RESERVE

MONTANA ADMINISTRATIVE REGISTER

1992 ISSUE NO. 10
MAY 28, 1992
PAGES 1077-1176

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to general provisions, racing secretary, veterinarians, general requirements, general rules, duties of the licensee and breakage, minus pools and commissions	)))))))	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO HORSE RACING

NO PUBLIC HEARING CONTEMPLATED

TO:All Interested Persons:

1. On June 28, 1992, the Board of Horse Racing proposes to adopt the above-stated rules.

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

"8.22.601 GENERAL PROVISIONS (1) will remain the same.

(2) Classified as major officials are the following:

(a) stewards;

(b) racing secretary;

(c) starter;

(d) state veterinarian;

(e) state security;

(f) director of racing;

(3) Classified as minor officials are the following:

(c) through (f) will remain the same, but will be renumbered (a) through (d);

~~(g) starter;~~

(h) through (k) will remain the same, but will be renumbered (e) through (h);

~~(l) state veterinarian;~~

~~(m) track veterinarian;~~

(n) through (p) will remain the same, but will be renumbered (i) through (k);

~~(q) chief of security;~~

~~(r) director of racing;~~

(s) through (x) will remain the same, but will be renumbered (l) through (q).

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

~~(4)~~ (5) No major official specified in ARM 8.22.601(2)(a) through ~~(x)~~ (f) may ~~serve in his official capacity in regard to any race meet at which a horse owned by him, his spouse or child living in the same household, or in which he has a financial interest is entered in a race at such meet~~ actively or passively participate in a race meet, nor may his spouse, parents, or child living in the same household actively or passively participate in a race meet, at which the major official is serving in his official capacity.

(a) "active" participation shall include owning, training or wagering on a race horse.

(b) "passive" participation shall include galloping, shoeing, ponying, grooming or transporting a race horse.

(6) No minor official specified in ARM 8.22.601 (3) (a) through (q) may actively participate (as defined in (5)(a) above), or act as groom for a horse at a race meet at which the minor official is serving in his official capacity.

(5) through (6) will remain the same, but will be renumbered (7) through (8).

~~(7)~~ (9) No racing official shall directly or indirectly wager money or anything of value on the result of any race at any licensed race meeting at which he is serving in his official capacity."

Auth: Sec. 23-4-104, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

REASON: The proposed amendment will standardize the titles for certain race officials, and categorize the officials list into major and minor officials to delineate the prohibited acts for each category during a race meet.

"8.22.607 RACING SECRETARY (1) through (2) will remain the same.

(3) The racing secretary shall ~~compile~~ be responsible for an official program for each racing day, which shall state the time fixed for the first race and give the names of the horses which are to run in each of the races of the day; and shall be responsible for any error ~~of~~ to the board or commission in the official program for each racing day.

(4) through (9) will remain the same."

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-201, MCA

REASON: The proposed amendment will delete the racing secretary's duty to compile the program, as this is done by others, but retain his responsibility to the board to proof read for program errors.

"8.22.612 VETERINARIAN: ~~OFFICIAL OR TRACK~~ STATE OR PRACTICING (1) Each track shall contract with or hire persons licensed as veterinarians pursuant to ARM 8.22.502 to perform the duties of state veterinarians at horse racing meets. Contracts (or hires) shall be upon such terms as the board and the veterinarians may mutually agree and may contain differing rates of compensation based upon the experience of the veterinarian.

(2) The board shall establish a committee of at least two board members to meet at least quarterly with representatives of the ~~track~~ state veterinarians, and discuss recommendations from the veterinarians. Such meetings may be scheduled the same day as the regular board meetings or at the convenience of the board.

(3) will remain the same.

(4) If for any reason, a horse must be destroyed either in the paddock or on the track, the ~~track~~ state veterinarian or his assistant shall perform the ~~execution~~ euthanasia. The

act of ~~execution~~ euthanasia shall not take place in view of the public.

(5) The state veterinarian ~~S~~shall be present at the starting gate while horses are being loaded. Any scratches after the horses leave the paddock may be made by the ~~track~~ state veterinarian with the approval of the stewards.

(6) The state veterinarian ~~S~~shall administer medication only in an emergency and if no practicing veterinarian is available."

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-201, MCA

REASON: The proposed amendment will standardize the title "state veterinarian" and replace the outdated term "execution" in the rule.

"8.22.711 VETERINARIANS (1) Each veterinarian shall be approved by the board and shall obtain a license from the board before he may practice his profession on the grounds of a race meeting. He shall not be eligible to own, or hold a license to train horses while being licensed to practice veterinary medicine on the grounds of a race meet.

(2) through (3) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment will clarify prohibited acts for veterinarians practicing at a race meet.

"8.22.801 GENERAL REQUIREMENTS (1) No horse may enter or start unless a registration certificate is first filed with the racing secretary. All entry forms shall be in the correct form as required by the board, shall be signed, and shall be kept by the track management for the duration of the meet, and for 30 days thereafter.

