it should be allowed to retain its class E certificate.

(2) Upon receipt of such a statement, the commission will evaluate the circumstances described therein together with any other information it feels would be revealing and will make a determination as to whether the carrier is entitled to possess a class E certificate. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 6, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IX.

RULE XIII. CLASS E REPORTS (1) In order to be entitled to retain its class E authority, on or before March 31st of each year, every class E carrier must submit with its annual report to the commission one of the following concerning its operations for the previous calendar year:

(a) A report on a form available from the commission office showing that the carrier's class E service was 20 loads in the preceding calendar year,

(b) A report on a form available from the commission office showing that the carrier's class E service generated at least \$5,000 gross revenue for the preceding calendar year, or

(c) A signed and verified statement as described in (Rule XII). AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 6, ch. 481, L. 1991) Sec. 69-12-407, MCA

Rationale: Please see rationale for Rule IX.

RULE XIV. ADDITIONAL INFORMATION REQUIRED BY THE COMMISSION (1) At any time, the commission may in its discretion require any class E carrier to submit additional supporting evidence beyond that received in accordance with (Rules XII and XIII).

(2) Upon refusal to submit additional evidence or receipt of additional evidence from the carrier or from any other source, the commission may in its discretion:

(a) Determine that the presumption in (Rule XI) has been rebutted,

(b) Reverse its earlier determination made under (Rule XII),

(c) Determine that the carrier is entitled to possess a class E certificate, or

(d) Decide to conduct an investigation. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 6, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IX.

RULE XV. SHOW CAUSE ORDER (1) When under the provisions of this sub-chapter the commission determines that a class E carrier is not in compliance, the commission may issue an order to show cause why the certificate should not be revoked. AUTH: Sec. 69-12-201, MCA; IMP, (Sec. 6, ch. 481, L. 1991)

Rationale: Please see rationale for Rule IX.

3. The rules proposed to be amended provide as follows.

38.3.401 COMPLETION OF APPLICATIONS (1) Applications for operating authority shall be in conformity with the requirements of the Montana Motor Carrier Act. ~~{69-12-311, 69-12-312, 69-12-313 and 69-12-314, MCA}~~.

(2) Application forms for operating authority must be submitted on a printed form supplied by this commission.

(3) The application form must be completed, signed by the proper party and notarized. AUTH: Sec. 69-12-201, MCA; IMP, Secs. 69-12-311, 69-12-312, 69-12-313, 69-12-314, MCA (Sec. 6, ch. 481, L. 1991)

Rationale: This amendment to an existing rule and amendments to existing rules 38.3.402, 38.3.702 and 38.3.2001, are necessary to conform existing rules to recent legislation and accommodate Class E motor carriers accordingly.

38.3.402 APPLICATION FEES (1) Every application for operating authority must be accompanied by the appropriate filing fee as required by ~~69-12-311, 69-12-312, 69-12-313 and 69-12-314, MCA~~ the Montana Motor Carrier Act.

(a) The specific filing fee is based on the number of counties contained within the application; i.e., 1-5 counties, \$100; 6-25 counties, \$200; 26-56 counties, \$300.

(b) Application fee for a certificate of public convenience and necessity to operate under a federal and/or state contract, as provided under 69-12-324, MCA, shall be \$100 for all such applications.

(c) Fees for the registration of interstate authority are as provided for under ARM 38.3.203(3). AUTH: Sec. 69-12-201, MCA; IMP, Secs. 69-12-311, 69-12-312, 69-12-313, 69-12-314, 69-12-324 and 69-12-423, MCA (Sec. 6, ch. 481, L. 1991)

Rationale: Please see rationale for 38.3.401.

38.3.702 BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE (1) Every class A, class B, class C, ~~or~~ class D, and class E intrastate carrier must file with this commission evidence of complying with the minimum insurance requirements of this commission as applicable to bodily injury and property damage liability insurance.

(2) For the purposes of this sub-chapter "bodily injury" shall include death. AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-402, MCA

Rationale: Please see rationale for 38.3.401.

38.3.2001 LEASING OF POWER EQUIPMENT - GENERAL

(1) The requirements for the leasing of power equipment by ~~a class A, B or C~~ any class of carrier operating within the state are as contained in 69-12-611, MCA.

(2) The purpose of these leasing regulations is to insure that the primary responsibility for the conduct of regulated motor carrier operations remain with the certificated motor carrier, and that members of the public using motor carrier services are clearly advised of the identity of the responsible carrier, and that the leasing of equipment by an authorized motor carrier from the owner thereof, is not a subterfuge for leasing the carrier's certificate or permit to the owner-lessee.

(3) The leasing of power equipment by a certificated carrier to a noncertificated carrier is prohibited. AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-611, MCA

Rationale: Please see rationale for 38.3.401.

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 Public Service Commission, Wayne Budt, Transportation Division, 2701 Prospect Avenue, Helena, Montana 59620-2601, phone (406) 444-6195, no later than July 31, 1991.

5. Martin Jacobson, staff attorney, Public Service Commission, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make and amend rules as proposed and the statutes being implemented by the proposed rules are set forth following each rule above.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620, phone (406) 444-2771; is available and may be contacted to represent consumer interests in this matter.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 17, 1991.

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

In the Matter of Proposed	)	NOTICE OF PUBLIC HEARING
Amendment of Rules Regarding	)	OF PROPOSED ADOPTION OF
Telecommunications Service	)	NEW RULES I AND II AND
Standards.	)	AMENDMENT OF ARM 38.5.2715,
	)	38.5.3302, 38.5.3332 AND
	)	38.5.3339

TO: All Interested Persons

1. On Tuesday, August 6, 1991 at 9:00 a.m. in the Commission Conference Room, 2701 Prospect Avenue, Helena, Montana, a hearing will be held to consider the proposals identified in the above titles and described in the following paragraphs regarding the telecommunications service standards.

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

RULE I. THIRD-NUMBER BILLING (1) The carrier must refuse to place a call that a customer requests to be billed to a third number unless the carrier is able to obtain prior authorization from the billed party. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE II. CHANGE IN CUSTOMER'S INTEREXCHANGE CARRIER

(1) A local exchange carrier shall not change a customer's choice of interexchange carrier to another carrier at a carrier's request unless the customer's written authorization accompanies the request for such a change. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

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

38.5.2715 FORBEARANCE (1)(a) through (f) No changes
(g) an affidavit verified by the customer to be served, containing:

(i) a description of the types of services sought by the customer,

(ii) a statement that the customer has received a bid from an alternative provider for such services,

(iii) the names(s) of the alternative provider(s) submitting the bid(s), and

(iv) the types of services offered in the bid(s).

(h) A certificate of service verifying compliance with subsection (2).

†g† (i) the commission may require other information that is reasonably related to determine the existence of an alternative offer except information relating to the cost of providing the service.

(2) When a telecommunications provider files a forbearance application with the commission, it must simultaneously mail copies of the application to all persons and entities on the telecommunications mailing list established by ARM 38.5.2703.

12-6/27/91

MAR Notice No. 38-2-96

42) (3) The commission's determination shall be based on the existence of a viable competitive offer. The telecommunications service provider seeking forbearance has the burden of establishing that a viable competitive offer exists.

43) (4) The commission shall approve or deny the application within ten days of receipt of the completed application. If the commission takes no action within ten days, the application is granted. The commission may by order defer action for up to five days. AUTH: Secs. 69-3-822 and 69-3-103, MCA; IMP, Sec. 69-3-808, MCA

38.5.3302 DEFINITIONS In the interpretation of these rules, the following definitions shall be used: (1) through (16) No changes.

(17) "Nonregulated services" means telecommunications services that are not regulated by the commission or that have been deregulated under the provisions of the Montana Telecommunications Act.

(17) through (21) remain the same but will be renumbered (18) through (22). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

38.5.3332 CUSTOMER BILLING (1)(a) through (iii) No changes.

(iv) a statement that regulated services may not be disconnected for nonpayment of unregulated nonregulated services or services provided by other carriers;

(1)(v) through (4) No changes.

(5) Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment ~~of services deregulated by the Montana Telecommunications Act~~ for nonregulated services or services provided by other carriers. A telecommunications provider's bill to its customer shall clearly ~~indicate regulated service and distinguish between tariffed and detariffed service~~ distinguish between both regulated and nonregulated service and tariffed and detariffed service. Regulated and ~~net-regulated~~ nonregulated service may appear on the same bill but must be presented as separate line items.

(a) Undesignated partial payments of a bill shall be applied first to local exchange carrier regulated local-exchange services and then to service other than local exchange carrier regulated local-exchange services in such percentage as each other service provider's charges represent of the total charges to the customer for services other than local exchange carrier regulated local-exchange services. Regulated service may not be affected by billing disputes over ~~net-regulated~~ nonregulated service or service provided by other carriers. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-221, MCA

38.5.3339 TERMINATION OF SERVICE (1) through (3)(b) No changes.

(c) Failure to pay for nonregulated service or service provided by other carriers.

(4) through (5) (b) No changes.

(6) Exception to seven-day notice requirement, excessive toll usage accompanied by risk of nonpayment. The seven-day notice requirement shall be excused when service is to be terminated for excessive toll usage and an identifiable risk of nonpayment exists, as defined herein.

(a) Toll usage. For purposes of this rule toll usage includes regulated toll charges whether already billed or as yet unbilled, but excludes all amounts owed or owing for nonregulated services or services provided by other carriers.

(b) Excessive toll usage. For purposes of this rule, "excessive toll usage" is defined as toll usage for a one month billing period that:

(i) exceeds 200 percent of the monthly average of the customer's toll charges from the preceding six months; and

(ii) is greater than \$100.

(c) Risk of nonpayment. For purposes of this rule, "risk of nonpayment" is established by the presence of any one of the following:

(i) No deposit. Risk of nonpayment exists when there is no customer deposit and ARM 38.5.1103 permits the requirement of such a deposit.

(ii) Historical deficiency. Risk of nonpayment exists when, during the preceding 12 months, any of the following conditions existed:

(A) the customer's telephone service was disconnected for failure to timely pay amounts owing;

(B) two or more delinquency notices were served on the customer; or

(C) payment was made with two or more dishonored checks.

(d) Contact with customer. The carrier shall not terminate service under the provisions of this rule without first contacting or making a diligent effort to contact the customer. Such contact will be for the purposes of:

(i) notifying the customer of the excessive toll usage;

(ii) notifying the customer of the possibility that service can be terminated on an expedited basis; and

(iii) providing the customer with the opportunity to supply adequate assurance of payment. In no event shall a diligent effort consist of less than three distinct attempts to contact the customer, either in person or by telephone. The carrier must keep a record showing the name of the employee, date, hour and type of each attempted contact.

(e) Adequate assurance of payment. For purposes of this rule, adequate assurance shall include:

(i) the establishment of satisfactory credit as defined by ARM 38.5.1101;

(ii) the existence of a deposit, such deposit being consistent in amount with ARM 38.5.1105; or

(iii) any other form of assurance mutually agreed upon by the customer and the carrier, including an oral or written promise to pay. If the customer supplies adequate assurance as defined herein, no further action may be taken to terminate service.

(f) Termination of service. If the carrier is unable to contact the customer it may terminate service three days (not including those days when there is no mail delivery) after the mailing of a notice consistent in form with the requirements of ARM 38.5.3339(5). If the carrier is able to contact the customer and no adequate assurance is supplied, the carrier may terminate service not less than 24 hours after such contact. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

4. RATIONALE: Rules I and II regarding third-number billing and changes in customers' interexchange carriers are proposed in order to respond to consumer complaints concerning current practices by carriers. The third-number billing rule is intended to ensure that customers are not billed for calls for which they have not agreed to be responsible. The proposed rule to require local exchange carriers to be provided with a customer's written authorization prior to making a carrier-requested change in that customer's choice of interexchange carrier is intended to prevent the problem of unauthorized switches in customers' choices of interexchange carriers.

Amendments to ARM 38.5.2715 are being proposed based upon the Commission's experience with the forbearance application process during the six years which have elapsed since the adoption of the 1985 Montana Telecommunications Act. The new (g)(i) through (iv) will aid in efficient Commission determination of whether a viable competitive offer actually exists. The new (h) and (2) will establish a procedure to provide interested parties an opportunity to comment on applications in a timely manner. Both amendments should improve the Commission's ability to diligently apply the decision-making criteria set forth in § 69-3-808, MCA, and provide more relevant information to the Commission within the time constraints established therein.

At the request of GTE Northwest Incorporated, the proposed amendment appearing at ARM 38.5.3339(6) establishes an exception to the seven-day notice requirement provided for by ARM 38.5.3339(5). This exception is intended to protect a telecommunications carrier from the risk of significant financial loss arising from a customer's nonpayment of an excessively high toll charge.

The remaining amendments appearing at ARM 38.5.3302, 39.5.3332 and 38.5.3339 are intended to 1) standardize the terminology used to describe services that are not regulated, deregulated, unregulated and nonregulated; and 2) distinguish between regulated services provided by a billing or terminating carrier and services, whether regulated or nonregulated, provided by other carriers.

5. Interested parties may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Tim Sweeney, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than August 6, 1991.

6. 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.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 17, 1991.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT
amendment of ARM 2.21.306	)	OF ARM 2.21.306 THROUGH
through 2.21.308 and 2.21.310	)	2.21.308 AND ADOPTION OF RULE I -
relating to work site	)	2.21.310 RELATING TO WORK SITE
closure during a localized	)	CLOSURE DURING A LOCALIZED
disaster or emergency	)	DISASTER OR EMERGENCY

TO: All Interested Persons.

1. On December 27, 1990, the department of administration published notice of the proposed amendment of ARM 2.21.306 through 2.21.308 and 2.21.310 relating to work site closure during a localized disaster or emergency at page 2209 of the Montana Administrative Register, issue number 24.

2. The proposed rules have been adopted with the following changes:

2.21.307 DEFINITIONS (1) - (4) Same as proposed rule.

(5) "Personal emergency" means circumstances affecting a state employee which are the same or similar to those covered by the definitions of disaster or emergency, but which are not covered by a declaration of disaster or emergency by the governor, as provided in ARM 2.21.308 or during a work site closure as provided in ARM 2.21.310.

(6) Same as proposed rule.

2.21.310 AFFECTED WORK SITE CLOSURE (1) - (3) Same as proposed rule.

(4) State employees may be assigned to a work site which is not a state-controlled facility, for example a county courthouse or facility leased from a private owner. In the event the facility is ordered closed by those with the authority to do so and under circumstances similar to those described in this rule, an affected employee may receive paid time off under conditions described in this rule.

(5) through (7) Same as proposed rule.

3. A public hearing was conducted on January 18, 1991, to receive testimony on these proposed rules. Testimony is summarized below.

COMMENT: A comment suggested expanding the policy statement to provide employees the opportunity to voluntarily make up lost hours due to a personal emergency, rather than take paid/unpaid leave as provided in the Disaster and Emergency Leave policy.

RESPONSE: The current revisions, or any other policy, do not prevent the suggested practice. Schedule adjustments are at the agency's discretion, and the department does not believe they should become an entitlement provided through this rule.

COMMENT: Under the current definition of "personal emergency," this condition could exist concurrently with a local work site closure or a declared disaster or emergency. However, the guidelines for compensating an employee are different in each situation. The definition should state that the conditions for a personal emergency are other than those provided for in the work site closure rule or disaster and emergency rules to clarify the issue of compensation.

RESPONSE: The department agrees. Changes have been made to the final rule.

COMMENT: The amendments do not provide for state employees who work at a site under the authority of a jurisdiction other than state government. The proposed rule requires that, for an employee to be compensated under the work site closure rule, a department head, the governor or the governor's designee must declare a site closed.

RESPONSE: The department agrees. Rule I (4) has been added to accommodate this exception.

COMMENT: The "two shift maximum" provision regarding compensation under this policy is restrictive. Department heads should retain the authority to provide paid leave as necessary during a work site closure that exceeds an employee's two regular shifts.

COMMENT: The two-shift period sets reasonable limits for compensating employees in emergency conditions. The department does not believe it has the authority to provide longer term extension of paid leave. The department also believes there should be consistent administration of this benefit. It is possible that two state agencies would share a work site which is closed. One agency, based solely on its budget, could provide a significantly longer paid leave than the other. The two-shift maximum is adopted based on informal practice and internal agency policy which has accommodated short closures in the past. If the work site is to be closed for a longer period, the agency may initiate a wide range of actions involving staff at the affected site, including but not limited to, reassignment to an alternate work site, use of personal paid leave, use of leave without pay or lay-off.


Bob Marks, Director
Department of Administration

Certified to the Secretary of State June 17, 1991.

BEFORE THE STATE COMPENSATION MUTUAL INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of Rule 2.55.301	)	ARM 2.55.301 METHOD FOR
relating to the method for	)	ASSIGNMENT OF CLASSIFICATIONS
assignment of classifications	)	OF EMPLOYMENTS
of employments.)	

TO: All Interested Persons:

1. On May 16, 1991, the State Compensation Mutual Insurance Fund published notice of the proposed amendment to ARM 2.55.301 relating to the method for assignment of classifications of employments. The notice can be found on pages 568 through 569 of the 1991 Montana Administrative Register, Issue No. 9.

2. No comments or testimony concerning the rule were received.

3. No public hearing was held nor was one requested. The State Compensation Mutual Insurance Fund has adopted the rule as proposed.

4. The authority for the rule is found in section 39-71-2316, MCA and the rule implements sections 39-71-2311 and 39-71-3426, MCA.

State Compensation Mutual
Insurance Fund

By: 

Patrick J. Sweeney, President

Certified to the Secretary of State June 17, 1991.

BEFORE THE STATE COMPENSATION MUTUAL INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT OF ARM
amendment of Rule 2.55.310) 2.55.310 VARIABLE PRICING
relating to variable pricing) WITHIN A CLASSIFICATION
within a classification.)

TO: All Interested Persons:

1. On April 25, 1991, the State Compensation Mutual Insurance Fund published notice of public hearing on proposed amendment to rule 2.55.310 relating to Variable Pricing Within a Classification. The notice can be found on pages 486 through 489 of the 1991 Montana Administrative Register, Issue No. 8.

2. No comments or testimony concerning the rule were received.

3. The State Compensation Mutual Insurance Fund has adopted the rule as proposed.

4. The authority for the rule is found in section 39-71-2316, MCA and the rule implements sections 39-71-2311 and 39-71-2316, MCA.

State Compensation Mutual
Insurance Fund

By:


Patrick J. Sweeney, President

Certified to the Secretary of State June 17, 1991.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of ARM 4.12.1012 Grain Fee	)	ARM 4.12.1012 GRAIN FEE
Schedule	)	SCHEDULE

TO: All Interested Persons

1. On May 16, 1991, the Department of Agriculture published a notice to amend the above-stated rule pertaining to the grain fee schedule on page 570 of the 1991 Montana Administrative Register, issue number 9.

2. No comments or testimony were received.

3. No public hearing was held nor was one requested. The department has amended the rule as proposed.

BY E.M. Snortland
E.M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, June 17, 1991.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to licen-) 8.39.502 LICENSURE --
sure - qualifications, licen-) OUTFITTER QUALIFICATIONS,
sure - examinations and conduct) 8.39.503 LICENSURE --
) OUTFITTER EXAMINATION AND
) 8.39.701 CONDUCT --
) STANDARDS OF OUTFITTER AND
) PROFESSIONAL GUIDE

TO: All Interested Persons:

1. On February 28, 1991, the Board of Outfitters published a notice of proposed amendment of the above-stated rules at page 213, 1991 Montana Administrative Register, issue number 4.

2. The Board amended the rules as proposed.

3. The proposed amendment to 8.39.701 should have read as follows:

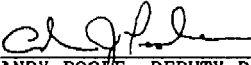
"8.39.701 CONDUCT--STANDARDS OF OUTFITTER AND PROFESSIONAL GUIDE (1) through (1)(r) will remain the same. (s) produce their current license at the demand of a representative of the board."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-301, MCA

A new subsection (r) was proposed in the original notice. Subsection (r) exists in the current rule. Therefore, the proposed subsection (r) should be changed to subsection (s).

4. No comments or testimony were received.

BOARD OF OUTFITTERS
IRVING (MAX) CHASE, CHAIRMAN

BY: 
ANDY POOVE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 17, 1991.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 11.14.105 pertaining) 11.14.105 PERTAINING TO
to registering and licensing) LICENSING AND REGISTERING
day care facilities.) DAY CARE FACILITIES

TO: All Interested Persons

1. On April 25, 1991, the Department of Family Services published notice of public hearing on the amendment of Rule 11.14.105, pertaining to licensing and registering day care facilities at page 495 of the 1991 Montana Administrative Register, issue number 8.

2. The department has amended the rule as proposed.

3. A public hearing was held May 20, 1991. Ann Gilkey, chief legal counsel for the department, submitted written testimony in support of the amendment. The department received no other testimony at the hearing. Several comments were received prior to the hearing in opposition to the amendment. The department has thoroughly considered these comments:

COMMENT: While the law must protect children in day care, the proposed change gives the department too much power. The department could effectively destroy a provider's business.

RESPONSE: The change in the rule restricts rather than expands the power of the department to revoke or suspend day care licenses. Previously, the rule allowed for suspension or revocation where any one non-compliance with licensing rules placed a child in danger of harm. Under the amendment, the department acts to immediately suspend or revoke a license only according to more definite criteria and procedure. There must be an initial investigation. If there exists no reasonable grounds to believe that children in the facility may be in danger of harm, no revocation or suspension will occur.

COMMENT: The terms "abuse", "neglect", "upon referral", "initial investigation", "reasonable grounds", "and may be in danger of harm", need to be precisely defined.

RESPONSE: The terms "abuse" and "neglect" may be defined by reference to existing Montana law. Section 41-3-102, MCA. Under this statute, an abused or neglected child means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or

other person responsible for his welfare. The statute also defines the essential terms used in its definition of abuse and neglect. Montana law mandates that rules not unnecessarily repeat statutory language. Section 2-4-305(2), MCA. Similarly, "upon referral" means that there has been a report communicating "reasonable cause to suspect" that a child has been abused or neglected. Section 41-3-201, MCA. Again, this language is not repeated in the rule, but nevertheless applies to defining what is meant by the term "upon referral". "Initial investigation" means such investigation as is necessary, depending on the facts and circumstances of each case. Thus no specific definition may be promulgated. Similarly, "reasonable grounds to believe" is defined according to the facts and circumstances of each case.

COMMENT: The proposed language may place a provider in extreme jeopardy of losing his or her license as a result of fabrications of incidents of abuse and neglect. For example, a "referral" could be made by an irate neighbor who does not want a day care in the neighborhood. Or, vindictive or unstable parents may make false allegations. In addition, the rule should provide for suspension or revocation only where the investigation reveals that a child "is" in danger of harm, rather than "may" be in danger of harm. "Upon referral" should be changed to "after a thorough investigation".

RESPONSE: The rule strikes an appropriate balance between the competing concerns. No action will be taken until such time as an initial investigation reveals whether immediate suspension or revocation is necessary for the protection of the children in the facility.

COMMENT: The proposed rule violates the Constitution because it presumes that a provider is guilty until proven innocent.

RESPONSE: The presumption of innocence applies to prosecution for crimes, not to day care license revocation or suspension.

COMMENT: While the rule grants the department broad authority to suspend or revoke licenses, there is nothing to guarantee a provider's right to due process. The rule should contain provisions on written notification, the intentions of the department, and information on a hearing. The department should consider the fact that day care providers are not protected by a union or professional grievance procedures.

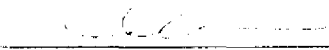
RESPONSE: Rules 11.2.201 through 220, ARM, provide for written notification, administrative review, fair hearing, and finally, judicial review, in cases of suspension or revocation. These procedures satisfy due process requirements and provide a method of grievance for department actions.

COMMENT: Day care providers should have been granted more time to review and respond to the rule amendment, and greater notice

should have been given. The department should continue the hearing to a later date.

RESPONSE: The provisions concerning the minimum amount of time and the method of notice as set out in the Montana Administrative Procedure Act were followed in regard to this amendment. The department also sent notice to members of provider associations. The comments received indicated that providers were concerned about expansion of department powers in license and registration revocation and suspension. Given that the amendment is designed to restrict rather than expand department power, no continuance or expansion of the comment period is deemed necessary.

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director

Certified to the Secretary of State, June 17, 1991.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

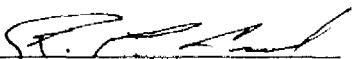
In the Matter of the)	Notice of Amendment of ARM
Amendment of ARM	12.6.901 Allowing the Use of
12.6.901 Pertaining to Water)	Electric Motors on Gartside
Safety Regulations)	Reservoir

To: All Interested Persons

1. On May 16, 1991, the Fish and Game Commission gave notice of a proposed amendment of ARM 12.6.901 to allow the use of electric motors on Gartside Reservoir at page 582 of the Montana Administrative Register, Issue No. 9.

2. The commission has amended ARM 12.6.901 as proposed; however, the spelling of Garthside Reservoir has been corrected as follows: Gartside Reservoir.

4. No written comments or testimony were received.


K.L. Cool, Secretary
Montana Fish and Game Commission

Certified to the Secretary of State June 17, 1991.

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

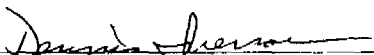
In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 16.35.111 concerning conditions)	OF RULE 16.35.111
for payment of claims under the)	
end stage renal disease (ESRD))	
program)	
	(End Stage Renal Disease)

To: All Interested Persons

1. On May 16, 1991, the department published notice at page 585 of the Montana Administrative Register, Issue No. 9, to amend ARM 16.35.111, which sets conditions governing payments made under the department's ESRD program to victims of end stage renal disease.

2. The department has amended the rule as proposed with no changes.

3. No comments were received.


DENNIS IVERSON, Director

Certified to the Secretary of State June 17, 1991.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF ADOPTION
of Montana's prevailing wage	)	BY REFERENCE OF
rates, pursuant to Rule	)	AMENDMENTS TO THE
24.16.9007, ARM	)	PREVAILING WAGE RATES

TO ALL INTERESTED PERSONS:

1. On April 25, 1991, the Department of Labor and Industry published a Notice of Public Hearing on Proposed Amendments of Prevailing Wage Rates. The notice can be found on page 497 of the 1991 Montana Administrative Register, Issue No. 8.

2. Oral and written comments were received by the Department. In response to comments, some rates proposed by reference in the "State of Montana Prevailing Wage Rates - Services" are changed. The comments, the Department's responses and the changes made to the "State of Montana Prevailing Wage Rates - Services" are as follows:

COMMENT: Mr. Don Halverson, Business Manager of Local 459, Plumbers, wrote protesting the rate for Heating and Air Conditioning Mechanics in Districts 1 and 2. Mr. Halverson's contention was that plumbers do this work and the rate for plumbers has been established under the Building Construction rates and does not need to be repeated under services. Mr. Halverson based his argument on the so-called Rochester decision of the American Federation of Labor, 1912, which, in effect, designated all heating and air conditioning work as under the jurisdiction of the United Association of Journeyman Plumbers and Steamfitters. Mr. Halverson also submitted 7437 hours of pension reports to substantiate his claim. Mr. Bob Papin, Business Manager, Local 30, Plumbers, also wrote protesting the Heating and Air Conditioning Mechanics rate, as did Mr. John Forkan, Business Manager, Local 41, Plumbers and Mr. Michael S. Mizenko, Business Manager, Local 139, Plumbers. Mr. Papin, Mr. Mizenko and Mr. Forkan also submitted payroll hours to support their claims.

RESPONSE: The Department reviewed the protests and the supporting documentation submitted by the plumber collective bargaining units and concurred that heating and air conditioning work falls under the jurisdiction of the plumbing trade and meets the work of similar nature rules. Accordingly, the Heating and Air Conditioning rates are deleted from the "State of Montana Prevailing Wage Rates - Services" publication.

COMMENT: Mr. George F. Hagerman, Executive Director, Montana Council #9, AFSCME, AFL-CIO, submitted hours for school system janitors in District 5 and asked that they be included in the calculation of janitor rates.

RESPONSE: The Department considered this request and determined that there was a classification difference between office cleaners, who simply dust and vacuum, and janitors who may be required to have light plumbing and electrical skills as well as low pressure boiler experience. For the purposes of determining rates the following classifications will apply:

Janitor, Building Maintenance, DOT 382.664-010

Janitor/Cleaner Supervisor, DOT 381.137-010

Cleaner, DOT 381.687-014

The data submitted by Mr. Hagerman will apply to the Janitor, Building Maintenance classification and data received for Cleaners will apply to that classification.

3. Several proposed rates have been amended. The worker classification and rationale for the change are as follows:


(a) Heating and Air Conditioning Mechanics - deleted as being covered by the plumbers' rates of the Prevailing Wage Rates for Building Construction.

(b) Cleaner - additional service classification created at a new rate as a result of additional data provided by a collective bargaining unit.

(c) Janitor, Building Maintenance - wage rate changed as a result of creating a separate Cleaner classification.

(d) Janitor/Cleaner Supervisor - wage classification changed due to additional data provided by a collective bargaining unit, but the wage rate remained the same.

4. The Commissioner of Labor and Industry adopts the rates as amended effective July 1, 1991



Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State: June 18, 1991

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF AN
adoption of an emergency	)	EMERGENCY RULE TO CONTROL
rule on the control of	)	MIGRATORY BISON FROM HERDS
migratory bison from herds	)	AFFECTED WITH A DANGEROUS
affected with a dangerous	)	DISEASE
disease)	

TO: All Interested Persons:

1. Due to the emigration of bison which have been exposed to or affected with brucellosis, a dangerous contagious zoonotic disease of man or animal from Yellowstone National Park and due to the imminent contact of these bison with Montana domestic livestock the State Veterinarian of the Department of Livestock has determined that imminent danger exists to these livestock and the livestock industry of the State of Montana.

Therefore, the Board of Livestock has adopted the following emergency rule which as adopted, will be mailed to all persons who may be affected thereby including delivery of copies to a state wire service and to any other news media the agency deems appropriate.

2. The text of the proposed rule is as follows:

NEW RULE: UNLAWFULLY ESTRAYED AND PUBLIC OWNED MIGRATORY BISON FROM HERDS AFFECTED WITH A DANGEROUS DISEASE (1) When estrayed or migratory bison exposed to or affected with brucellosis, a dangerous, contagious, zoonotic disease of man and animals, enter into or are otherwise present within the state of Montana one of the following actions will be taken:

(a) The live bison may be physically removed by the safest and most expeditious means from within the state boundaries. This means may include but not be limited to capture, trucking, hazing/aversion, or delivery to a licensed slaughterhouse.

(b) If live bison cannot safely or by reasonable and permanent means be removed from the state they shall be summarily destroyed where they stand by the use of firearms. If firearms cannot be used with due regard to human safety and public property bison may be relocated to such a danger free area and destroyed by firearms or by any other practicable means of euthanasia.

(c) When bison of necessity or unintentionally are killed through actions of the department, the carcass remains will be disposed of by the most economical means possible. This may include but not be limited to burying, incineration, rendering, or field dressing for delivery to a custom slaughterhouse.

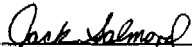
(d) To comply to the fullest extent possible with the Montana Environmental Policy Act, a copy of this emergency action which is being undertaken to protect the public health and the economic well-being of citizens of the state of Montana is being delivered to the legislative environmental quality council.

AUTH: 81-2-102 and
81-2-103,MCA

IMP: 81-2-102 and
81-2-103,MCA


3. The rationale for the proposed rule is as set forth in the statement of reasons for emergency.

4. Interested persons who are affected may comment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620.



Jack Salmond, Chairman
Board of Livestock

By:



Lon Mitchell, Staff Attorney
Department of Livestock

Certified to the Secretary of State June 17, 1991.

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

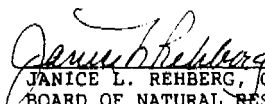
In the matter of amendment	)	NOTICE OF AMENDMENT
of ARM 36.12.103 concerning	)	OF ARM 36.12.103
water right application	)	APPLICATION FEES
fees)	

To: All interested persons.

1. On May 16, 1991, the Board of Natural Resources and Conservation published a notice of proposed amendment of ARM 36.12.103, pertaining to water right application fees at page 634 of the 1991 Montana Administrative Register, Issue No. 9.

2. No public hearing was contemplated or held, nor was one requested. Public comments were accepted until June 14, 1991. No written or oral comments concerning these rules were received.

3. The Board has amended the rule exactly as proposed.


JANICE L. REHBERG, CHAIR
BOARD OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State on June 17, 1991.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the amendment) NOTICE OF AMENDMENT OF
of ARM 36.21.415 concerning) 36.21.415 FEE SCHEDULE
the fee schedule)

TO: ALL INTERESTED PERSONS:

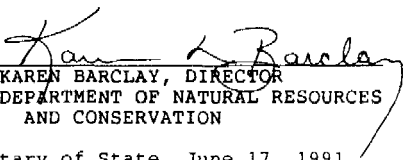
1. On May 16, 1991, the Board of Water Well Contractors published a notice of proposed amendment of the above-stated rule at page 636, 1991 Montana Administrative Register, issue number 9.

2. The rule is being amended exactly as proposed.

3. No written comments or testimony were received.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY:


KAREN BARCLAY, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State, June 17, 1991.

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

In the matter of the)
amendment of Rule 46.10.403) NOTICE OF THE AMENDMENT OF
pertaining to AFDC table of) RULE 46.10.403 PERTAINING
assistance standards) TO AFDC TABLE OF ASSISTANCE
STANDARDS) STANDARDS

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.403 pertaining to AFDC table of assistance standards at page 694 of the 1991 Montana Administrative Register, issue number 9.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsection (1) remains as proposed. (2) remains the same.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 499 526 527	\$ 479 189
2	670 705	209 304 305
3	830 895 884	394 416
4	1,010 1,065 1,064	501 529
5	1,170 1,244 1,245	601 634 633
6	1,347 1,424 1,423	694 722 731
7	1,519 1,603 1,602	786 829
8	1,689 1,783 1,782	871 912
9	1,771 1,817	953 1,005
10	1,848 1,894	1,030 1,087 1,088
11	1,921 1,967	1,103 1,163 1,162
12	1,989 2,035	1,171 1,235 1,236
13	2,052 2,098	1,234 1,301
14	2,111 2,157	1,293 1,364 1,363
15	2,167 2,213	1,349 1,422 1,423
16	2,217 2,263	1,399 1,475 1,474

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month	
1	\$ 177 107 189	\$ 68 72	
2	351 371 370	179 189	
3	528 556 557	289 304	305
4	701 729 740	394 416	
5	877 925 923	500 527	
6	1,053 1,110	603 636	
7	1,227 1,295	703 741	742
8	1,402 1,479 1,478	801 845	
9	1,483 1,565	882 931	
10	1,563 1,649 1,648	962 1,014	
11	1,641 1,730	1,040 1,096	1,097
12	1,715 1,808 1,809	1,114 1,174 1,173	
13	1,789 1,887	1,188 1,252	
14	1,859 1,961	1,258 1,327 1,326	
15	1,927 2,033	1,326 1,399	
16	1,992 2,101 2,102	1,391 1,467	

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month	
1	\$ 270 284 285	\$ 97 102	
2	362 381	156 165	
3	453 478	213 225	
4	546 575	271 286	
5	637 673	325 343	342
6	728 770 769	375 395	
7	821 867 866	425 448	
8	913 964 963	471 497	
9	997 982	515 543	
10	999 1,024	557 587	588
11	1,038 1,063	596 629	628

12	1,075 1,100	633	668
13	1,109 1,134	667	703
14	1,141 1,166	699	737
15	1,171 1,196	729	769
16	1,198 1,223	756	797

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 96 191 102	\$ 37 39
2	190 200	97 102
3	285 301	156 165
4	379 400	213 225
5	474 500 499	270 285
6	569 600	326 344
7	663 700	380 401
8	758 799	433 457
9	852 846	477 503
10	845 891	520 548
11	887 915	562 593
12	927 978	602 635 634
13	967 1,020	642 677
14	1,005 1,060	680 717
15	1,042 1,099	717 756
16	1,077 1,136	752 793

Subsections (3) through (4)(b) remain as proposed.


AUTH: Sec. 53-4-212 MCA

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

4. The Department has thoroughly considered all commentary received:

COMMENT: It is noted that there have been some changes in the Net Monthly Income and Gross Monthly Income Standards.

RESPONSE: Due to a minor arithmetical error in computing these standards, some of the figures were incorrect by one or two dollars. This has been corrected.



Director, Social and Rehabilita-
tion Services

Certified to the Secretary of State June 18,
1991.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rule I and the	)	RULE I AND THE AMENDMENT OF
amendment of Rules	)	RULES 46.10.803, 46.10.805,
46.10.803, 46.10.805,	)	46.10.809, 46.10.811,
46.10.809, 46.10.811,	)	46.10.819, 46.10.821,
46.10.819, 46.10.821,	)	46.10.823, 46.10.825,
46.10.823, 46.10.825,	)	46.10.827, 46.10.839 AND
46.10.827, 46.10.839 and	)	46.10.843 PERTAINING TO
46.10.843 pertaining to	)	TRANSITION-TO-WORK
transition-to-work allowance	)	ALLOWANCE AND THE JOBS
and the JOBS program	)	PROGRAM

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule I and the amendment of Rules 46.10.803, 46.10.805, 46.10.809, 46.10.811, 46.10.819, 46.10.821, 46.10.823, 46.10.825, 46.10.827, 46.10.839 and 46.10.843 pertaining to transition-to-work allowance and the JOBS program at page 707 of the 1991 Montana Administrative Register, issue number 9.

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

[RULE I] 46.10.411 TRANSITION-TO-WORK ALLOWANCE
Subsection (1) remains as proposed.

~~(a) AFDC recipients enrolled in the JOBS program will not be eligible for the transition to work allowance.~~

Subsection (2) remains as proposed.

(3) The maximum amount of the allowance provided to a recipient shall be UP TO four times the AFDC benefit amount the recipient is receiving at the time of qualification for the allowance.

AUTH: ~~53-2-202~~ 53-2-201 and 53-4-212 MCA
IMP: 53-4-211 and 53-4-241 MCA and HB 2

3. The Department has amended Rules 46.10.809, 46.10.819, 46.10.821, 46.10.823, 46.10.825, 46.10.839 and 46.10.843 as proposed.

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

46.10.803 DEFINITIONS Subsections (1) through (34) remain as proposed.

~~(35) "Work supplementation" means the program provided for at ARM 46.10.701 et seq. which has as its purpose to improve the~~

~~employability of participants who have not otherwise been able to obtain employment.~~

AUTH: Sec. 53-4-212 and 53-4-719 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-702 through 53-4-718 MCA

46.10.805 ELIGIBILITY, EXEMPT STATUS Subsections (1) through (2)(a) remain as proposed.

(b) a person residing at a location more than ± 2 hours ROUND TRIP distance ~~distant~~ in commuting time. This excludes the time necessary to transport a child to and from a child care facility;

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

(4) The selection of persons to participate in the program, OTHER THAN THE UNEMPLOYED PARENT TRACK, will be within the discretion of the department or its designee lead agencies.

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

Subsections (5)(a) through (5)(c) remain as proposed but will be renumbered as subsections (4)(a) through (4)(c).

(5) IN THE UNEMPLOYED PARENT TRACK, THE PRIMARY WAGE EARNER MUST PARTICIPATE UNLESS SPECIFICALLY EXEMPT UNDER SUBSECTION (2).

Subsections (6) through (8) remain as proposed.

(9) If an on-the-job training participant becomes ineligible for AFDC due to excess earned income or due to exceeding the limitations set forth in ARM 46.10.304A as to number of hours of employment per month in the case of an unemployed parent, the participant may remain a JOBS participant for the duration of the training and may be eligible for case management, child care, and supportive services available to other JOBS participants who become employed, for up to ninety (90) days after the ineligibility, until the participant completes the training described in the on the job contract.

AUTH: Sec. 53-4-212 and 53-4-719 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707, 53-4-708, 53-4-715, 53-4-717 and 53-4-720 MCA

46.10.811 PARTICIPATION REQUIREMENTS FOR UNEMPLOYED PARENTS TRACK PARTICIPATION AND OTHER REQUIREMENTS

Subsections (1) through 4(c)(1) remain as proposed.

(ii) in other cases, as determined appropriate by the case manager after assessment and development of an employability plan.

Subsections (5) through (6) remain as proposed.

AUTH: Sec. 53-4-212 and 53-4-719 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707 and 43-4-720 MCA

12-6/27/91

Montana Administrative Register

46.10.827 AVAILABILITY OF SERVICES AFTER LOSS OF AFDC ELIGIBILITY Subsection (1) remains as proposed.

(2) A JOBS participant who is participating in on-the-job training funded by JOBS or JTPA or in work supplementation and loses AFDC eligibility due to excess earned income or due to exceeding the limitations set forth in ARM 46.10.304 as to the number of hours of employment per month in the case of an unemployed parent may receive case management activities, supportive services and child care until the participant completes the training described in the on-the-job contract, even if the time required to complete the training exceeds 90 days after the date the participant's AFDC case is closed.

AUTH: Sec. 53-4-212 and 53-4-719 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707 and 53-4-720 MCA

46.10.843 FAIR HEARING PROCEDURE (1) A recipient ~~appealing a sanction that has not been resolved by the conciliation process provided for in ARM 46.10.841 participating in any work-related program or activity under the JOBS program, including on-the-job training, work supplementation, and community work experience programs.~~ is entitled to a fair hearing and appeal provided for in ARM 46.2.201 et seq. with respect to the following issues:

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

(3) A recipient who is dissatisfied with the decision of the fair hearing officer with regard to any of the matters set forth in subsections (1)(b) through (d) may appeal to the office of administrative law judges of the U.S. department of labor, AS PROVIDED IN 45 CFR 251.5(b) THROUGH (g) AS AMENDED THROUGH JANUARY 23, 1991, WHICH THE DEPARTMENT HEREBY ADOPTS AND INCORPORATES BY REFERENCE. A COPY OF 45 CFR 251.5(b) THROUGH (g) AS AMENDED THROUGH JANUARY 23, 1991, MAY BE OBTAINED FROM THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, 111 N. SANDERS, P.O. BOX 4210, HELENA, MT 59604-4210.

Subsection (3)(a) remains as proposed.

(b) An appeal under this subsection shall be the recipient's exclusive remedy in cases concerning matters set forth in subsections (1)(b) through (d) and shall be in lieu of ADDITION TO the appeal process REMEDIES provided in ARM 46.2.211 and 46.2.212.

AUTH: Sec. 53-4-212 and 53-4-719 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707 and 53-4-720 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The Legislative Council noted that 53-2-202 was an incorrect authorizing statute.

RESPONSE: The Department agrees and has corrected the citation.

COMMENT: It has been noted that Rule 46.10.843(3)(b), which provides that an appeal to the office of administrative law judges of the U.S. Department of Labor shall be the exclusive remedy of a recipient who is dissatisfied with the decision of the hearing officer regarding on-the-job working conditions. Workers compensation coverage, or wages used to calculate the hours of participation required of persons in Community Work Experience programs, is inconsistent with the intent of federal regulations at 45 CFR 251.5(b) that such appeals be in addition to any other rights of appeal which the recipient may already have.

RESPONSE: The department has changed Rule 46.10.843(3)(b) to provide that an appeal to the U.S. Department of Labor will be in addition to (rather than in lieu of) the appeal process provided in ARM 46.2.211 and 46.2.212.

COMMENT: Several comments were made expressing concern about the limited funding available for the JOB-UP track and the large number of referrals that will be made in each county. Concern was expressed that the participation requirement will be 40 hours per week and will be limited to Community Work Experience, Job Search and basic education requirements. In addition, concern was expressed about the program's apparent inability to address participant's long term barriers to self sufficiency.

RESPONSE: Beginning on October 1, 1994, federal regulations will mandate separate participation requirements for AFDC-Unemployed Parent (UP) households. These requirements will require participation of at least, but not limited to, 16 hours per week for each UP household. The Department presented to the 52nd Legislature a plan that would continue the current JOBS program for AFDC-Regular recipients with no cuts in services or funding. The legislature also granted permission to use AFDC benefit appropriations to fund a separate AFDC-UP track. The testimony presented to the legislature for the AFDC-UP track described an employment oriented approach - with emphasis on community work experience and job search. The department has received assurances from appropriate federal representations that the proposal is within federal regulations.

The Department shares the concern that individuals with significant barriers may need services beyond the basic components of community work experience, job search and basic education. AFDC-UP recipients who may be physically or mentally incapacitated will be re-evaluated to determine if they should be receiving AFDC-Incapacitated Parent (IP) benefits rather than AFDC-UP.

The comments received that are aimed at the Project Work Program are out of the scope of this rule and, as such, are not being responded to.

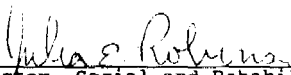
COMMENT: One commenter requested that the Department calculate the hours of participation in Community Work Experience using the prevailing wage for the specific position rather than the federal minimum wage.

RESPONSE: The federal regulations state that the maximum number of hours that an individual may participate in community work experience is found by dividing the grant by either the federal or state minimum wage, whichever is greater. In addition, the regulations indicate that after nine months, the calculation shall be made by using the higher of the federal or state minimum wage or the prevailing wage. It appears that the department would have the option of using the prevailing wage (assuming that it was higher than the minimum wage) during both time periods. The Department will continue to evaluate this suggestion and may alter this policy at a later date.

COMMENT: Why has the Department deleted section (1)(a) of [Rule I] ARM 46.10.411, which provided that AFDC recipients participating in JOBS would not be eligible for the transition-to-work allowance?

RESPONSE: The Department has removed this restriction because it has determined it would be more equitable to make the transition-to-work allowance available to JOBS participants as well as to other AFDC recipients.

5. [Rule I] 46.10.411 will become effective October 1, 1991.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State June 14, 1991.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rule I and the	)	RULE I AND THE AMENDMENT OF
amendment of Rule 46.11.101	)	RULE 46.11.101 PERTAINING
pertaining to the food stamp	)	TO THE FOOD STAMP PROGRAM
program and transfer of	)	AND TRANSFER OF RESOURCES
resources)	

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule I and the amendment of Rule 46.11.101 pertaining to the food stamp program and transfer of resources at page 654 of the 1991 Montana Administrative Register, issue number 9.

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

[RULE I] 46.11.133 FOOD STAMPS, TRANSFER OF RESOURCES
Subsections (1) through (6)(b) remain as proposed.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. ~~53-2-306~~ 53-2-201 MCA

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

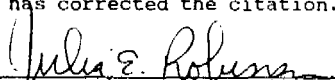
46.11.101 FOOD STAMP PROGRAM Subsection (1) remains as proposed.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. ~~53-2-306~~ 53-2-201 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The Legislative Council noted that 53-2-306 was an incorrect implementing authority.

RESPONSE: The Department agrees and has corrected the citation.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State _____ June 13, 1991.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules I, II and	)	RULES I, II AND III AND THE
III and the amendment of	)	AMENDMENT OF RULE 46.12.501
Rule 46.12.501 pertaining to	)	PERTAINING TO GROUP HEALTH
health plan premium payment	)	PLAN PREMIUM PAYMENT

TO: All Interested Persons

1. On April 25, 1991, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I, II and III and the amendment of Rule 46.12.501 pertaining to health plan premium payment at page 505 of the 1991 Montana Administrative Register, issue number 8.

2. The Department has adopted the following Rules as proposed with the following changes:

(RULE I) 46.12.3214 GROUP HEALTH PLAN PREMIUM PAYMENTS

(1) "Group health plan" means any plan of, AN EMPLOYER or ~~contributed~~ ANY PLAN to WHICH by an employer CONTRIBUTES (including a self-insured plan) to provide health care, (directly or otherwise), to the employer's employees, former employees, or the families of such employees or former employees.

(2) "INDIVIDUAL HEALTH PLAN" MEANS ANY PLAN TO PROVIDE HEALTH CARE TO AN INDIVIDUAL AND/OR HIS FAMILY WHICH IS NOT A PLAN OF THE INDIVIDUAL'S EMPLOYER OR TO WHICH THE INDIVIDUAL'S EMPLOYER CONTRIBUTES.

(23) "Cost effective" means the amount paid for premiums, co-insurance, deductibles, and other cost sharing obligations under an INDIVIDUAL OR group health plan ~~and for~~ PLUS THE additional DEPARTMENTAL administrative costs ~~in a given period of time~~ is likely to be less than the department of social and rehabilitation services would pay out for medicaid services for a medicaid recipient ~~during the same period~~, determined on an actuarial basis.

(a) Cost effective criteria may include assessment of medical diagnoses and health risk assessment.

(34) Payment of INDIVIDUAL OR group health premiums is a medicaid benefit.

(45) The department of social and rehabilitation services may pay premiums of AN INDIVIDUAL OR group health plan which provides benefits not covered by medicaid as long as it has determined that payment of the premiums will be cost effective.

Original subsection (5) remains as proposed but will be renumbered as subsection (6).

(a) Coinsurance and deductibles will not be paid for non-medicaid eligible persons who are covered by the ~~group~~ health plan.

(b) Coinsurance and deductibles will not be paid for persons who are eligible for medicaid as COBRA continuation beneficiaries, AS DEFINED IN [RULE III].

Original subsection (6) remains as proposed but will be renumbered as subsection (7).

(78) Payment of premiums may be in the form of direct payments to insurance companies or employers offering the ~~group~~ health plan or direct reimbursement to the recipient or insured.

(89) Premiums for non-medicaid recipients may be paid only if it is a condition of the enrollee's eligibility in the ~~group~~ health plan to enroll family members, and if premium payments are cost effective.

(a) Ineligible family members may reside in a separate household.

(910) Medicaid payment of ~~group~~ health plan premiums may begin as of the medicaid eligibility effective date for:

(a) applicants who are already enrolled in a ~~group~~ health plan; and

(b) applicants who have a waiting period before ~~group~~ health plan coverage begins.

(i) Full medicaid coverage is available to applicants during the waiting period.

(1011) ~~Group~~ Health plans are treated as a third party resource in accordance with ARM 46.12.304.

AUTH: Sec. 53-2-201, ~~53-6-111~~ and 53-6-113 MCA

IMP: Sec. 53-6-101, ~~53-6-103~~ and 53-6-131 MCA

[RULE III] 46.12.3215 GROUP HEALTH PLAN ENROLLMENT

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

(A) ~~Individuals who are unable to enroll in the group health plan on their own behalf (for example, children) are not considered "eligible to enroll". MEDICAID BENEFITS OF PERSONS WHO ARE UNABLE TO ENROLL IN THE HEALTH PLAN ON THEIR OWN BEHALF (FOR EXAMPLE, CHILDREN) WILL NOT BE TERMINATED BECAUSE OF THE FAILURE OF SOME OTHER PERSON TO ENROLL THEM IN THE HEALTH PLAN. SUCH PERSONS ARE NOT CONSIDERED "ELIGIBLE TO ENROLL."~~

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

(2) ENROLLMENT IN AN INDIVIDUAL HEALTH PLAN IS NOT A CONDITION OF MEDICAID ELIGIBILITY REGARDLESS OF WHETHER IT WOULD BE COST EFFECTIVE.

Original subsections (2) through (3) remain as proposed but will be renumbered as subsections (3) through (4).

AUTH: Sec. 53-2-201, ~~53-6-111~~ and 53-6-113 MCA

IMP: Sec. 53-6-101, ~~53-6-103~~ and 53-6-131 MCA

[RULE III] 46.12.3216 COBRA CONTINUATION BENEFICIARIES. APPLICATION AND ELIGIBILITY FOR MEDICAID Subsections (1) through (2) remain as proposed.

~~(a) would be eligible for AFDC-related or SSI-related medicaid under the coverage groups listed in ARM 46.12-3401 or ARM 46.12-3601 had they not exceeded the income or resource standards for those programs;~~

Original subsections (2)(b) through (2)(d) remain as proposed but will be renumbered as subsections (2)(a) through (2)(c).

Subsection (3) remains as proposed.

~~(a) ARM 46.12-304 concerning third party liability;~~

Original subsections (3)(b) through (3)(f) remain as proposed but will be renumbered as subsections (3)(a) through (3)(e).

Subsection (4) remains as proposed.

AUTH: Sec. 53-2-201, ~~53-6-111~~ and 53-6-113 MCA

IMP: Sec. 53-6-101, ~~53-6-103~~ and 53-6-131 MCA

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

46.12.501 SERVICES PROVIDED Subsections (1) through (1) (cc) remain as proposed.

(dd) payment of premiums, co-insurance, deductibles and other cost sharing obligations under an INDIVIDUAL OR group health plan in accordance with the provisions of [RULE I].

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

IMP: Sec. 53-6-101, ~~53-6-103~~ and 53-6-131 MCA

4. We are changing the proposed rules in order to exercise the option allowed by federal law of paying premiums for cost effective individual health plans as well as group plans. Enrollment in an individual plan would not be a condition of Medicaid eligibility, but payment of these premiums would provide for even larger cost savings to the Medicaid program.

The need for minor changes in the proposed rules and amendments is recognized. For example, current wording of Rule II makes it appear that children are not eligible to enroll when it is really intended that children are not denied Medicaid benefits solely because a parent or guardian chooses not to enroll them in available health insurance. Also, several authorizing and implementing statutes were cited inappropriately and have therefore been removed.

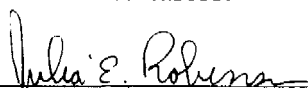
According to recent correspondence clarifying section 4713 of OBRA 90, it is now evident that it is not necessary to meet eligibility requirements of either the SSI or AFDC program to qualify as a COBRA continuation beneficiary. For example, a

child must be deprived of the care and support of at least one parent in order to be eligible for AFDC, but a person does not have to show deprivation to qualify as a COBRA continuation beneficiary. Because of this Rule III section (2)(a) has been deleted.

5. The Department has thoroughly considered all commentary received:

COMMENT: [Rule II](1) requires persons who are eligible to enroll in a cost-effective group health plan to do so in order to be eligible for Medicaid. Does this mean that a child will be ineligible for Medicaid if the child's parent is eligible to enroll in a cost-effective group health plan which would cover the child but the parent does not enroll in the plan?

RESPONSE: No, a child will not be ineligible for Medicaid because of the failure of the child's parent or some other person to enroll in a cost-effective group health plan, if the parent or other person is eligible to enroll in the plan which would cover the child but the child is not able to enroll on his own behalf. We have added additional language to [Rule II](1)(a)(ii)(A), which addresses this issue, to clarify our policy of not penalizing a person who is unable to enroll on his own behalf for someone else's failure to enroll.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 13 _____, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules 46.12.503	)	RULES 46.12.503 AND
and 46.12.505 pertaining to	)	46.12.505 PERTAINING TO
inpatient hospital	)	INPATIENT HOSPITAL
reimbursement	)	REIMBURSEMENT

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.503 and 46.12.505 pertaining to inpatient hospital reimbursement at page 671 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.503 and 46.12.505 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: This proposed rule will cost hospitals money due to the fact that our costs are increasing in the area of 6-8% annually regardless of our efforts to reduce them. A portion of this loss will be borne by private payors (cost shifting) which seems to be an inequitable taxing mechanism. Is this the long term answer?

COMMENT: The Montana Hospital Association (MHA) opposes the proposed rule freezing inpatient hospital payments. The proposed rule, while implementing the freeze called for by the Governor, does not consider the actual costs incurred by these hospitals. The Department has neither made findings to support the rule nor defined efficiently and economically operated hospitals. There is no basis under federal statute to adopt the rule proposed by the state.

MHA formally requests that the Department provide copies of the assurances and supporting findings for the inpatient and outpatient hospital programs for State Fiscal Year 1992.

The Department recently completed the budget neutral adjustment applicable to the first year of DRG reimbursement. According to the results of the study, the DRG payment rate was set at about 4 percent below the appropriate level. While the adjustment to the rate for the first year has been made, the effect of the error has carried forward to the recent rate years. Because the base price was too low the hospitals have already been subjected to a "rate freeze" for one year.

MHA urges the Department to provide an adjustment for inflation, equal to the medical marketbasket for the upcoming state fiscal year. In the alternative, the Department should correct the cumulative impact of the budget neutral adjustment.

RESPONSE: The budget neutral base year adjustment calculation indicated that in the aggregate TEFRA cost reimbursement would have resulted in additional reimbursement of approximately 4% over what was paid under the DRG system. However, there is no ongoing requirement that the state reimburse at this level, only that we do not exceed the amount that would have been paid under Medicare payment principles.


Federal law does not require any particular percentage of the hospital provider population to be paid actual costs. A State Plan can meet these federal standards even though very few or none of the hospitals are reimbursed actual costs, because such costs may include unnecessary costs and/or the facility may not be efficiently and economically operated.

The Department believes that payment rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals in providing services in conformity with applicable state and federal laws, regulations and quality and safety standards.

The 1991 legislature authorized a Prospective Payment System study to be completed during state fiscal year 1992. The purpose of this study is to perform an overall review of Medicaid inpatient hospital reimbursement policies considering changes in health care patterns, Medicare program adjustments, the effectiveness of some policies and changes necessary to make the system more efficient for providers and Medicaid.

Provider concerns will be considered as part of this reimbursement study. This study should provide long term direction regarding reimbursement of inpatient hospital services. Copies of FY 1992 assurances and findings will be forwarded to MHA when completed.

4. These rules become effective July 1, 1991.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 14, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules 46.12.508	)	RULES 46.12.508 AND
and 46.12.509 pertaining to	)	46.12.509 PERTAINING TO
outpatient hospital	)	OUTPATIENT HOSPITAL
reimbursement	)	REIMBURSEMENT

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.508 and 46.12.509 pertaining to outpatient hospital reimbursement at page 669 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.508 as proposed.

3. The Department has amended the following Rule as proposed with the following changes:

46.12.509 ALL HOSPITAL REIMBURSEMENT, GENERAL

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

(a) FOR EACH HOSPITAL WHICH IS NOT A SOLE COMMUNITY HOSPITAL, AS DEFINED IN ARM 46.12.503, ~~Reimbursement to each provider of outpatient hospital services for reasonable costs~~ OF OUTPATIENT HOSPITAL SERVICES, other than the capital-related costs of such services, shall be limited to allowable costs, as determined in accordance with subsection (2), less 5.8% of such costs.

Subsections (3) through (7) 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: Section 4151(b) of the Omnibus Budget Reconciliation Act of 1990 exempts sole community hospitals from the 5.8% outpatient reduction. The department should recognize this exemption.

RESPONSE: The department agrees and has amended the proposed rule to recognize exemption of sole community hospitals.

COMMENT: In its reasoning for proposing the rules the department contends that Section 4401 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 applies to Title XIX programs. According to the November 21, 1990 Commerce Clearing House Guide, number 636, Section 4401 pertains to reimbursement for prescription drugs.

RESPONSE: The department agrees; the first notice for this rule incorrectly referenced Section 4401 of OBRA 1990. The correct reference is Section 4151, Payments for Outpatient Hospital Services.

COMMENT: Department staff provided a copy of correspondence from the HCFA Denver Regional Office which further explains the basis for this proposed rule. The letter reasons that if a state relies on Medicare reimbursement principles for outpatient hospital payments the changes in Medicare statutes automatically apply to Medicaid. HCFA further stated that formal instructions on this matter would be added to the Medicaid Manual. According to SRS staff no such instructions have been received.

We believe the Denver Regional Office erroneously directed the state to reduce outpatient hospital payments. We recommend that the Department postpone adoption of this rule until clear instructions are received from HCFA.

RESPONSE: As the commentor stated, the department has received written instructions from HCFA that Section 4151 changes do apply to Montana Medicaid payments since we have selected to follow Medicare principles of reimbursement in our Medicaid State Plan. The commentor provides no documentation or references to support the belief that HCFA has "erroneously directed the state to reduce outpatient hospital payments."

The department further believes that failure to implement this rule, while awaiting additional formal instructions from HCFA, could jeopardize the states ability to apply these rules in a timely manner and could result in being out of compliance with our State Plan. However, if the state proceeds with implementation of the rule and subsequently is notified by HCFA that compliance was in error, the reduction could be rolled back without significant negative impact on the providers.

COMMENT: If Medicare statutes in fact apply to Medicaid, the proposed rule exceeds the magnitude of the OBRA 1990 cuts. Specifically, Congress exempted hospital designated as sole community providers. In addition, Medicare blends rates for some outpatient services. These services will also be partially excluded from the reduction. SRS should amend the rule to more closely incorporate the Medicare program requirements.

RESPONSE: The department has reviewed Section 4151(b) of OBRA 1990 and agrees that sole community hospitals should be exempt from this reduction. The rule has been amended to recognize this exemption. The department will review the "Medicare blend" issue prior to implementation and determine what impact it has, if any.

COMMENT: SRS should specify the proposed rule applies to cost reporting periods beginning after the effective date of the rule.

RESPONSE: The department intends to apply these rules to portions of cost reporting periods beginning July 1, 1991.

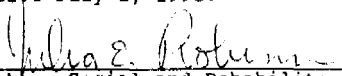
COMMENT: We recommend that the state make one additional change to the outpatient hospital rule. ARM 46.12.507(2) excludes payment for cardiac rehabilitation services. This exclusion is arbitrary and capricious, and contrary to Federal regulations governing Medicaid services.

RESPONSE: This comment is outside the scope of this proposed rule change. The department will, however, review this issue as part of the comprehensive hospital program study to be conducted during state fiscal year 1992.

COMMENT: We do not believe that funding reasonable costs less 5.8% is in keeping with the "spirit" of the Medicaid program. We believe providers should be entitled to a minimum of "reasonable costs" for such services.

RESPONSE: This rule will implement a OBRA 1990 provision which the department has been instructed by HCFA that we must apply and which was included in appropriation legislation during the 1991 session. In this case, the "spirit" of Medicaid is being dictated by the federal government. If we receive instructions to the contrary from HCFA we will certainly consider repealing this rule.

5. These rules become effective July 1, 1991.


Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 13, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.521, 46.12.522,
46.12.521, 46.12.522,	)	46.12.802, 46.12.805,
46.12.802, 46.12.805,	)	46.12.806, 46.12.2001,
46.12.806, 46.12.2001,	)	46.12.2002 AND 46.12.2003
46.12.2002 and 46.12.2003	)	AND THE REPEAL OF RULES
and the repeal of Rules	)	46.12.523 AND 46.12.524
46.12.523 and 46.12.524	)	PERTAINING TO BILLING AND
pertaining to billing and	)	REIMBURSEMENT FOR PHYSICIAN
reimbursement for physician	)	SERVICES, DURABLE MEDICAL
services, durable medical	)	EQUIPMENT AND PODIATRY
equipment and podiatry	)	SERVICES
services)	

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.521, 46.12.522, 46.12.802, 46.12.805, 46.12.806, 46.12.2001, 46.12.2002 and 46.12.2003 and the repeal of Rules 46.12.523 and 46.12.524 pertaining to billing and reimbursement for physician services, durable medical equipment and podiatry services at page 716 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.521, 46.12.522, 46.12.802, 46.12.805, 46.12.806, 46.12.2001, 46.12.2002 and 46.12.2003 as proposed.

3. The Department has repealed Rules 46.12.523 and 46.12.524 as proposed.

4. The Department has thoroughly considered all commentary received:

COMMENT: The reduction in reimbursement of x-ray services through the implementation of modifier pricing based on the existing fee schedule will cause a reduction in Medicaid reimbursement for these services.

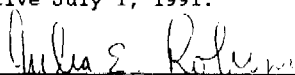
RESPONSE: Through the rule change the Department is changing the reimbursement methodology for the procedures billed with modifiers from a percent of billed charges to a percent of the established fee schedule.

The methodology for establishing a fee for procedures is defined in the state plan and is defined in this rule change. The Department has reviewed the reimbursement policies of other major insurers regarding payment of procedures billed

with modifiers. The change implemented by the Department is consistent with the general application of payment, which is a percent of the existing fee schedule.

This rule change does not provide for any increases to the existing fee for service reimbursement schedule. This rule change does make payment more equitable because all providers are reimbursed based on the existing fee for service schedule.

5. These rules become effective July 1, 1991.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1991.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules I, II and	)	RULES I, II AND III AND THE
III and the amendment of	)	AMENDMENT OF RULES
Rules 46.12.571, 47.12.580,	)	46.12.571, 46.12.580,
46.12.581, 46.12.582 and	)	46.12.581, 46.12.582 AND
46.12.588 pertaining to	)	46.12.588 PERTAINING TO
licensed professional	)	LICENSED PROFESSIONAL
counselor services	)	COUNSELOR SERVICES

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I, II, and III and the amendment of Rules 46.12.571, 46.12.580, 46.12.581, 46.12.582 and 46.12.588 pertaining to licensed professional counselor services at page 679 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has adopted Rule [I] 46.12.620, LICENSED PROFESSIONAL COUNSELOR SERVICES, DEFINITION as proposed.

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

[RULE II] 46.12.622 LICENSED PROFESSIONAL COUNSELOR SERVICES, REQUIREMENTS Subsections (1) through (2) (a) remain as proposed.

(b) group counseling; and

(c) family therapy-1

(d) APPRAISALS; AND

(e) CONSULTATION.

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

(a) ~~Six~~ ~~(6)~~ TWELVE 12 hours TOTAL may be used for APPRAISALS AND consultation with family members or agencies involved with the care of the recipient. The ~~six~~ ~~(6)~~ TWELVE 12 hours shall count against the time available for LIMITS ON testing and ON consultation by psychologists provided in ARM 46.12.571 and 46.12.581 and consultation by licensed clinical social workers provided in ARM 46.12.588.

(i) TWO UNITS OF TIME MAY BE ALLOWED FOR INTERPRETATION, RECORD REVIEW, SCORING AND REPORT WRITING FOR EVERY UNIT OF TIME SPENT IN FACE-TO-FACE CONTACT WITH THE RECIPIENT FOR APPRAISAL.

Subsections (b) and (c) remain as proposed.

Subsections (5) through 7(c) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

[RULE III] 46.12.624 LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT Subsections (1) through (3)(c) remain as proposed.

(d) \$34.49 PER HOUR FOR APPRAISALS AND CONSULTATION, PAID AT THE RATE OF \$8.62 PER FIFTEEN MINUTE UNIT.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.571 CLINIC SERVICES, REQUIREMENTS Subsections (1) through (9)(b)(ii) remain as proposed.

(10) ~~No more than twelve~~ (12) hours TOTAL per state fiscal year may be used for psychological testing of the recipient, and ~~or~~ consultation with family members or agencies involved with the care of the recipient. The twelve (12) hours shall count against the time LIMITS ON ~~available and for~~ consultation by licensed clinical social workers provided in ~~for~~ ARM 46.12.588 ~~(4)(a)~~. ON APPRAISALS AND CONSULTATION BY licensed professional counselors provided for in [RULE II] and ~~for~~ ON testing and consultation by psychologists provided ~~for~~ in ARM 46.12.581~~(4)(a)~~.

Subsections (10)(a) through (13) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.580 PSYCHOLOGICAL SERVICES LICENSED CLINICAL PSYCHOLOGISTS SERVICES, DEFINITION Subsection (1) remains the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.581 PSYCHOLOGICAL SERVICES LICENSED CLINICAL PSYCHOLOGISTS SERVICES, REQUIREMENTS Subsections (1) through (4) remain as proposed.

(a) Twelve (12) hours TOTAL may be used for psychological testing of the recipient, and ~~or~~ consultation with family members or agencies involved with the care of the recipient. The twelve (12) hours shall count against the TIME LIMITS ON PSYCHOLOGICAL TESTING AND CONSULTATION CONDUCTED AS clinic services time limitations provided ~~for~~ in ARM 46.12.571~~(10)~~ and ~~by the time limitations of~~ ON CONSULTATION BY licensed clinical social workers provided ~~for~~ in ARM 46.12.588~~(4)(a)~~. ~~and the time limitations of~~ ON APPRAISALS AND CONSULTATION BY licensed professional counselors provided in [RULE II]. Consultations with agencies may be conducted via the telephone.

Subsections (4)(b) through (7)(c) remain as proposed.

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

46.12.582 PSYCHOLOGICAL SERVICES LICENSED CLINICAL PSYCHOLOGISTS SERVICES, REIMBURSEMENT Subsections (1) through (4) remain the same.

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

46.12.588 LICENSED CLINICAL SOCIAL WORK SERVICES, REQUIREMENTS Subsections (1) through (4) remain as proposed.

(a) Six (6) hours may be used for consultation with family members or agencies involved with the care of the recipient. The six (6) hours shall count against the time available for LIMITS ON PSYCHOLOGICAL testing and consultation by psychologists provided for in ARM 46.12.571(10) and 46.12.581(4)(a) and ON APPRAISALS AND consultation by licensed professional counselors provided in [RULE II]. Consultation with agencies may be conducted via the telephone.

Subsections (4)(b) through (7)(c) 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: There should be a distinction between the services billed by licensed professional counselors and licensed clinical social workers. This distinction should allow interested parties to determine if a significant jump in Medicaid payments is caused by services rendered by licensed clinical psychologists, licensed clinical social workers or licensed professional counselors.

RESPONSE: The department will track service provided by these three provider groups in a manner that will facilitate determining the impact of each provider group's services on the Medicaid budget.

COMMENT: Licensed clinical psychologists and licensed clinical social workers must bill Medicare first for recipients who are eligible for both programs. How will this be handled with licensed professional counselors?

RESPONSE: We understand that licensed professional counselors are not currently eligible for Medicare reimbursement. Therefore they will not be required to bill Medicare for services provided to recipients eligible for both programs.

COMMENT: In rule II, paragraph (4) and (4)(a), and the proposed amendment to rule 46.12.581, paragraph (4)(a) appear

to allow licensed professional counselors to provide psychological services and psychological testing. Under the licensure law for licensed psychologists, the use of such terms as psychologists, psychological, etc. is limited to licensed clinical psychologists.

RESPONSE: In response to the comment made at the public hearing the reference to psychological services and psychological testing in rule II, paragraph (4) and (4)(a), and the proposed amendment to rule 46.12.581, paragraph (4)(a) are included in this MAR notice because the 22 hour limit and the 6 hour sub-limit on consultation apply to services provided by licensed clinical psychologists, licensed clinical social workers and licensed professional counselors. ARM 46.12.581 does not authorize Medicaid payment to licensed professional counselors for psychologists' services specified in Title 37, Chapter 17, MCA. The department is changing the titles of ARM 46.12.580, 46.12.581 and 46.12.582 to clarify that these rules address services provided by licensed clinical psychologists.

COMMENT: You have left out of Rule II appraisal or testing services that licensed professional counselors can provide. These services were authorized by House Bill 571, passed by the 49th legislature.

RESPONSE: The department will modify Rules II and III to address Medicaid coverage of and reimbursement of appraisals done by licensed professional counselors as provided for in 37-23-102 (3)(b).

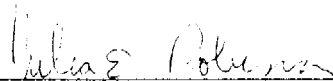
COMMENT: Not all licensed professional counselors can ethically provide appraisals nor can all psychologists do testing because of lack of training.

RESPONSE: The department considers this an issue between the practitioners and their respective licensing boards. We cannot assure the qualifications of individual practitioners other than assuring that they are currently licensed at the time of their enrollment and periodically thereafter.

COMMENT: We request that appraisals by licensed professional counselors not be counted against the hours available for psychological evaluations. It is important that the hours be preserved for patients who may require psychological evaluations.

RESPONSE: The legislature in enacting SB 306 provided for the inclusion of licensed professional counselors as providers. Appraisals by licensed professional counselors and testing by psychologists appear to be very similar mental health services. The legislature, however, through HB 2 directed the Medicaid program not to expand the amount, duration and scope of covered services. Consequently, the time available for mental health related services per client cannot be increased.

The Department believes that appraisals performed by licensed professional counsellors should count against the twelve hour limitation.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 14 _____, 1991.

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

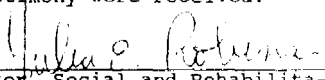
In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules 46.12.575	)	RULES 46.12.575 AND
and 46.12.577 pertaining to	)	46.12.577 PERTAINING TO
family planning services	)	FAMILY PLANNING SERVICES

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.575 and 46.12.577 pertaining to family planning services at page 689 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.575 and 46.12.577 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.590, 46.12.591
46.12.590, 46.12.591 and	)	AND 46.12.599 PERTAINING TO
46.12.599 pertaining to	)	INPATIENT PSYCHIATRIC
inpatient psychiatric	)	SERVICES
services)	

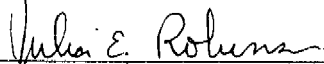
TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.590, 46.12.591 and 46.12.599 pertaining to inpatient psychiatric services at page 673 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.590, 46.12.591 and 46.12.599 as proposed.

3. No written comments or testimony were received.

4. These rules become effective July 1, 1991.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1991.

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

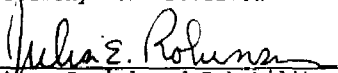
In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 46.12.702	)	RULE 46.12.702 PERTAINING
pertaining to drug rebates	)	TO DRUG REBATES

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.702 pertaining to drug rebates at page 677 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.702 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State _____ June 13 _____, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 46.12.1025	)	RULE 46.12.1025 PERTAINING
pertaining to ambulance	)	TO AMBULANCE SERVICES,
services, reimbursement	)	REIMBURSEMENT

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.1025 pertaining to ambulance services, reimbursement at page 699 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.1025 as proposed.

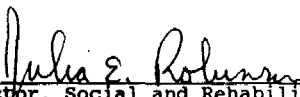
3. The Department has thoroughly considered all commentary received:

COMMENT: One comment noted that averaging all charges submitted would include services with both paid and volunteer staff. This may not reflect a true picture of the costs involved in providing ambulance services by those with full time paid staff.

RESPONSE: The Department has elected to establish a state wide average fee to minimize the administrative burden on the providers and the department and to maximize the incentive to provide services at the lowest cost.

The use of volunteer or donated services range from completely volunteer to minimal donated services. Determining the extent of volunteer services could be a difficult if not impossible task. Because of the variability of the use of volunteer time and services, reflecting the true cost of these services would require individual rates to reflect the use of volunteer staff or other donated or free services based on the submission and review of cost information from providers. This method does not provide an incentive to maintain volunteer services or to control costs. The use of a state wide average fee will provide the incentive to minimize costs and cost growth while reimbursing all providers on an equal basis. The Department feels that this method provides for equitable reimbursement for all providers and minimizes the administrative burden on the providers and the Department.

4. This rule becomes effective July 1, 1991.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 13 _____, 1991.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules I, II, III	)	RULES I, II, III AND IV
and IV pertaining to	)	PERTAINING TO FEDERALLY
federally qualified health	)	QUALIFIED HEALTH CENTERS
centers)	

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I, II, III and IV pertaining to federally qualified health centers at page 733 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has adopted [RULE II] 46.12.1703, FEDERALLY QUALIFIED HEALTH CENTERS, REQUIREMENTS; [RULE III] 46.12.1705, FEDERALLY QUALIFIED HEALTH CENTERS, RECORD KEEPING AND REPORTS; and [RULE IV] 46.12.1707, FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT as proposed.

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

[RULE I] 46.12.1701 FEDERALLY QUALIFIED HEALTH CENTERS.
DEFINITIONS Subsections (1) through (1)(c) remain as proposed.

(d) "VISIT" MEANS A FACE TO FACE ENCOUNTER, FOR THE PURPOSE OF PROVIDING FQHC SERVICES, BETWEEN A MEDICAID RECIPIENT AND A HEALTH CARE PROFESSIONAL PROVIDING FQHC SERVICES ON BEHALF OF THE FQHC. ENCOUNTERS WITH MORE THAN ONE SUCH HEALTH CARE PROFESSIONAL, AND MULTIPLE ENCOUNTERS WITH THE SAME HEALTH CARE PROFESSIONAL, ON THE SAME DAY AND AT A SINGLE LOCATION CONSTITUTE A SINGLE VISIT, EXCEPT WHEN THE RECIPIENT, SUBSEQUENT TO THE FIRST VISIT, SUFFERS ILLNESS OR INJURY REQUIRING ADDITIONAL DIAGNOSIS OR TREATMENT.

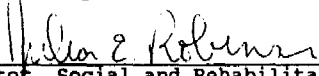
AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The rule provides that interim payment rates will be based upon estimated costs and "visits," but "visits" are not defined.

RESPONSE: The department has included a definition of "visit" in the final rule.

4. These rules become effective July 1, 1991.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1991.

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

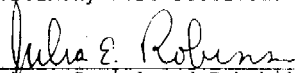
In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.2011 AND
46.12.2011 and 46.12.2013	)	46.12.2013 PERTAINING TO
pertaining to nurse	)	NURSE SPECIALIST NON-
specialist non-covered	)	COVERED SERVICES
services		

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.2011 and 46.12.2013 pertaining to nurse specialist non-covered services at page 665 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.2011 and 46.12.2013 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 13 _____, 1991.

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


In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules I and II	)	RULES I AND II PERTAINING
pertaining to conditional	)	TO CONDITIONAL MEDICAL
medical assistance	)	ASSISTANCE
)	

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I and II pertaining to conditional medical assistance at page 683 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has adopted Rules [RULE I] 46.12.3210, CONDITIONAL MEDICAL ASSISTANCE, DEFINITIONS and [RULE II] 46.12.3211, CONDITIONAL MEDICAL ASSISTANCE, ELIGIBILITY as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 13 _____, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.3401 AND
46.12.3401 and 46.12.3801	)	46.12.3801 PERTAINING TO
pertaining to non-institu-	)	NON-INSTITUTIONALIZED
tionalized medical	)	MEDICAL ASSISTANCE FOR
assistance for children	)	CHILDREN

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.3401 and 46.12.3801 pertaining to non-institutionalized medical assistance for children at page 661 of the 1991 Montana Administrative Register, issue number 9.

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

46.12.3401 GROUPS COVERED. NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (g)(i) remain as proposed.

(ii) NEWBORN CHILDREN ARE CONTINUOUSLY ELIGIBLE THROUGH THE MONTH OF THEIR FIRST BIRTHDAY, PROVIDED THEY CONTINUE TO RESIDE WITH THEIR MOTHER AND SHE WOULD CONTINUE ELIGIBLE FOR ASSISTANCE IF SHE WERE STILL PREGNANT.

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

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

46.12.3801 INDIVIDUALS COVERED. NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsection (1) through (1)(b) remain as proposed.

(c) ~~caretaker relatives as defined in ARM 46.10.302; a child born on or after October 1, 1983, through the month of their 7th 19TH birthday whose family income and resources meet the requirements listed in ARM 46.12.3803 and 46.12.3805;~~

Subsections (1)(d) through (3)(b) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: It has been noted that the OBRA 90 regulations require an upper age limit of 19 be imposed for the qualified children (our Ribicoff children).

RESPONSE: The department has changed the amendment to reflect the upper age limit of 19.

COMMENT: Comments were received from individuals expressing concern that the caretaker relative would no longer be eligible to be included under the non-institutionalized medically needy program.

RESPONSE: The Montana Legislature debated this issue and determined in House Bill 2 that the needs of the caretaker relative would no longer be included. This rule complies with that mandate.

COMMENT: If the caretaker relative had a large medical expense and applied for emergency Aid to Families with Dependent Children would this not cost the State more than if the needs of the caretaker relative were still included in the medically needy program.

RESPONSE: The Federal Government does pay 50 percent of the Emergency Aid to Families with Dependent Children's cost as compared to 71.71 percent of Medicaid expenses. However the emergency assistance may only be received one time during a 12 month period by the recipient.

COMMENT: If a newborn child lives with his/her mother for only one month and then lives with his/her father can the child continue to receive Medicaid.

RESPONSE: If it is anticipated that the infant will be gone from the Mother's care for a short duration of under 90 days, the infant may continue on the Mother's Medicaid. If it is not anticipated that the child will be returning to his/her mother's care within the 90 days, a new application would have to be made and a new determination of eligibility made based on the father's situation. If the infant later returns to his/her mother's care, a new application and determination of eligibility would have to be made.

COMMENT: When a child turns age 19 what happens to his/her medical needs.

RESPONSE: When a child turns age 19, he/she is no longer eligible for Medicaid under Aid to Families with Dependent Children. The individual could apply for medical assistance under an adult category of disability/blindness.

COMMENT: Comments were received from several people as to whether or not the Legislature looked at the cost effectiveness of removing the caretaker relative's needs.

RESPONSE: The Legislature did consider the cost effectiveness of the removal of caretaker relatives.

COMMENT: A comment was made in regards to this Department's support of a "National Health Plan".

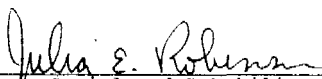
RESPONSE: This Department would support any reasonable initiative that would further medical care for needy Montanans.

COMMENT: A concern was expressed as to the lack of data in regards to the actual number of people that would be affected by the removal of the caretaker relative.

RESPONSE: This Department is aware of the lack of data under the present system. This should be improved under the new computer system that is currently being installed.

COMMENT: It has been noted that OBRA 90 requires continuous eligibility for newborn children through the month of their first birthday, provided they continue to reside with their mother and she would continue to be eligible for assistance if she were still pregnant.

RESPONSE: The department has recently received clarification of the federal policy pertaining to continuous eligibility for newborns and has changed Rule 46.12.3401(1)(g) to provide for continuous eligibility for newborns.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1991.

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

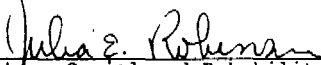
In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment Rules 46.12.3601	)	RULES 46.12.3601 AND
and 46.12.3603 pertaining to	)	46.12.3603 PERTAINING TO
medicaid for disabled	)	MEDICAID FOR DISABLED
widows/widowers	)	WIDOWS/WIDOWERS

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.3601 and 46.12.3603 pertaining to medicaid for disabled widows/widowers at page 692 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.3601 and 46.12.3603 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State June 13, 1991.

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 standards) (a) NOTICE OF THE AMENDMENT OF
RULE 46.12.3803 PERTAINING
TO MEDICALLY NEEDY INCOME
STANDARDS

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards at page 667 of the 1991 Montana Administrative Register, issue number 9.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS

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

(b) Institutionalized recipients must also meet the income criteria of ARM 46.12.4008.

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

Family Size	One Month	Two Month	Three Month
	Net Income Level	Net Income Level	Net Income Level
1	\$400 386 407	\$ 800	\$ 1,200
2	400 417	800	1,200
3	423 443	846	1,269
4	445 469	890	1,335
5	519 548	1,038	1,557
6	594 627	1,188	1,782
7	669 706	1,338	2,007
8	744 785	1,488	2,232
9	780 800	1,560	2,340
10	814 835	1,628	2,442
11	846 866	1,692	2,538
12	876 897	1,752	2,628
13	904 924	1,808	2,712
14	930 950	1,860	2,790
15	954 975	1,908	2,862
16	976 997	1,952	2,928

AUTH: Sec. 53-6-113 MCA


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

12-6/27/91

Montana Administrative Register

3. This change to the final rule is necessary because further clarification of the federal regulations pertaining to the calculation of the medically needy standard provides that since the Aid to Families with Dependent Children's standard is being increased July 1, 1991, the standards for the medically needy program will also be increased.

4. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1991.

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

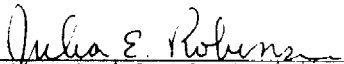
In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules I, II and	)	RULES I, II AND III
III pertaining to medicaid	)	PERTAINING TO MEDICAID FOR
for qualified disabled	)	QUALIFIED DISABLED WORKING
working individuals	)	INDIVIDUALS

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I, II and III pertaining to medicaid for qualified disabled working individuals at page 686 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has adopted [RULE I] 46.12.4201, QUALIFIED DISABLED WORKING INDIVIDUALS, APPLICATION AND ELIGIBILITY FOR MEDICAID; [RULE II] 46.12.4202, QUALIFIED DISABLED WORKING INDIVIDUALS, EFFECTIVE DATE OF ELIGIBILITY; and [RULE III] 46.12.4203, QUALIFIED DISABLED WORKING INDIVIDUALS, MEDICAID BENEFITS as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 13, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.25.101, 46.25.724,
46.25.101, 46.25.724,	)	46.25.731, 46.25.742,
46.25.731, 46.25.742,	)	46.25.751 AND 46.25.752
46.25.751 and 46.25.752	)	PERTAINING TO GENERAL
pertaining to general relief	)	RELIEF ASSISTANCE AND
assistance and general	)	GENERAL RELIEF MEDICAL
relief medical assistance	)	ASSISTANCE

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.25.101, 46.25.724, 46.25.731, 46.25.742, 46.25.751 and 46.25.752 pertaining to general relief assistance and general relief medical assistance at page 701 of the 1991 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.25.731, 46.25.742, 46.25.751 and 46.25.752 as proposed.

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

46.25.101 DEFINITIONS For purposes of this chapter, the following definitions apply: Subsections (1) through (42)(c) remain as proposed.

(4043) "Serious medical condition" means a mental or physical condition that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner for physical conditions, and by a licensed MEDICAL PRACTITIONER, psychiatrist, psychologist, social worker or chemical dependency counselor for emotional and mental conditions. ~~and~~ The department may confirm ~~it the diagnosis through expert medical a departmental review.~~ Necessary treatment includes prenatal essential medical care and such other elective treatments as are determined other services that the department determines by department rule to be medically necessary. A serious medical condition is limited to chronic illness, an acute medical need, or a medical condition that requires services in order for a person to obtain or retain employment.

Subsections (44) through (51) remain as proposed.

AUTH: Sec. 53-2-803, 53-3-114 MCA

IMP: Sec. 53-2-201, 53-3-109, as amended by HB 927, 53-3-205 and 53-3-206 MCA

46.25.724 DETERMINATION OF INFIRMITY UNEMPLOYABILITY

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

(2) The ~~diagnosis~~ DETERMINATION of infirmity ~~un-~~
~~employability~~ is subject to ~~professional-medical~~ departmental
review.

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

AUTH: Sec. 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-201, 53-3-109, as amended by HB 927,
53-3-205 and 53-3-206 MCA

4. The Department has thoroughly considered all commen-
tary received:

COMMENT: Rule 46.25.101(43) as amended states that a serious
medical condition which is mental or emotional rather than
physical must be diagnosed by a licensed psychiatrist,
psychologist, social worker or chemical dependency counselor.
Does this mean the Department will not accept the diagnosis of
a medical practitioner for a mental or emotional condition?

RESPONSE: No. The intent is that a serious medical condition
which is mental or emotional can be diagnosed by a licensed
psychiatrist, psychologist, social worker or chemical depen-
dency counselor as well as by a licensed medical practitioner.
We are changing the wording of section (43) to make this
clear.

COMMENT: Three persons had comments concerning the defini-
tions of acute medical need and chronic illness contained in
ARM 46.25.101. Their concern regards the acute medical need
definition that limits the medical condition to a duration of
less than 12 months while the chronic illness definition
states that the medical condition must last longer than 12
months. The respondents felt that there exists a potential
group of clients who have medical conditions which are ex-
pected to last longer than 12 months (diabetes for example, or
asthma) yet these medical conditions do not always meet the
added requirement under the chronic illness definition that
the condition meet SSA criteria. The respondents felt that
this group's probable medical conditions would not be covered
because they are not specifically addressed in the acute
medical need or chronic illness definition. They asked
whether these conditions are considered serious medical condi-
tions and will be treated as medically necessary in the same
manner as acute medical need and chronic illness.

RESPONSE: The Department has no intention of denying ser-
vices to any person eligible for General Relief Medical (GRM).
Those with the types of illnesses mentioned above will be
treated as acute medical needs under GRM. Their conditions

fall under the definition of "serious medical condition" [ARM 46.25.101 (43)]. Under that definition, any condition which causes a serious health risk to a person and for which treatment is medically necessary, will be given. This is also covered in 46.25.752 where medically necessary services are defined as those which require immediate medical attention to alleviate a serious health risk. The GRA/GRM Policy Manual will also be revised to reflect that such group's medical conditions are covered under acute care coverage.

COMMENT: One person commented that the term "unemployable" was not previously defined in rule and asked whether the definition of "unemployable" contained in ARM 46.25.101 is necessary.

RESPONSE: The 51st Legislature deleted references to "infirmity" under the revision of the General Relief Laws. The term "Unemployable" replaced infirmity. The Administrative Rules are now being changed to reflect this. This definition of "Unemployable" now coincides with 53-3-109 and 53-3-215, MCA.

COMMENT: ARM 46.25.724(2) as amended states that a diagnosis of unemployability is subject to departmental review. One person commented on the authority of the Department to reverse a determination of unemployability.

RESPONSE: The Department has the authority to review determinations as part of its general authority to administer the General Relief Program. The Department has the responsibility to review all determinations (favorable or unfavorable to a client) to insure that the assessments are consistent with all General Relief statutes. If the Department questions a determination of unemployability by a Vocational Specialist, a second opinion will be sought. We have changed the word "diagnosis" in section (2) to "determination" to reflect the fact that unemployability is now determined by a vocational specialist rather than diagnosed by a medical practitioner, in accordance with 53-3-109, MCA, as amended by the 52nd Legislature.

COMMENT: The Missoula PWP/UP Task Force submitted written comments on the focus of the PWP/UP Program. Comments were:

1. Changes in Project Work are inconsistent with statutory requirements, and do not reflect legislative intent in the 1991 session.
2. Changes will grossly disserve clients.
3. Changes will be financially short-sighted from the SRS perspective.

RESPONSE: The remarks made in this written communication focused on Administrative Rules we are not amending. The above comments refer to fiscal reductions in provider contracts for PWP due to the reductions in the number of GRA/PWP clients being served. The Project Work Program has not changed. Therefore, these comments had no relevancy on the particular Administrative Rules presently being changed.

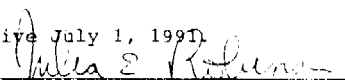
COMMENT: Montana Legal Services has commented that the definition of "chronic illness" in ARM 46.25.101, which tracks the social security definition of disability, is too narrow.

RESPONSE: The definition of "chronic illness" is taken from 53-3-109(4), MCA, as amended by the 52nd Legislature in Senate Bill 269. The Department does not have the authority to change the Legislature's definition of that term.

COMMENT: Montana Legal Services comments that implementation of a managed care system or other restrictions on availability of medical services may result in denial of necessary medical care to some individuals.

RESPONSE: The proposed amendments to the rules pertaining to General Relief Assistance do not address the issue of managed care except at ARM 46.25.101(31), which defines "managed care system." To the extent that managed care systems or other possible restrictions on medical services are addressed by these rules, the Department is merely implementing changes made by the 52nd Legislature in House Bill 927, Senate Bill 269 and Senate Bill 391. The Department is charged with adopting rules which are consistent with statutes as amended by the Legislature.

5. These rules become effective July 1, 1991.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ June 14 _____, 1991.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules 46.25.727	)	RULES 46.25.727 AND
and 46.25.744 pertaining to	)	46.25.744 PERTAINING TO
general relief assistance	)	GENERAL RELIEF ASSISTANCE
and general relief medical	)	AND GENERAL RELIEF MEDICAL
income standards	)	INCOME STANDARDS

TO: All Interested Persons

1. On May 16, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.25.727 and 46.25.744 pertaining to general relief assistance and general relief medical income standards at page 663 of the 1991 Montana Administrative Register, issue number 9.

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

46.25.727 MONTHLY INCOME AND RESOURCE STANDARD FOR GENERAL RELIEF ASSISTANCE Subsection (1) remains as proposed.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. ~~53-2-205~~ 53-3-205 and ~~53-2-206~~ 53-3-206 MCA

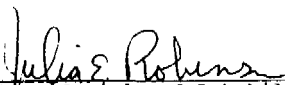
46.25.744 INCOME FOR GENERAL RELIEF MEDICAL Subsections (1) through (5) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. ~~53-2-205~~ 53-3-205 and ~~53-2-206~~ 53-3-206 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The Legislative Council has noted that the implementing authorities for both rules are incorrect.

RESPONSE: The Department agrees and has corrected the authorities.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1991.

VOLUME NO. 44

OPINION NO. 10

APPROPRIATIONS - Private organizations not under government control;
COUNTIES - Search and rescue units; contracts with private organizations;
COUNTY GOVERNMENT - Search and rescue units; contracts with private organizations;
LOCAL GOVERNMENT - Search and rescue units; contracts with private organizations;
PUBLIC FUNDS - Search and rescue units;
SHERIFFS - Control over search and rescue units;
MONTANA CODE ANNOTATED - Sections 7-7-2103, 7-32-235, 7-32-2121(11);
MONTANA CONSTITUTION - Article V, section 11(5);
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 7 (1979), 37 Op. Att'y Gen. No. 105 (1978), 37 Op. Att'y Gen. No. 25 (1977).

- HELD: 1. A county-recognized search and rescue unit that, pursuant to section 7-32-235(3), MCA, receives tax money to support the unit may maintain private bank accounts to distribute funds accumulated from nontax sources.
2. The county sheriff does not control the finances of a county-recognized and -supported search and rescue unit.

June 3, 1991

John T. Flynn
Broadwater County Attorney
P.O. Box 96
Townsend MT 59644

Dear Mr. Flynn:

You have requested my opinion on two questions I have rephrased as follows:

1. May a county-recognized search and rescue unit that, pursuant to section 7-32-235(3), MCA, receives tax money to support the unit maintain private bank accounts to distribute funds accumulated from nontax sources?
2. Does the county sheriff control the finances of such a search and rescue unit, i.e., must the sheriff authorize any disbursement of funds by the unit?

You have provided me with the following facts: A nonprofit search and rescue unit has operated in Broadwater County for many years. The unit was originally funded solely through donations and private contributions. Recently, however, Broadwater County voters approved, pursuant to section 7-32-235(3), MCA, the levy of an annual tax to support the unit. All monies accumulated through donations have historically been placed in a separate bank account payable upon the signature of one of the officers of the unit. All tax monies received by the unit have been budgeted annually and paid upon a county claim form approved by the Broadwater County Commissioners. Recently questions have arisen regarding the appropriateness of the county-recognized and -supported unit's maintaining a separate private bank account, and as to whether the unit's annual budget and disbursements of funds must be approved by the county sheriff.

In 1981 the Legislature enacted a bill (1981 Mont. Laws, ch. 42), codified at sections 7-32-235(2) and 7-32-2121(11), MCA, placing search and rescue units and their officers under the operational control and supervision of the county sheriff. The legislative history and the plain language of the bill make it clear that the Legislature intended only to give the sheriff supervisory authority over the units when they are called into service. See Minutes, Senate Judiciary Committee, January 6, 1981, at 1-2; Minutes, House Judiciary Committee, March 3, 1981, at 1-2, 6-7. Four years later, the Legislature amended section 7-32-235, MCA, to authorize counties to establish or recognize one or more search and rescue units within the county and, after approval by the voters, to levy an annual tax to support the established or recognized units. § 7-32-235(1), (3), MCA. The legislative history of the amendment reveals a legislative intent to authorize optional funding for these volunteer units which act for the public good; it reveals no intent to give the county sheriff control over the finances of the units. See Minutes, House Local Government Committee, February 12, 1985, at 1-2; Minutes, Senate Taxation Committee, March 19, 1985, at 1.

Based upon the legislative histories of these bills, it is my opinion that the Legislature intended that county-recognized search and rescue units remain private, volunteer organizations. While these county-recognized units function under the sheriff's operational control whenever called into service, all other aspects of the units remain under the control of the officers of the units. This raises the issue of whether provision of public funds to such an organization is proper. A local government unit may not make an appropriation to a private organization not under government control. Mont. Const. Art. V, § 11(5); § 7-7-2103, MCA; 37 Op. Att'y Gen. No. 25 (1977). Nonetheless, the local government may contract with private organizations to perform functions or services which the local government is authorized to provide for its constituencies. 38 Op. Att'y Gen. No. 7 at 27 (1979); 37 Op. Att'y Gen. No. 105 at

441 (1978). The inquiry is, first, whether the local government has the power to provide the service or function and, second, whether a contract with a private organization is a reasonable and appropriate means of providing that service or function. 38 Op. Att'y Gen. No. 7 at 27 (1979). The Legislature has answered both of these inquiries affirmatively by its enactment of section 7-32-235, MCA. I therefore conclude that, pursuant to section 7-32-235, subsections (1) and (3), MCA, the county may contract with a county-recognized search and rescue unit and provide public funds to the unit in exchange for search and rescue functions provided to the county. I further conclude that such a search and rescue unit, as a private organization, may maintain private bank accounts to distribute funds accumulated from nontax sources and that there is no requirement that the county sheriff authorize or approve disbursements of funds by the unit.

THEREFORE, IT IS MY OPINION:

1. A county-recognized search and rescue unit that, pursuant to section 7-32-235(3), MCA, receives tax money to support the unit may maintain private bank accounts to distribute funds accumulated from nontax sources.
2. The county sheriff does not control the finances of a county-recognized and -supported search and rescue unit.

Sincerely,



MARC RACICOT
Attorney General

VOLUME NO. 44

OPINION NO. 11

CONSOLIDATION - Creation of multijurisdictional service district within existing district to increase mill levy;
INTERGOVERNMENTAL COOPERATION - Creation of multijurisdictional service district within existing district to increase mill levy;
LIBRARIES - Creation of multijurisdictional service district within existing district to increase mill levy;
LOCAL GOVERNMENT - Creation of multijurisdictional service district within existing district to increase mill levy;
TAXATION AND REVENUE - Creation of multijurisdictional service district within existing district to increase mill levy;
MONTANA CODE ANNOTATED - Sections 7-11-1101 to 7-11-1112, 22-1-316.

HELD: A multijurisdictional service district within an existing service district may not be created for the purpose of increasing the total mill levy within the existing district where the proposed multijurisdictional service district will not increase the existing service area, will not serve people who are not currently receiving the service, and will not equalize the tax burden among those who will be using the service.

June 11, 1991

Larry J. Nistler
Lake County Attorney
106 Fourth Avenue East
Polson MT 59860

Dear Mr. Nistler:

You have requested an opinion on the creation of a multijurisdictional library service district within an existing library district. In particular, you ask:

May a multijurisdictional library service district be created within an existing library district, in order to increase the total mill levy within the new district? If so, will the mill levy violate the restrictions imposed by Initiative 105 (I-105), §§ 15-10-401 to 412, MCA?

Sections 7-11-1101 to 1112, MCA, govern the creation of multijurisdictional service districts. Under section 7-11-1101(1), MCA, a multijurisdictional service district may be formed by municipalities to provide "a higher level of service than is available through the local governments forming such a district."

12-6/27/91

Montana Administrative Register

Libraries are expressly included in the types of services provided through multijurisdictional districts. § 7-11-1102, MCA. A multijurisdictional service district is established by an interlocal agreement among participating local government jurisdictions. § 7-11-1105(1), MCA. As far as is practical, the boundary of a proposed district must follow precinct, school district, municipal or county lines. § 7-11-1105(3), MCA. Under section 7-11-1111(3), MCA, the interlocal agreement that establishes a district "may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions."

You state that a proposal has been made to the Polson Library Board to create a new multijurisdictional service district. The proposed district would follow established school district lines within Lake County. You further state that the intent in the creation of the new district is to impose a new mill levy within this service district to supplement the funds already received by the Polson Library. Currently, the Polson Library is funded by a property tax on city residents, as well as a portion of a county-wide levy. While you do not indicate whether the Polson Library Board has a formal agreement with Lake County, you state that the revenues from the county-wide mill levy are currently divided among the five libraries in the county, with the Polson Library receiving 33 percent of the levy's revenues. The people who would be taxed under the new multijurisdictional service district currently receive services from the Polson Library and are taxed under the city mill levy and the county-wide mill levy for provision of library services. The proposal calls for the replacement of the city levy with the multijurisdictional service district levy, while the county-wide levy for library services would continue to be imposed on those taxpayers within the proposed district boundaries.

Your first question is whether a local library board may create a multijurisdictional service district within an existing library district in order to increase the total mill levy within the new district. In order to create a multijurisdictional district, there must be a purpose to provide either a higher level of service or services that are not otherwise available. § 7-11-1101, MCA. Because the city and county may provide library services through a joint city-county library under section 22-1-316, MCA, the initial consideration here is whether the proposal calls for the provision of a "higher level of service." Your question is candidly framed in terms of whether a multijurisdictional service district may be formed to increase the mill levy on those provided services. Under the plain language of section 7-11-1101, MCA, such a purpose is not permissible absent provision of a higher level of service.

You acknowledge that you do not necessarily anticipate that services will be provided at a higher level, but rather hope to

shift some of the tax burden from city property owners. You suggest that additional employees and perhaps a computer system may be added to the Polson Library with the additional revenue, but that the services are already being provided on a county-wide basis. It is doubtful that a "higher level of service" will be provided when the proposed district will neither increase the service areas nor serve people who are not currently receiving services. Accordingly, the purpose of the proposed multijurisdictional service district is to generate more revenue.

The legislative history of the multijurisdictional statutes indicates that multijurisdictional service districts were intended to perform two main functions: (1) allow cities and counties to enter into interlocal agreements to provide services to suburban areas without the necessity of taxing the entire county for provision of those services; and (2) make only those people within the multijurisdictional district responsible for the services that they use. See Exhibit A submitted by the Montana League of Cities and Towns as testimony at the Hearing on House Bill 239, Minutes of Senate Local Government Committee, March 7, 1985. Many examples are cited in the legislative history of the types of problems that the statutes on multijurisdictional districts were intended to address. Alec Hansen of the Montana League of Cities and Towns stated that the provisions were intended to provide "more equal financing for services in Montana" and gave the following example:

The city of Bozeman is particularly interested in this bill as a fair way of financing its recreation programs. Under the existing law they do not have an effective way of financing these recreation programs. In Bozeman, outsiders use the facilities but the people in the city have to pay for it. With this bill, both the people in the city and those outside the city would be sharing in the cost of the recreational services.

February 2, 1985, Minutes of House Local Government Committee on House Bill 239, at 5.

Mr. Hansen further noted in response to a question from Representative Sands that if the recreation district was created, then the cost previously incurred by the city or county should be assumed by the district. He suggested that the costs for services provided by the district would no longer be the responsibility of those taxpayers in other jurisdictions who would not be using the services. Id. at 7. Your proposal is therefore proper to the extent that the taxpayers within the district would be responsible for the services that they use. However, the legislative history suggests that those taxpayers not using the service should then be relieved of any tax that would support the same service.

One main purpose of the statutes allowing creation of multijurisdictional districts was to provide services to suburban areas without having to tax the entire county for the services. Your proposal would require the creation of a multijurisdictional service district while maintaining county-wide taxation and a county-wide service district. The multijurisdictional district would be a superfluous entity with respect to provision of services, and would be created solely for the purpose of raising revenue. This purpose was not envisioned by the Legislature and is contrary to the expressed intent of the statute.

Section 7-11-1111(3), MCA, supports this reasoning, specifically addressing the creation of a multijurisdictional service district for libraries:

(3) An interlocal agreement under this part may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions.

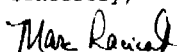
This provision suggests that in order to provide library services through a multijurisdictional service district the proposed interlocal agreement should enlarge an existing service district. The proposal before the Library Board is to create a multijurisdictional service district within an existing library district. The proposal does not intend to enlarge an existing library district or city or county library district, but only intends to increase the tax burden. Further, your request indicates that there is currently an agreement between the county and the city in which the Polson Library receives 33 percent of the revenues for the county-wide levy for library services. Under section 7-11-1111(3), MCA, an interlocal agreement for a multijurisdictional service district may not supersede such an existing agreement.

In conclusion, while statutes on multijurisdictional service districts were intended to expand the services available to people in districts outside urban areas and thereby equalize the tax burden by allowing cities and counties to create districts in which only those who used the services would pay for them, the statutes were not intended as a mechanism to create a service district within an existing district in order to increase the mill levy and impose an additional tax burden on those who are already receiving the service. Because a new multijurisdictional service district may not be created within an existing service district to increase the total mill levy within the district, I need not address your question concerning application of I-105.

THEREFORE, IT IS MY OPINION:

A multijurisdictional service district within an existing service district may not be created for the purpose of increasing the total mill levy within the existing district where the proposed multijurisdictional service district will not increase the existing service area, will not serve people who are not currently receiving the service, and will not equalize the tax burden among those who will be using the service.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Racicot", written in a cursive style.

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 | 1. Consult ARM topical index. |
| Subject | Update the rule by checking the accumulative |
| Matter | table and the table of contents in the last |
| | Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and |
| Department | 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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1991. This table includes those rules adopted during the period April 1, 1991 through June 30, 1991 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, 1991, 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 and 1991 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

- 2.21.306 and other rules - Work Cite Closure During A Localized Disaster or Emergency, p. 2209
- 2.21.1801 and other rules - Leave Administration for Salaried Employees, p. 876
- 2.21.1812 Exempt Compensatory Time, p. 2062, 430
- 2.21.3802 and other rules - Probation - Recruitment and Selection - Reduction in Work Force, p. 1982, 433
- 2.21.8011 and other rules - Grievances, p. 2212, 352
(Public Employees' Retirement Board)
- 2.43.432 Allowing PERS Members to Purchase Full Months of Additional Service When Eligible to Purchase a Full Year, p. 2215, 510
(State Compensation Mutual Insurance Fund)
- I-XI Organization and Board Meetings of the State Fund - Establishment of Premium Rates, p. 1975, 353
- 2.55.301 Method for Assignment of Classifications of Employments, p. 568
- 2.55.310 Variable Pricing Within a Classification, p. 486

AGRICULTURE, Department of, Title 4

- I Honeybee Hourly Inspection Fee, p. 880
- I Grading Standards for Hulless Barley, p. 383, 812
- I-LV Montana Agricultural Chemical Ground Water Protection Act, p. 1199, 2244

- 4.5.201 and other rules - Designation of Noxious Weeds, p. 210, 511
- 4.10.311 and other rules - Regulatory Status and Use of Aquatic Herbicides, p. 100, 354
- 4.10.1202 and other rules - Livestock Protection Collars, p. 2217, 194
- 4.10.1402 and other rules - M-44 Sodium Cyanide Capsules and Devices, p. 2220, 195
- 4.12.1012 Grain Fee Schedule, p. 570
- 4.12.1229 Fees Established for Service Samples, p. 2065, 440
- 4.12.1504 Fee on All Mint Oil Producers, p, 385, 813
- 4.12.3402 Seed Laboratory - Reports - Enforcement, p. 341, 738

STATE AUDITOR, Title 6

- I-VI Pricing of Noncompetitive or Volatile Lines, p. 2067, 253
- I-VII Loss Cost System in Property-Casualty Lines Other Than Workers' Compensation, p. 1806, 2171
- I-XVI Long-term Care Insurance, p. 1990, 119

COMMERCE, Department of, Title 8

(Board of Athletics)

- 8.8.3402 Referees, p. 387, 814

(Board of Barbers)

- 8.10.403 and other rules - Fees - General Requirements - Sanitation Requirements - Teaching Staff - College Requirements - Applications - Procedure Upon Completion - Identification and Sanitation Requirements - Preparation and Publication of Posters, Notices, Orders, New Schools - Violation, p. 344, 911

(Board of Hearing Aid Dispensers)

- 8.20.402 and other rule - Fees - Record Retention, p. 575

(Board of Horse Racing)

- 8.22.501 and other rules - Definitions - Fees - General Provisions - Definition of Conduct Detrimental to the Best Interests of Racing, p. 172, 355

(Board of Medical Examiners)

- 8.28.908 and other rule - Equivalency - EMT - Advanced Certification, p. 764

(Board of Optometrists)

- 8.36.401 and other rules - Meetings - Examinations - Reciprocity - Practice Requirements - Fees - Continuing Education Requirements - Approved Courses and Examinations - Permissible Drugs for Diagnostic Pharmaceutical Agents - Approved Drugs for Therapeutic Pharmaceutical Agents - Definitions - Unprofessional Conduct - Continuing Education, p. 1748, 2176

- 8.36.403 and other rule - Application for Examination - Examination, p. 882
(Board of Outfitters)
- 8.39.502 and other rules - Licensure - Qualifications - Licensure - Examinations - Conduct, p. 213
(Board of Physical Therapy Examiners)
- 8.42.402 and other rules - Examinations - Fees, Temporary Licenses - Licensure by Endorsement - Exemptions - Foreign-Trained Applicants - Lists, p. 1810, 2107
(Board of Plumbers)
- 8.44.412 Fee Schedule, p. 2225
(Board of Social Workers and Professional Counselors)
- 8.61.401 Definitions, p. 884
(Board of Passenger Tramway Safety)
- 8.63.501 and other rule - ANSI Standard - Fee and Assessment Schedule, p. 577
(Weights and Measures Bureau)
- 8.77.101 and other rules - Scale Pit Clearance - Fees - Voluntary Registration of Servicemen and Service Agencies - Weighing Device License Transfer - Random Inspection of Packages - Liquefied Petroleum Gas - Accessibility to Stock Scales, p. 886
(Consumer Affairs Unit)
- 8.78.301 Disclosure Fees, p. 176, 739
(Milk Control Bureau)
- 8.79.301 Licensee Assessments, p. 178, 441
(Financial Division)
- I-II Repurchase Agreements - Fixed Annuity Sales, p. 389, 490
- 8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be Applied, p. 766
- 8.80.401 and other rule - Credit Unions - Supervisory and Examination Fees - Credit Unions - Limited Income Persons - Definitions, p. 1872, 292, 442
(Board of Milk Control)
- 8.86.301 and other rules - Class I Wholesale Price - Statewide Pool and Quota Plan, p. 768
- 8.86.301 Pricing Rules - Jobber Prices, p. 215, 513
- 8.86.301 Pricing Rules - Class I Wholesale Prices, p. 1, 296
- 8.86.301 Class I Price Formula and Wholesale Prices - Class III Producer Price, p. 1646, 2177
- 8.86.501 Statewide Pooling and Quota Plan, p. 1656, 2110
- 8.86.505 Quota Plans - Readjustment and Miscellaneous Quota Rules, p. 2072, 49
(Board of County Printing)
- 8.91.303 and other rule - Official Publications and Legal Advertising - Schedule of Prices, p. 892
(Local Government Assistance Division)
- I Incorporation by Reference - Administration of the 1991 Federal Community Development Block Grant (CDBG) Program, p. 105, 358

(Board of Investments)

- 8.97.1301 and other rules - Definitions Related to General Requirements for All Investments in Mortgages and Loans - Requirements for All Residential, Commercial, Multi-Family, Federally Guaranteed Loans - Economic Development Linked Deposit Programs, p. 772

(Business Development Division)

- I-III Microbusiness Finance Program - Definitions - Composition of the Council - Soliciting Nominations, p. 579

(Coal Board)

- I-II Incorporation by Reference - Montana Environmental Policy Act - Categorical Exclusions from Environmental Review Process, p. 107

(Board of Science and Technology Development)

- I Incorporation by Reference of Rules Implementing the Montana Environmental Policy Act, p. 2008

EDUCATION. Title 10

(Superintendent of Public Instruction)

- 10.10.309 Accounting Practices and Tuition, p. 2015, 2275
10.21.104 Guaranteed Tax Base, p. 2010, 2276
10.23.101 and other rule - Permissive Amount - Voted Amount and School Levies, p. 2013, 2277

(Board of Public Education)

- 10.55.707 Certification, p. 493
10.55.903 Basic Education Program: Junior High and Grades 7 and 8 Budgeted at High School Rates, p. 217
10.57.208 and other rules - Reinstatement - Class 1 Professional Teaching Certificate - Class 3 Administrative Certificate, p. 2232, 297
10.57.211 Test for Certification, p. 2231, 298
10.57.301 and other rule - Endorsement Information - Foreign Languages, p. 2229, 299
10.57.301 and other rules - Endorsement Information - Computer Endorsement Review Committee - Endorsement of Computer Science Teachers, p. 2235, 300
10.57.403 Class 3 Administrative Certificate, p. 491
10.57.601 and other rule - Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action - Notice and Opportunity for Hearing Upon Determination that Substantial Reason Exists to Suspend or Revoke Teacher or Specialist Certificate, p. 219
10.61.207 Student Transportation, p. 2227, 301

FAMILY SERVICES. Department of, Title 11

- 11.5.1001 Day Care Payments, p. 2143, 125
11.7.604 Foster Care Support Services, p. 893
11.14.105 Licensing and Registering Day Care Facilities, p. 495

- 11.16.170 and other rules - Prohibition of Day Care in Adult Foster Homes - Licensing of Adult Foster Homes - Department Services Provided to and Procedures for Adult Foster Homes, p. 2017, 2278

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I-VI and other rules - Fish Health and Importation Rules, p. 895
I-XXII Hunting License and Damage Hunt Rules, p. 4, 288, 815
12.6.901 Water Safety Regulations - Use of Electric Motors on Garthside Reservoir, p. 582
12.6.901 Water Safety Regulations - Establishing a No-Wake Restriction on Hyalite Reservoir, p. 221, 912
12.6.901 Extension of 10 Horsepower Restriction on Yellowstone River to the Springdale Bridge, p. 180, 740
12.6.901 Establishing A No-Wake Restriction on Tongue River Reservoir, p. 1918, 2279

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- 16.8.1302 and other rule - Air Quality - Open Burning of Scrap Creosote-Treated Railroad Ties Under Appropriate Circumstances, Through the Use of a Permit Program, p. 1815, 126
16.8.1423 Air Quality - Standard of Performance for New Stationary Sources - Emission Standards for Hazardous Air Pollutants, p. 348, 584
16.18.201 and other rules - Water and Wastewater Operators, p. 776
16.20.202 and other rules - Water Quality - Public Water Supplies, p. 596
16.35.111 Conditions for Payment of Claims Under the End Stage Renal Disease (ESRD) Program, p. 585
16.38.105 and other rules - Water Quality - Licensure and Requirements for Analysis of Public Water Supplies, p. 587
16.38.115 and other rules - Fees for Laboratory Analyses and Licensure of Laboratories to Perform Drinking Water Analysis, p. 780
16.44.102 and other rules - Solid and Hazardous Waste - Incorporations by Reference - Exclusions - Special Requirements for Counting Hazardous Wastes - Polychlorinated Biphenyl (PBC) Wastes Regulated Under Federal Law - Toxicity Characteristic - Lists of Hazardous Wastes - General - Representative Sampling Methods - Toxicity Characteristic Leaching Procedure - Chemical Analysis Test Methods - Testing Methods, p. 182, 514
16.44.102 and other rules - Solid and Hazardous Waste - Adoption of Changes in Order to Achieve Parity with Federal Regulations for Montana to Independently Operate a Hazardous Waste Program, p. 23, 302

- 16.44.202 and other rules - Solid and Hazardous Waste - Mining Waste Exclusion, p. 1536, 2280
- 16.44.401 and other rules - Solid and Hazardous Waste - Defining the Terms Large Generator, Small Generator and Conditionally Exempt Small Generator of Hazardous Waste, p. 19, 307
- 16.45.1219 Underground Storage Tanks - Inspection Requirements for Small Farm and Residential Tanks, p. 900
- 16.45.1220 and other rules - Underground Storage Tanks - Inspection Fees - Requirements for Inspection Generally - Inspection Reimbursement, p. 290

JUSTICE. Department of. Title 23

- I-XVI and other rules - Fire Marshal Bureau - Describing Enforcement of the Rules - Incorporating by Reference the 1988 Uniform Fire Code, a Montana Supplement to the Code - Other Provisions Generally Dealing with Fire Safety, p. 2074, 291
- 23.3.504 and other rule - Licensing Operators of Commercial Motor Vehicles, p. 1819, 2114
- 23.4.201 and other rules - Alcohol Analysis, p. 785
- 23.5.102 Motor Carrier Safety Regulations, p. 1817, 2115
- 23.16.1201 and other rule - Changing the Name of the Department's Authority Reference Regarding Poker and Other Card Games, p. 2090, 196

LABOR AND INDUSTRY. Department of. Title 24

(Human Rights Commission)

- I and other rules - Document Format, Filing, Service and Time Relating to Certain Documents Filed During Investigation and Conciliation - Format, Filing and Service of Documents Filed with the Commission during Contested Case Proceedings - Calculating the Time Limits for Acts, such as Filing Documents, Required Under the Contested Case Rules, p. 2145, 308
- 24.9.805 and other rules - Records on Age, Sex, and Race - Employment Applications, p. 904
- 24.11.441 and other rules - Administration of Unemployment Insurance, p. 1920, 2181
- 24.16.9007 Prevailing Wage Rates, p. 497
(Workers' Compensation)
- 24.29.802 and other rules - Reduced Reporting Requirements, p. 1928, 2183

STATE LANDS. Department of. Title 26

- I Prohibiting Export of Logs Harvested From State Lands and Requiring Purchasers of State Timber to Enter Into Non-export Agreements Implementing the Forest

- Resources Conservation and Shortage Relief Act of 1990, p. 1875, 2116
- I-III and other rules - Sale of Cabinsites and Homesites on State Trust Lands, p. 1660, 2284
- I-X Bonding Small Miner Placer and Dredge Operations - Permit Requirements for Small Miner Cyanide Ore Processing Operations, p. 2092, 445
- 26.3.149 Mortgaging of State Leases and Licenses, p. 109, 444
- 26.4.1301A Modification of Existing Coal and Uranium Permits, p. 111, 465

LIVESTOCK, Department of. Title 32

- 32.2.401 Fee Change for Recording of Brands, p. 1823, 2298
- 32.3.136 and other rules - Treatment, Control and Elimination of the Disease of Pseudorabies, p. 625

NATURAL RESOURCES AND CONSERVATION, Department of. Title 36

- I-X Financial Assistance Available Under the Wastewater Treatment Revolving Fund Act, p. 637
- I-X Financial Assistance Available Under the Wastewater Treatment Revolving Fund Act, p. 2148
- 36.12.103 Water Right Application Fees, p. 634
- 36.16.117 Water Reservation Applications in the Upper Missouri Basin, p. 2239
- (Board of Water Well Contractors)
- 36.21.403 and other rules - Requirements for Water Well Contractors - Definitions - Plastic Casing - Casing Perforations - Movement of Casing after Grouting - Sealing - Temporary Capping - Disinfection of the Well - Abandonment - Placement of Concrete or Cement - Verification of Experience for Monitoring Well Constructor Applicants - Application Approval - Definitions - Installation of Seals - Abandonment - Casing Depth - Verification of Equivalent Education and Experience for Monitoring Well Constructors - Types of Wells Requiring Abandonment, p. 223, 913
- 36.21.415 Fees, p. 636

PUBLIC SERVICE REGULATION, Department of. Title 38

- I Proper Accounting Treatment for Acceptable Conservation Expenditures, p. 1931, 466
- 38.3.706 Motor Carrier Insurance - Endorsements, p. 45, 360
- 38.3.706 Emergency Amendment - Motor Carrier Insurance - Endorsements, p. 50
- 38.5.2202 and other rule - Federal Pipeline Safety Regulations Including Drug-Testing Requirements, p. 275, 698, 1897
- 38.5.3302 and other rules - Telecommunications Service Standards, p. 392

REVENUE. Department of. Title 42

- I Use of Real Property, p. 426
- I Special Fuel Dealers Bond for Motor Fuels Tax, p. 192, 469
- I-IV Telephone License Tax, p. 1878, 131
- 42.12.115 Liquor License Renewal, p. 115, 467
- 42.17.105 Computation of Withholding Surtax, p. 2026, 129
- 42.17.111 and other rules - Withholding and Workers' Compensation Payroll Taxes, p. 498
- 42.19.401 Low Income Property Tax Reduction, p. 237
- 42.20.423 and other rules - Property Tax - Sales Assessment Ratio Study, p. 239, 742
- 42.21.106 and other rules - Trending and Depreciation Schedules for Personal Property Tax, p. 396, 915
- 42.22.1311 Industrial Machinery and Equipment Trend Factors, p. 2020, 130
- 42.27.118 Prepayment of Motor Fuels Tax, p. 114, 468

SECRETARY OF STATE. Title 44

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1881, 2117

SOCIAL AND REHABILITATION SERVICES. Department of. Title 46

- I and other rule - Food Stamp Program - Transfer of Resources, p. 654
- I and other rules - Transition-to-Work Allowance - JOBS Program, p. 707
- I Reimbursement for General Relief Medical Assistance Services, p. 2242, 313
- I-II Conditional Medical Assistance, p. 683
- I-II and other rules - General Relief Medical Assistance, p. 2033, 2310
- I-III Medicaid for Qualified Disabled Working Individuals, p. 686
- I-III and other rules - Licensed Professional Counselor Services, p. 679
- I-III and other rules - Group Health Plan Premium Payment, p. 505
- I-IV Federally Qualified Health Centers, p. 733
- I-XXI Targeted Case Management, p. 797
- I-LXV and other rules - Child Support Enforcement Procedures and Administration, p. 74, 375, 1337, 1852, 2312
- 46.10.403 AFDC Table of Assistance Standards, p. 694
- 46.10.403 Suspension of AFDC for One Month, p. 1947, 52
- 46.10.506 Nonrecurring Gifts and Excluded Unearned Income, p. 503, 923
- 46.10.510 AFDC Excluded Earned Income, p. 350, 823
- 46.10.512 AFDC Earned Income Disregards Policy, p. 1945, 53

- 46.12.503 and other rule - Inpatient Hospital Reimbursement, p. 671
- 46.12.503 and other rule - Inpatient Hospital Services and Medical Assistance Facilities, p. 117, 310
- 46.12.503 and other rules - Disproportionate Share for Inpatient Psychiatric Hospitals, p. 2028, 198
- 46.12.508 and other rule - Outpatient Hospital Reimbursement, p. 669
- 46.12.514 and other rules - Early Periodic Screening and Diagnosis (EPSDT), p. 1938, 2299
- 46.12.521 and other rules - Billing and Reimbursement for Physician Services - Durable Medical Equipment - Podiatry Services, p. 716
- 46.12.545 and other rule - Occupational Therapy, p. 658
- 46.12.575 and other rule - Family Planning Services, p. 689
- 46.12.575 and other rule - Family Planning Services, p. 1934, 2302
- 46.12.590 and other rules - Inpatient Psychiatric Services, p. 673
- 46.12.702 Drug Rebates, p. 677
- 46.12.1025 Ambulance Services, Reimbursement, p. 699
- 46.12.1401 and other rules - Medicaid Home and Community Based Program for Elderly and Physically Disabled Persons, p. 1090, 2184, 470
- 46.12.2003 Physician Services, Reimbursement/General Requirements and Modifiers, p. 428, 824
- 46.12.2003 and other rule - Pharmacy Pricing Codes for Drugs Administered by Physicians and Nurse Specialists, p. 2031, 2305
- 46.12.2011 and other rule - Nurse Specialist Non-Covered Services, p. 665
- 46.12.3207 Transfer of Resources for Medical Services, p. 2104, 262
- 46.12.3401 and other rule - Non-Institutionalized Medical Assistance for Children, p. 661
- 46.12.3401 Presumptive and Continuous Eligibility for Medicaid Services, p. 2037, 516
- 46.12.3601 and other rule - Medicaid for Disabled Widows/Widowers, p. 692
- 46.12.3801 and other rules - Medically Needy Program, p. 2163, 265
- 46.12.3803 Medically Needy Income Standards, p. 667
- 46.13.106 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1672, 1959, 2307
- 46.14.401 Eligibility of Group Homes for Weatherization Assistance, p. 47, 311
- 46.25.101 and other rules - General Relief Assistance - General Relief Medical Assistance, p. 701
- 46.25.727 and other rule - General Relief Assistance - General Relief Medical Income Standards, p. 663
- 46.30.801 and other rules - Child Support Medical Support Enforcement, p. 2102, 135

BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in May, 1991, are published. Vacancies scheduled to appear from July 1, 1991, through September 30, 1991, are also listed, as are current recent vacancies due to resignations or other reasons.

Boards created by the 1991 Legislature are also listed in this issue. Additional boards, if any, will be printed in the next issue of the *Montana Administrative Register*. Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 17, 1991.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES: MAY, 1991

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Crime Control (Justice)			
Representative Royal Johnson	Governor	Deligdisch	5/1/1991
Billings			1/1/1995
Qualifications (if required):	public member		
Board of Personnel Appeals (Labor and Industry)			
Mr. Don K. Klepper	Governor	Hatch	5/1/1991
Missoula			1/1/1995
Qualifications (if required):	management representative		
Board of Real Estate Appraisers (Commerce)			
Mr. Patrick Asay	Governor	none listed	5/13/1991
Cardwell			5/1/1993
Qualifications (if required):	appraiser represent Internat'l Right-of-Way Association		
Ms. Connie G. Clarke	Governor	none listed	5/13/1991
Miles City			5/1/1992
Qualifications (if required):	public member		
Ms. Linda Cunningham	Governor	none listed	5/13/1991
Fairfield			5/1/1994
Qualifications (if required):	public member		
Ms. Janet M. Davis	Governor	none listed	5/13/1991
Billings			5/1/1992
Qualifications (if required):	appraiser represent American Institute Real Estate Appraiser		
Mr. Jack B. Moore	Governor	none listed	5/13/1991
Helena			5/1/1994
Qualifications (if required):	appraiser represent Nat'l Assoc. Independent Fee Appraisers		

BOARD AND COUNCIL APPOINTEES: MAY, 1991

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Realty Regulation (Cont.)			
Mr. Steven E. Cummings Kallispell	Governor	Dudis	5/9/1991 5/9/1995
Qualifications (if required):	public member and from Western Cong. District		
Mr. Rocky Zindars Glasgow	Governor	reappointed	5/9/1991 5/9/1995
Qualifications (if required):	in realty business and Democrat from Western Congressional		
Board of Social Work Examiners and Professional Counselors (Commerce)			
Mr. C. James Armstrong Fort Harrison	Governor	Lappin	5/13/1991 1/2/1993
Qualifications (if required):	licensed professional social worker		
Clark Fork Rehabilitation Advisory Council (Governor)			
Mr. Vic Andersen Helena	Governor	none listed	5/23/1991 5/23/1993
Qualifications (if required):	none specified		
Senator Thomas Beck Deer Lodge	Governor	none listed	5/23/1991 5/23/1993
Qualifications (if required):	none specified		
Mr. Frank Bennett Anaconda	Governor	none listed	5/23/1991 5/23/1993
Qualifications (if required):	none specified		
Mr. Cal Christian Anaconda	Governor	none listed	5/23/1991 5/23/1993
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES: MAY, 1991

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Clark Fork Rehabilitation Advisory Council (Cont.)	Governor	(Governor)	
Mr. Bob Fox	Governor	none listed	5/23/1991
Helena			5/23/1993
Qualifications (if required):	none specified		
Mr. Pat Graham	Governor	none listed	5/23/1991
Helena			5/23/1993
Qualifications (if required):	none specified		
Mr. Glen Green	Governor	none listed	5/23/1991
Deer Lodge			5/23/1993
Qualifications (if required):	none specified		
Mr. Frank Munshower	Governor	none listed	5/23/1991
Bozeman			5/23/1993
Qualifications (if required):	none specified		
Mr. Peter Nielson	Governor	none listed	5/23/1991
Missoula			5/23/1993
Qualifications (if required):	none specified		
Mr. Steve Pilcher	Governor	none listed	5/23/1991
Helena			5/23/1993
Qualifications (if required):	none specified		
Ms. Sandy Stash	Governor	none listed	5/23/1991
Anaconda			5/23/1993
Qualifications (if required):	none specified		
Mr. Tim Sullivan	Governor	none listed	5/23/1991
Butte			5/23/1993
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES: MAY, 1991

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Clark Fork Rehabilitation Advisory Council (Cont.)			
Mr. Ray Tilman	Governor	none listed	5/23/1991
Butte			5/23/1993
Qualifications (if required):	none specified		
Education Advisory Council (Governor)			
Senator Robert Brown	Governor	Knapp	5/1/1991
Whitefish			5/1/1993
Qualifications (if required):	legislator and teacher		
Dr. Peter Carparelli			
Billings	Governor	reappointed	5/1/1991
Qualifications (if required):	regional superintendent		5/1/1993
Mr. John Dallum			
Cascade	Governor	reappointed	5/1/1991
Qualifications (if required):	parent of elementary student		5/1/1993
Mr. Bob Deming			
Great Falls	Governor	reappointed	5/1/1991
Qualifications (if required):	serves on Board of Higher Education		5/1/1993
Mr. LeRoy Ensign			
Bozeman	Governor	Hane	5/1/1991
Qualifications (if required):	represents private schools		5/1/1993
Ms. Martha H. Parrish			
Rexford	Governor	Beery	5/1/1991
Qualifications (if required):	elementary school librarian		5/1/1993
Mr. Sidney Sutherland			
Fairfield	Governor	reappointed	5/1/1991
Qualifications (if required):	guidance counselor		5/1/1993

BOARD AND COUNCIL APPOINTEES: MAY, 1991

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Education Advisory Council (Cont.)			
Ms. Linda Vaughney	Governor	reappointed	5/1/1991
Havre			5/1/1993
Qualifications (if required): school board member			
Hard Rock Mining Impact Board			
Mr. John F. Gardner	(Commerce) Governor	Jenkins	5/1/1991
Butte			1/1/1995
Qualifications (if required): rep. of hard rock mining industry & from Western Congressional District			
Housing Discrimination Advisory Council (Labor)			
Ms. Jean Bear Crane	Governor	none listed	5/15/1991
Billings			1/31/1992
Qualifications (if required): none specified			
Reverend Phillip Caldwell	Governor	none listed	5/15/1991
Great Falls			1/31/1992
Qualifications (if required): none specified			
Mr. Tim Harris	Governor	none listed	5/15/1991
Helena			1/31/1992
Qualifications (if required): none specified			
Ms. Maria Stephens	Governor	none listed	5/15/1991
Billings			1/31/1992
Qualifications (if required): none specified			
Ms. Dallas Teboe	Governor	none listed	5/15/1991
Poplar			1/31/1992
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES: MAY, 1991

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Housing Discrimination Advisory Council (Cont.)			
Mr. Michael Wangen	Governor	none listed	5/15/1991
Missoula			1/31/1992
Qualifications (if required):	none specified		
Mr. Walt Wetzel	Governor	none listed	5/15/1991
Billings			1/31/1992
Qualifications (if required):	none specified		
Ms. Pam Willett	Governor	none listed	5/15/1991
Billings			1/31/1992
Qualifications (if required):	none specified		
Mr. Larry Witt	Governor	none listed	5/15/1991
Bozeman			1/31/1992
Qualifications (if required):	none specified		
Science and Technology Development Board (Commerce)			
Mr. Rick Hill	Governor	Hibbard	5/1/1991
Helena			1/1/1995
Qualifications (if required):	experienced in finance		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Governor) Mr. Chris S. Johansen, Great Falls Qualifications (if required): none specified	Governor	7/18/91
Mr. Roland F. Kennerly, Browning Qualifications (if required): none specified	Governor	7/18/91
Mr. Dwight Mackay, Billings Qualifications (if required): from Region II	Governor	7/18/91
Mr. Stan Rogers, Billings Qualifications (if required): none specified	Governor	7/18/91
Board of Banking (Commerce) Ms. Laurel McAtee, Ennis Qualifications (if required): active officer in state bank	Governor	7/1/91
Mr. Michael J. Milodragovich, Missoula Qualifications (if required): public member	Governor	7/1/91
Board of Cosmetologists (Commerce) Ms. Marlene J. Sorum, Great Falls Qualifications (if required): licensed cosmetologist	Governor	7/1/91
Ms. Dorothy M. Turner, Great Falls Qualifications (if required): none specified	Governor	7/1/91
Board of Directors, Montana Self Insurers Guaranty Fund (Administration) Mr. Mark Blair, Troy Qualifications (if required): none specified	Governor	7/1/91
Mr. Daniel L. Walker, Billings Qualifications (if required): none specified	Governor	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Hearing Aid Dispensers (Commerce) Mr. W. A. Higgs, Kalispell Qualifications (if required): none specified	Governor	7/1/91
Mr. Byron Randall, Kalispell Qualifications (if required): licensed dispenser & fitter of hearing aids	Governor	7/1/91
Board of Medical Examiners (Commerce) Dr. John R. Jacobson, Butte Qualifications (if required): has degree of doctor of medicine	Governor	9/1/91
Dr. Thomas J. Malee, Glendive Qualifications (if required): has degree of doctor of medicine	Governor	9/1/91
Board of Nursing (Commerce) Ms. Sherri Chatham, Highwood Qualifications (if required): licensed practical nurse	Governor	7/1/91
Mr. Donna Mae Snodgrass, Poplar Qualifications (if required): registered professional nurse	Governor	7/1/91
Board of Pharmacy (Commerce) Mr. D. Wayne Bollinger, Kalispell Qualifications (if required): none specified	Governor	7/1/91
Board of Physical Therapy Examiners (Commerce) Ms. Barbara Reed, Butte Qualifications (if required): licensed physical therapist	Governor	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Plumbers (Commerce)		
Mr. William A. Lindsay, Helena	Governor	7/1/91
Qualifications (if required): public member		
 Mr. Alve J. Thomas, Helena	Governor	7/1/91
Qualifications (if required): public member		
 Mr. Roy A. Wells, Helena	Governor	7/1/91
Qualifications (if required): sanitary engineer represent Dept. of Health		
Board of Private Security Patrolmen and Investigators (Commerce)		
Mr. Robert F. Ash, Hysham	Governor	8/1/91
Qualifications (if required): representing the county sheriff's office		
 Mr. David J. Collings, Deer Lodge	Governor	8/1/91
Qualifications (if required): rep: County Sheriff's Department		
 Mr. Al Murphy, Missoula	Governor	8/1/91
Qualifications (if required): licensed private investigator		
 Mr. Jack F. Samson, Billings	Governor	8/1/91
Qualifications (if required): rep: City Police Department		
 Mr. Joseph H. Servel, Missoula	Governor	8/1/91
Qualifications (if required): licensed private investigator		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Richard E. Guenzi, Glendive	Governor	7/1/91
Qualifications (if required): surveyor		
 Board of Psychologists (Commerce)		
Dr. Michael J. McLaughlin, Great Falls	Governor	9/1/91
Qualifications (if required): licensed psychologist		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Public Accountants (Commerce) Ms. Ivah G. Schmitz, Missoula Qualifications (if required): licensed public accountant	Governor	7/1/91
Mr. Everitt A. Sliter, Kalispell Qualifications (if required): certified public accountant	Governor	7/1/91
Mr. Joseph W. Upshaw, Helena Qualifications (if required): none specified	Governor	7/1/91
Board of Radiologic Technologists (Commerce) Ms. Sandra Curtiss, Havre Qualifications (if required): licensed radiologic technologist	Governor	7/1/91
Ms. Patricia K. Kelly, Helena Qualifications (if required): licensed radiologic technologist	Governor	7/1/91
Board of Sanitariums (Commerce) Mr. Paddy R. Trusler, Polson Qualifications (if required): licensed sanitarian	Governor	7/1/91
Board of Trustees of the State Historical Society (Education) Mr. Bruce L. Ennis, Billings Qualifications (if required): none specified	Governor	7/1/91
Mr. Leif Erickson, Bigfork Qualifications (if required): none specified	Governor	7/1/91
Mr. Harold G. Stearns, Helena Qualifications (if required): none specified	Governor	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Veterinary Medicine (Commerce) Dr. William D. McFarland, Fort Benton Qualifications (if required): none specified	Governor	7/3/91
Board of Water Well Contractors (Natural Resources and Conservation) Mr. W. J. Lindsay, Clancy Qualifications (if required): licensed Montana water well contractor	Governor	7/1/91
Chemical Dependency Advisory Council (Institutions) Ms. Carol Carey, Ekalaka Qualifications (if required): none specified	Director	7/1/91
Ms. Dena L. Christiansen, Kalispell Qualifications (if required): none specified	Director	7/1/91
Mr. Jim Gannell, Great Falls Qualifications (if required): none specified	Director	7/1/91
Ms. Carol A. Judge, Helena Qualifications (if required): none specified	Director	7/1/91
Ms. Sandra Lambert, Miles City Qualifications (if required): none specified	Director	7/1/91
Representative Thomas N. Lee, Bigfork Qualifications (if required): none specified	Director	7/1/91
Mr. Marko Lucich, Butte Qualifications (if required): none specified	Director	7/1/91
Mr. Curtis C. Moxley, Chinook Qualifications (if required): none specified	Director	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Chemical Dependency Advisory Council (cont.)		
Mr. Rod Robinson, Billings	Director	7/1/91
Qualifications (if required): none specified		
Mr. Patrick Wolberd, Billings	Director	7/1/91
Qualifications (if required): none specified		
Committee on State Employee Compensation (Labor and Industry)		
Mr. Ralph T. Anderson, Clancy	Governor	7/1/91
Qualifications (if required): public member		
Ms. Barb Booher, Clancy	Governor	7/1/91
Qualifications (if required): public member		
Rep. Vicki Cocchiarella, Missoula	Governor	7/1/91
Qualifications (if required): public member		
Sen. Gerry Devlin, Terry	Governor	7/1/91
Qualifications (if required): public member		
Mr. Bob Kelly, Missoula	Governor	7/1/91
Qualifications (if required): public member		
Mr. Robert L. Marks, Helena	Governor	7/1/91
Qualifications (if required): public member		
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)		
Mr. Eric Eck, Helena	Governor	7/1/91
Qualifications (if required): represents Public Service Commission		
Mr. Norman E. Eck, Helena	Governor	7/1/91
Qualifications (if required): 1 of 2 non-handicapped members		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee on Telecommunications Services for the Handicapped (Cont.)		
Ms. Sue Jackson, East Helena	Governor	7/1/91
Qualifications (if required): represents Department of Social and Rehabilitation Services		
Mr. Thomas P. McGree, Helena	Governor	7/1/91
Qualifications (if required): member from largest local exchange company in Montana		
Criminal Justice and Corrections Advisory Council (Institutions)		
Senator Thomas Beck, Deer Lodge	Governor	9/1/91
Qualifications (if required): none specified		
Ms. Margaret L. Borg, Missoula	Governor	9/1/91
Qualifications (if required): none specified		
Criminal Justice and Corrections Advisory Council (Cont.)		
Rep. Vivian M. Brooke, Missoula	Governor	9/1/91
Qualifications (if required): public member		
Mr. Henry E. Burgess, Helena	Governor	9/1/91
Qualifications (if required): none specified		
Sen. B. F. "Chris" Christiaens, Great Falls	Governor	9/1/91
Qualifications (if required): none specified		
Ms. Colleen Conroy, Hardin	Governor	9/1/91
Qualifications (if required): none specified		
Mr. Donald D. Dupuis, Pablo	Governor	9/1/91
Qualifications (if required): none specified		
Ms. Sheryl Hoffarth, Billings	Governor	9/1/91
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Criminal Justice and Corrections Advisory Council (Cont.)		
Rep. Betty Lou Kasten, Brockway	Governor	9/1/91
Qualifications (if required): none specified		
Mr. Mike Lavin, Helena	Governor	9/1/91
Qualifications (if required): none specified		
Mr. Ted O. Lympus, Kalispell	Governor	9/1/91
Qualifications (if required): none specified		
Mr. Walter J. Moore, Roundup	Governor	9/1/91
Qualifications (if required): none specified		
Rep. Helen O'Connell, Great Falls	Governor	9/1/91
Qualifications (if required): none specified		
Judge Thomas A. Olson, Bozeman	Governor	9/1/91
Qualifications (if required): none specified		
Ms. Pat Regan, Billings	Governor	9/1/91
Qualifications (if required): none specified		
Mr. Daniel D. Russell, Helena	Governor	9/1/91
Qualifications (if required): none specified		
Mr. Mike Schafer, Billings	Governor	9/1/91
Qualifications (if required): none specified		
Ms. Debbie Swanson, Havre	Governor	9/1/91
Qualifications (if required): none specified		
Representative Bob Thoft, Stevensville	Governor	9/1/91
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electrical Board (Commerce) Mr. James A. Lewis, Helena Qualifications (if required): none specified	Governor	7/1/91
Family Support Services Advisory Council (Social and Rehabilitation Services) Ms. Alicia Pichette, Helena Qualifications (if required): public member	Governor	9/29/91
Flathead Basin Commission (Governor) Mr. Edgar Brannon, Kalispell Qualifications (if required): none specified	Director	8/5/91
Mr. Kenneth Krueger, Kalispell Qualifications (if required): none specified	County Commissioners	8/1/91
Mr. Robert T. O'Leary, Butte Qualifications (if required): none specified	Director	7/28/91
Incentive Awards Advisory Council (Administration) Mr. James A. "Jim" Adams, Helena Qualifications (if required): none specified	Director	7/1/91
Mr. Jack Ellery, Helena Qualifications (if required): none specified	Director	7/1/91
Ms. Renee Erdmann, Helena Qualifications (if required): none specified	Director	7/1/91
Mr. Russell G. McDonald, Helena Qualifications (if required): none specified	Director	7/1/91
Ms. Lois A. Menzies, Helena Qualifications (if required): none specified	Director	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Incentive Awards Advisory Council (Cont.)		
Ms. Janet Myren, Helena Qualifications (if required): none specified	Director	7/1/91
Mr. John H. Noble, Helena Qualifications (if required): none specified	Director	7/1/91
Job Training Coordinating Advisory Council (Labor and Industry)		
Ms. Colleen Allison, Columbia Falls Qualifications (if required): none specified	Governor	7/1/91
Mr. Duane L. Ankney, Colstrip Qualifications (if required): representative of labor & community based organizations	Governor	7/1/91
Mr. Forrest H. Boles, Helena Qualifications (if required): none specified	Governor	7/1/91
Rep. John Cobb, Augusta Qualifications (if required): none specified	Governor	7/1/91
Mr. Tom Dahl, Havre Qualifications (if required): none specified	Governor	7/1/91
Mr. Tom Hannah, Billings Qualifications (if required): none specified	Governor	7/1/91
Ms. Helen Kellicut, Deer Lodge Qualifications (if required): none specified	Governor	7/1/91
Mr. Marvin McMichael, Missoula Qualifications (if required): none specified	Governor	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Job Training Coordinating Advisory Council (Cont.)		
Mr. Ted Neuman, Vaughn Qualifications (if required): none specified	Governor	7/1/91
Mr. Larry Salmonsens, Hardin Qualifications (if required): none specified	Governor	7/1/91
Mr. Jack E. Sands, Billings Qualifications (if required): none specified	Governor	7/1/91
Rep. Charles "Chuck" Swysgood, Dillon Qualifications (if required): none specified	Governor	7/1/91
Judicial Standards Commission (Governor)		
Mr. Rich Pavlennis, Great Falls Qualifications (if required): public member from second congressional district	Governor	7/1/91
Lewis and Clark Trail Advisory Council (Governor)		
Mr. John C. Austin, Hamilton Qualifications (if required): none specified	Governor	9/5/91
Mr. Joe Belgum, Great Falls Qualifications (if required): none specified	Governor	9/5/91
Mr. Arthur W. Dickhoff, Great Falls Qualifications (if required): none specified	Governor	9/5/91
Mr. Robert Doerk, Jr., Great Falls Qualifications (if required): none specified	Governor	9/5/91
Sen. Harry W. Fritz, Missoula Qualifications (if required): none specified	Governor	9/5/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991			
<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>	
Lewis and Clark Trail Advisory Council (Cont.)			
Mr. Jack Hane, Lewistown	Governor	9/5/91	
Qualifications (if required): none specified			
Mr. Jack Hayne, Dupuyer	Governor	9/5/91	
Qualifications (if required): none specified			
Mr. Don D. Hyypya, Helena	Governor	9/5/91	
Qualifications (if required): none specified			
Ms. Ruth Kvaalen, Lambert	Governor	9/5/91	
Qualifications (if required): none specified			
Mr. Mike Letson, Helena	Governor	9/5/91	
Qualifications (if required): none specified			
Mr. Donald F. Nell, Bozeman	Governor	9/5/91	
Qualifications (if required): none specified			
Mr. Robert A. Saindon, Helena	Governor	9/5/91	
Qualifications (if required): none specified			
Ms. Jane Schmoeyer Weber, Great Falls	Governor	9/5/91	
Qualifications (if required): none specified			
Mr. William P. Sherman, Portland, OR	Governor	9/5/91	
Qualifications (if required): none specified			
Ms. Gladys V. Silk, Glasgow	Governor	9/5/91	
Qualifications (if required): none specified			
Mr. Lawrence Sommer, Helena	Governor	9/5/91	
Qualifications (if required): none specified			

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Lewis and Clark Trail Advisory Council (Cont.)		
Mr. Andy A. Van Teylingen, Bozeman Qualifications (if required): none specified	Governor	9/5/91
Ms. Margaret S. Warden, Great Falls Qualifications (if required): none specified	Governor	9/5/91
Mr. John A. Willard, Billings Qualifications (if required): none specified	Governor	9/5/91
Local Youth Services Advisory Council, Great Falls (Family Services)		
Mr. Earl Arkinson, Box Elder Qualifications (if required): Great Falls	Director	8/15/91
Mr. Joe Gottfried, Shelby Qualifications (if required): Great Falls	Director	8/15/91
Local Youth Services Advisory Council, Miles City (Family Services)		
Mr. Ernest Big Horn, Miles City Qualifications (if required): Miles City	Director	8/15/91
Mr. Garry Bunke, Miles City Qualifications (if required): Miles City	Director	8/15/91
Mint Committee (Agriculture)		
Mr. Philip Clarke, Columbia Falls Qualifications (if required): actively involved in growing mint	Governor	7/1/91
Ms. Fonda Fisher, Columbia Falls Qualifications (if required): actively involved in growing mint	Governor	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

Board/current position holder	Appointed by	Term end
Motorcycle Safety Advisory Committee (Office of Public Instruction) Mr. Dal Smilie, Helena Qualifications (if required): represents motorcycle riding groups	Governor	7/1/91
Mr. Ron Ullom, Red Lodge Qualifications (if required): peace officer	Governor	7/1/91
Pork Research and Marketing Committee (Livestock) Mr. Roger J. Jergeson, Chinook Qualifications (if required): none specified	Governor	7/22/91
Prison Ranch Advisory Council (Institutions) Representative Francis Bardanouve, Harlem Qualifications (if required): none specified	Director	9/1/91
Mr. Don Davis, Deer Lodge Qualifications (if required): none specified	Director	9/1/91
Rep. Edward J. "Ed" Grady, Canyon Creek Qualifications (if required): none specified	Director	9/1/91
Senator Francis Koehnke, Townsend Qualifications (if required): none specified	Director	9/1/91
Mr. Ray Lybeck, Kalispell Qualifications (if required): none specified	Director	9/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Special Education Advisory Council (Office of Public Instruction)		
Ms. Mary Ann Brown, Bozeman	Superintendent of Schools	7/1/91
Qualifications (if required): county superintendent		
Mr. Rick Davis, Kalispell	Superintendent of Schools	7/1/91
Qualifications (if required): general educator		
Mr. Robert Slonaker, Ronan	Superintendent of Schools	7/1/91
Qualifications (if required): special education program administrator		
Mr. Ronald F. Stegmann, Glasgow	Superintendent of Schools	7/1/91
Qualifications (if required): General educator		
Ms. Betty Van Tighem, Great Falls	Superintendent of Schools	7/1/91
Qualifications (if required): Individual with handicapping condition		
State Employee Group Benefits Advisory Council (Administration)		
Ms. Cindy Anders, Helena	Governor	9/1/91
Qualifications (if required): none specified		
Ms. Laurie Ekanger, Helena	Governor	9/1/91
Qualifications (if required): none specified		
Ms. Nancy Ellery, Helena	Governor	9/1/91
Qualifications (if required): member		
Mr. David H. Evenson, Helena	Governor	9/1/91
Qualifications (if required): none specified		
Mr. Ken Givens, Helena	Governor	9/1/91
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Cont.)		
Ms. Nadien Jensen, Helena Qualifications (if required): none specified	Governor	9/1/91
Mr. Tom McCarthy, Warm Springs Qualifications (if required): none specified	Governor	9/1/91
Mr. Curt Nichols, Helena Qualifications (if required): member	Governor	9/1/91
Mr. William Salisbury, Helena Qualifications (if required): member	Governor	9/1/91
Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Governor	9/1/91
Mr. Scott Seacat, Helena Qualifications (if required): none specified	Governor	9/1/91
Ms. Lois Steinbeck, Helena Qualifications (if required): none specified	Governor	9/1/91
Mr. Dennis M. Taylor, Missoula Qualifications (if required): none specified	Governor	9/1/91
Teachers Retirement Board (Administration)		
Ms. Virginia Egli, Glendive Qualifications (if required): 1 of 2 from teaching profess. & member of retirement system	Governor	7/1/91
Tourism Advisory Council (Commerce)		
Mr. Al Donohue, Great Falls Qualifications (if required): none specified	Governor	7/1/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Cont.)		
Mr. Elmer Frame, Missoula	Governor	7/1/91
Qualifications (if required): none specified		
Mr. Kenneth Hickel, Billings	Governor	7/1/91
Qualifications (if required): MT Chamber of Commerce		
Mr. Herbert H. Leuprecht, Butte	Director	7/1/91
Qualifications (if required): none specified		
Mr. Oliver Taylor Middleton, Big Sky	Governor	7/1/91
Qualifications (if required): none specified		
Ms. Barbara Moe, Great Falls	Governor	7/1/91
Qualifications (if required): from Russell Country		
Water Plan Advisory Council (Natural Resources and Conservation)		
Mr. Ed Azure, Harlem	Governor	8/23/91
Qualifications (if required): none specified		
Mr. Byron Bayers, Twin Bridges	Governor	8/23/91
Qualifications (if required): none specified		
Senator Esther Bengtson, Shepherd	Governor	8/23/91
Qualifications (if required): none specified		
Mr. Stan Bradshaw, Helena	Governor	8/23/91
Qualifications (if required): none specified		
Mr. Dueane Calvin, Ballantine	Governor	8/23/91
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Water Plan Advisory Council (Cont.)</u>		
Mr. K. L. Cool, Helena Qualifications (if required): none specified	Governor	8/23/91
Mr. Jack Galt, Helena Qualifications (if required): none specified	Governor	8/23/91
Senator Lorents Grosfield, Big Timber Qualifications (if required): none specified	Governor	8/23/91
Mr. Brian Kahn, Helena Qualifications (if required): none specified	Governor	8/23/91
Mr. Jess Kilgore, Three Forks Qualifications (if required): none specified	Governor	8/23/91
Mr. Glenn Marx, Helena Qualifications (if required): none specified	Governor	8/23/91
Mr. Donald E. Pizzini, Great Falls Qualifications (if required): none specified	Governor	8/23/91
Mr. Chris Risbrudt, Missoula Qualifications (if required): none specified	Governor	8/23/91
Mr. Jim Wedeward, Billings Qualifications (if required): none specified	Governor	8/23/91
Mr. Mike Zimmerman, Butte Qualifications (if required): none specified	Governor	8/23/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Wheat and Barley Committee (Agriculture) Mr. Richard E. Sampsen, Dagmar Qualifications (if required): represents District I	Governor	8/29/91
Women in Employment Advisory Council (Governor) Ms. Jeanne C. Amsberry, Helena Qualifications (if required): none specified	Governor	8/9/91
Ms. Judy Birch, Helena Qualifications (if required): none specified	Governor	8/9/91
Ms. Virginia Bliss, Conrad Qualifications (if required): none specified	Governor	8/9/91
Ms. Aubyn Curtiss, Fortine Qualifications (if required): none specified	Governor	8/9/91
Ms. Ilene "Mike" Dallum, Cascade Qualifications (if required): none specified	Governor	8/9/91
Ms. Verna Green, Helena Qualifications (if required): none specified	Governor	8/9/91
Ms. Dolores Havdahl, Helena Qualifications (if required): public member	Governor	8/9/91
Ms. Darlene Johnson, Wolf Point Qualifications (if required): none specified	Governor	8/9/91
Ms. Blanche Proul, Anaconda Qualifications (if required): none specified	Governor	8/9/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Women in Employment Advisory Council (Cont.)		
Ms. Antoinette Fraser Rosell, Billings	Governor	8/9/91
Qualifications (if required): none specified		
Ms. Rosemarie Strobe, Helena		
Qualifications (if required): none specified	Governor	8/9/91
Ms. Sue Weingartner, Helena		
Qualifications (if required): none specified	Governor	8/9/91
Youth Placement Advisory Council, 1st Judicial District (Family Services)		
Mr. James K. Benish, Helena	Director	8/15/91
Qualifications (if required): from 1st Judicial District		
Mr. Lowell H. Luke, Helena		
Qualifications (if required): from 1st Judicial District	Director	8/15/91
Mr. Richard L. Meeker, Helena		
Qualifications (if required): from 1st Judicial District	Director	8/15/91
Ms. Rosemary Miller, Helena		
Qualifications (if required): from 1st Judicial District	Director	8/15/91
Mr. Norman Waterman, Helena		
Qualifications (if required): from 1st Judicial District	Director	8/15/91
Youth Placement Advisory Council, 2nd Judicial District (Family Services)		
Ms. Sue Bennett, Butte	Director	8/15/91
Qualifications (if required): from 2nd Judicial District		
Mr. Jim Fay, Anaconda		
Qualifications (if required): from 2nd Judicial District	Director	8/15/91

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 2nd Judicial District (Cont.)		
Mr. Ed Heard, Butte	Director	8/15/91
Qualifications (if required): from 2nd Judicial District		
Mr. Dave Manning, Butte	Director	8/15/91
Qualifications (if required): from 2nd Judicial District		
Mr. Don Puich, Butte	Director	8/15/91
Qualifications (if required): from 2nd Judicial District		
Youth Placement Advisory Council, 3rd Judicial District (Family Services)		
Ms. Jean S. Duncan, Deer Lodge	Director	8/15/91
Qualifications (if required): from 3rd Judicial District		
Mr. Tim Hamm, Anaconda	Director	8/15/91
Qualifications (if required): from 3rd Judicial District		
Ms. Frieda Howerly, Deer Lodge	Director	8/15/91
Qualifications (if required): from 3rd Judicial District		
Dr. Minott E. Pruyn, Missoula	Director	8/15/91
Qualifications (if required): from 3rd Judicial District		
Mr. Jackie Sperry, Anaconda	Director	8/15/91
Qualifications (if required): from 3rd Judicial District		
Ms. Bernie Sturm, Anaconda	Director	8/15/91
Qualifications (if required): from 3rd Judicial District		
Youth Placement Advisory Council, 4th Judicial District (Family Services)		
Mr. Rodney C. Bates, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 4th Judicial District (Cont.)		
Mr. Gregory N. Burham, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		
Mr. John Contway, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		
Mr. Steve Gibson, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		
Ms. Carole Graham, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		
Mr. Bill Houchin, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		
Mr. Jim Parker, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		
Mr. Jack Rudio, Missoula	Director	8/15/91
Qualifications (if required): from 4th Judicial District		
Youth Placement Advisory Council, 5th Judicial District (Family Services)		
Mr. Frank Hull, Dillon	Director	8/15/91
Qualifications (if required): from 5th Judicial District		
Reverend Mary Jacques, Dillon	Director	8/15/91
Qualifications (if required): from 5th Judicial District		
Mr. Dennis Kimzey, Dillon	Director	8/15/91
Qualifications (if required): from 5th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 5th Judicial District (Cont.)		
Ms. Marj Montrose, Dillon	Director	8/15/91
Qualifications (if required): from 5th Judicial District		
Mr. Emery Smith, Twin Bridges	Director	8/15/91
Qualifications (if required): from 5th Judicial District		
Youth Placement Advisory Council, 6th Judicial District (Family Services)		
Ms. Kathy Ellison, Livingston	Director	8/15/91
Qualifications (if required): from 6th Judicial District		
Mr. Mike G. Fleming, Livingston	Director	8/15/91
Qualifications (if required): from 6th Judicial District		
Ms. Juanita M. Freeman, Livingston	Director	8/15/91
Qualifications (if required): from 6th Judicial District		
Mr. Steve Hoppes, Livingston	Director	8/15/91
Qualifications (if required): from 6th Judicial District		
Mr. Gerald S. Spalding, Livingston	Director	8/15/91
Qualifications (if required): from 6th Judicial District		
Youth Placement Advisory Council, 7th Judicial District (Family Services)		
Mr. Craig J. Anderson, Glendive	Director	8/15/91
Qualifications (if required): from 7th Judicial District		
Ms. Audrey Crook, Sidney	Director	8/15/91
Qualifications (if required): from 7th Judicial District		
Mr. Rod Huisman, Miles City	Director	8/15/91
Qualifications (if required): from 7th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 7th Judicial District (Cont.)		
Ms. Vicki Metcalfe, Sidney	Director	8/15/91
Qualifications (if required): from 7th Judicial District		
Ms. Bonne Lu Perry, Sidney	Director	8/15/91
Qualifications (if required): from 7th Judicial District		
Ms. Joan Ritter, Sidney	Director	8/15/91
Qualifications (if required): from 7th Judicial District		
Youth Placement Advisory Council, 8th Judicial District (Family Services)		
Ms. Lynette Bolender, Great Falls	Director	8/15/91
Qualifications (if required): from 8th Judicial District		
Ms. Marsha Brunett, Great Falls	Director	8/15/91
Qualifications (if required): from 8th Judicial District		
Mr. Dennis Dronen, Great Falls	Director	8/15/91
Qualifications (if required): from 8th Judicial District		
Dr. Renee Johnson, Great Falls	Director	8/15/91
Qualifications (if required): from 8th Judicial District		
Ms. Sharon Lindstrom, Great Falls	Director	8/15/91
Qualifications (if required): from 8th Judicial District		
Ms. Ingrid Wagner, Great Falls	Director	8/15/91
Qualifications (if required): from 8th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 9th Judicial District (Family Services)		
Ms. Eva Burney, Cut Bank	Director	8/15/91
Qualifications (if required): from 9th Judicial District		
Ms. Rita Christiaens, Conrad	Director	8/15/91
Qualifications (if required): from 9th Judicial District		
Mr. James Richard Gunlikson, Cut Bank	Director	8/15/91
Qualifications (if required): from 9th Judicial District		
Ms. Mary Meis, Shelby	Director	8/15/91
Qualifications (if required): from 9th Judicial District		
Mr. Matt Shearer, Cut Bank	Director	8/15/91
Qualifications (if required): from 9th Judicial District		
Ms. Sue Walley, Cut Bank	Director	8/15/91
Qualifications (if required): from 9th Judicial District		
Ms. Linda Warden, Browning	Director	8/15/91
Qualifications (if required): from 9th Judicial District		
Youth Placement Advisory Council, 10th Judicial District (Family Services)		
Mr. Michael L. Ikard, Lewistown	Director	8/15/91
Qualifications (if required): from 10th Judicial District		
Mr. Michael F. Otto, Lewistown	Director	8/15/91
Qualifications (if required): from 10th Judicial District		
Mr. Mike Steuhm, Lewistown	Director	8/15/91
Qualifications (if required): from 10th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 10th Judicial District (Cont.)		
Mr. Joseph Cahill, Lewistown	Director	8/15/91
Qualifications (if required): from 10th Judicial District		
Ms. Boni Braunbeck, Lewistown	Director	8/15/91
Qualifications (if required): from 10th Judicial District		
Youth Placement Advisory Council, 11th Judicial District (Family Services)		
Ms. Ruth Davis, Kalispell	Director	8/15/91
Qualifications (if required): from 11th Judicial District		
Mr. Bill Harris, Kalispell	Director	8/15/91
Qualifications (if required): from 11th Judicial District		
Mr. Patrick C. Lee, Kalispell	Director	8/15/91
Qualifications (if required): from 11th Judicial District		
Ms. Mary Schulze, Kalispell	Director	8/15/91
Qualifications (if required): from 11th Judicial District		
Mr. Patrick Warnecke, Kalispell	Director	8/15/91
Qualifications (if required): from 11th Judicial District		
Youth Placement Advisory Council, 12th Judicial District (Family Services)		
Mr. Bryce Johnson, Havre	Director	8/15/91
Qualifications (if required): from 12th Judicial District		
Ms. Nancy Neibauer, Havre	Director	8/15/91
Qualifications (if required): from 12th Judicial District		
Ms. Judy Rominger, Havre	Director	8/15/91
Qualifications (if required): from 12th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 12th Judicial District (Cont.)		
Dr. Laurence C. Stineford, Havre	Director	8/15/91
Qualifications (if required): from 12th Judicial District		
Mr. Keith Turck, Havre	Director	8/15/91
Qualifications (if required): from 12th Judicial District		
Mr. Joe Uhl, Havre	Director	8/15/91
Qualifications (if required): from 12th Judicial District		
Youth Placement Advisory Council, 13th Judicial District (Family Services)		
Mr. Corum Cunningham, Billings	Director	8/15/91
Qualifications (if required): from 13th Judicial District		
Mr. Gary Huffmaster, Billings	Director	8/15/91
Qualifications (if required): from 13th Judicial District		
Mr. Ted Lechner, Billings	Director	8/15/91
Qualifications (if required): from 13th Judicial District		
Mr. Leonard Orth, Billings	Director	8/15/91
Qualifications (if required): from 13th Judicial District		
Ms. Betty Petek, Billings	Director	8/15/91
Qualifications (if required): from 13th Judicial District		
Youth Placement Advisory Council, 14th Judicial District (Family Services)		
Ms. Boni Braunbeck, Lewistown	Director	8/15/91
Qualifications (if required): from 14th Judicial District		
Mr. Joseph Cahill, Billings	Director	8/15/91
Qualifications (if required): from 14th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 14th Judicial District (Cont.)		
Mr. Mike Ikard, Lewistown	Director	8/15/91
Qualifications (if required): from 14th Judicial District		
Mr. Mike Otto, Lewistown	Director	8/15/91
Qualifications (if required): from 14th Judicial District		
Mr. Mike Steuhm, Lewistown	Director	8/15/91
Qualifications (if required): from 14th Judicial District		
Youth Placement Advisory Council, 15th Judicial District (Family Services)		
Mr. James Allen, Plentywood	Director	8/15/91
Qualifications (if required): from 15th Judicial District		
Mr. J. T. Brownlee, Wolf Point	Director	8/15/91
Qualifications (if required): from 15th Judicial District		
Ms. Wilma Desjarlais, Poplar	Director	8/15/91
Qualifications (if required): from 15th Judicial District		
Mr. William E. Lumpkin, Wolf Point	Director	8/15/91
Qualifications (if required): from 15th Judicial District		
Mr. Michael Preyer, Wolf Point	Director	8/15/91
Qualifications (if required): from 15th Judicial District		
Youth Placement Advisory Council, 16th Judicial District (Family Services)		
Mr. Ernest "Sonny" Butts, Miles City	Director	8/15/91
Qualifications (if required): from 16th Judicial District		
Mr. Jim Hunter, Miles City	Director	8/15/91
Qualifications (if required): from 16th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Placement Advisory Council, 16th Judicial District (Cont.)		
Ms. Gordon Jackson, Miles City Qualifications (if required): from 16th Judicial District	Director	8/15/91
Ms. Sue Matthews, Miles City Qualifications (if required): from 16th Judicial District	Director	8/15/91
Mr. Nolan Mickelson, Miles City Qualifications (if required): from 16th Judicial District	Director	8/15/91
Youth Placement Advisory Council, 17th Judicial District (Family Services)		
Mr. Mike Boyer, Glasgow Qualifications (if required): from 17th Judicial District	Director	8/15/91
Mr. Robert E. Brown, Glasgow Qualifications (if required): from 17th Judicial District	Director	8/15/91
Mr. Dain Christianson, Glasgow Qualifications (if required): from 17th Judicial District	Director	8/15/91
Mr. Bob McNeel, Harlem Qualifications (if required): from 17th Judicial District	Director	8/15/91
Ms. Carolyn Nyquist, Glasgow Qualifications (if required): from 17th Judicial District	Director	8/15/91
Ms. Darlene Pomeroy, Chinook Qualifications (if required): from 17th Judicial District	Director	8/15/91
Mr. Preston L. Stiffarm, Harlem Qualifications (if required): from 17th Judicial District	Director	8/15/91

12-6/27/91

Montana Administrative Register

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

Board/current position holder	Appointed by	Term end
Youth Placement Advisory Council, 17th Judicial District (Cont.)		
Ms. Lori Tresch, Glasgow	Director	8/15/91
Qualifications (if required): from 17th Judicial District		
Ms. Linda Uhl, Chinook	Director	8/15/91
Qualifications (if required): from 17th Judicial District		
Mr. Tim Whitney, Chinook	Director	8/15/91
Qualifications (if required): from 17th Judicial District		
Youth Placement Advisory Council, 18th Judicial District (Family Services)		
Ms. Joan Davies, Bozeman	Director	8/15/91
Qualifications (if required): from 18th Judicial District		
Ms. Dorothy Filson, Bozeman	Director	8/15/91
Qualifications (if required): from 18th Judicial District		
Mr. David Gates, Bozeman	Director	8/15/91
Qualifications (if required): from 18th Judicial District		
Ms. Sharon Hanton, Bozeman	Director	8/15/91
Qualifications (if required): from 18th Judicial District		
Mr. Mark Salo, Bozeman	Director	8/15/91
Qualifications (if required): from 18th Judicial District		
Youth Placement Advisory Council, 19th Judicial District (Family Services)		
Ms. Nancy Chalgren, Libby	Director	8/15/91
Qualifications (if required): from 19th Judicial District		
Mr. John P. Freemole, Polson	Director	8/15/91
Qualifications (if required): from 19th Judicial District		

VACANCIES ON BOARDS AND COUNCILS -- July 1 through September 30, 1991

Board/current position holder	Appointed by	Term end
Youth Placement Advisory Council, 19th Judicial District (Cont.)		
Mr. Gordon F. Spence, Attorney	Director	8/15/91
Qualifications (if required): from 19th Judicial District		
Ms. Susan Smith, Attorney	Director	8/15/91
Qualifications (if required): from 19th Judicial District		
Ms. Catherine L. Spence, Attorney	Director	8/15/91
Qualifications (if required): from 19th Judicial District		
Ms. Marie Studebaker, Librarian	Director	8/15/91
Qualifications (if required): from 19th Judicial District		
Ms. Lee Tonner, Librarian	Director	8/15/91
Qualifications (if required): from 19th Judicial District		
Youth Placement Advisory Council, 20th Judicial District (Family Services)		
Ms. Marilyn C. Beck, Polson	Director	8/15/91
Qualifications (if required): from 20th Judicial District		
Mr. Dennis Jones, Polson	Director	8/15/91
Qualifications (if required): from 20th Judicial District		
Mr. David W. McDougall, Polson	Director	8/15/91
Qualifications (if required): from 20th Judicial District		
Youth Services Advisory Council		
Mr. Donald Wetzel, Harlow	Governor	9/27/91
Qualifications (if required): none specified		