(2) through (67) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment will specifically require signed and correct entry forms to be present for each race at a race meet, and require track management to retain the forms for 30 days to preserve a record in the event of future inquiries or problems regarding entries.

"8.22.1601 GENERAL RULES (1) will remain the same.

(2) The board shall have a representative(s) to be known as parimutuel auditor(s) who shall be stationed at any licensed track during the time of their live race meets ~~and/or at the location of the technical operations of the network simulcast licensee~~, and may also include roving auditors at the location of one or more simulcast facilities. Their duties shall be to ~~direct and~~ supervise the conduct of the mutuel operations during each live or simulcast race meeting. They shall be given free access to all of the records, books and papers of any association under jurisdiction of the board and to any room or enclosure of any association at any and all

times. The officers and employees of all associations shall promptly give such auditors such information as they may request from time to time, and shall freely and fully cooperate with them in every way so that they may be certain that the mutuel operations are being properly and efficiently operated in strict accordance with the laws and rules of the board. If the auditors find defects in the parimutuel operations, they have the authority to stop wagering until remedied.

(3) through (4) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment will delete the impractical requirement of the presence of an auditor at the simulcast locations, while allowing this to remain a board option, and will delete the reference to "directing" the parimutuel operations, which is not currently an auditor function.

"8.22.1602 DUTIES OF THE LICENSEE (1) through (18) will remain the same.

(19) Each licensee shall report to the board the total face value of all unclaimed winning tickets from their meet within ~~30~~ 45 days of the end of the meet. A claim on a winning ticket may be made within ~~this~~ a 30 day period after the end of the meet after which it may be retained by the licensee for capital improvements approved by the board. Board approved capital improvements shall be completed, and the unclaimed ticket money spent, within one year from the date of board approval."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment will set a time limit for completion of capital improvements and allow board monitoring of the expenditure of the unclaimed ticket monies.

"8.22.1611 BREAKAGE, MINUS POOLS AND COMMISSIONS

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

(b) an odd cent over any multiple of ~~ten~~ five cents in the amount calculated on a dollar basis, so that the licensee may retain the breaks on tickets of every denomination except in the case of a minus pool.

(2) through (3) will remain the same."

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment will lower the breakage point to five cents, to bring Montana in line with national standards at other state tracks with races being simulcast in Montana.

"8.22.1802 REQUIREMENTS OF LICENSEE (1) through (3) will remain the same.

(4) Urine samples may be taken from all or any horses which started in a race on which there was trifecta wagering

and all urine samples shall be tested by the official racing chemist with the costs therefore borne by the licensee. ~~In all cases the first two placing horses shall be tested.~~

~~(5) Trifecta wagering shall be allowed only at tracks that can demonstrate to the board that their facilities can properly handle and implement trifecta wagering.~~

(6) will remain the same, but will be renumbered (5)."

Auth: Sec. 23-4-104, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment deletes the requirement of testing the first two placing horses in each trifecta race because this amount of testing is impractical, and deletes the language in (5) because it repeats language and requirements found elsewhere in the rules.

3. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Board of Horse Racing, 1520 East 6th, Room 50, Helena, Montana 59620, by receipt no later than 5:00 p.m., June 26, 1992.

4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has by delivery to the Board of Horse Racing, 1520 East 6th, Room 50, Helena, Montana, 59620, no later than June 26, 1992 at 5:00 p.m.

5. If the board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those 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 an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 280, based on the 2800 licensees in Montana.

BOARD OF HORSE RACING
STEVE CHRISTIAN, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 18, 1992.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to course requirements, and fees, and the proposed adoption of new rules pertaining to complaint process, reciprocity and license and certificate upgrade and downgrade	NOTICE OF PROPOSED AMENDMENT OF 8.57.406 COURSE REQUIREMENTS, 8.57.412 FEES, AND PROPOSED ADOPTION OF NEW RULES PERTAINING TO COMPLAINT PROCESS, RECIPROCITY, AND LICENSE AND CERTIFICATE UPGRADE AND DOWNGRADE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested persons:

1. On June 28, 1992, the Board of Real Estate Appraisers proposes to amend and adopt the above-stated rules.

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

"8.57.406 COURSE REQUIREMENTS (1) through (11) will remain the same.

(12) Each applicant shall provide a signed and notarized statement under penalty of perjury and, ~~if available~~, certificates and transcripts attesting to the successful completion of the required hours of appraisal education and training on a form prescribed by the board. The board reserves the right to require an applicant to provide additional satisfactory documentary evidence of completion of appropriate course work.

(a) If an applicant is unable to provide certificates or transcripts attesting to the successful completion of required hours of appraisal education, he must provide another form of verification, which may consist of a signed and notarized affidavit from employer, supervisor, or other persons with knowledge of applicant's completion of the course work."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-202, 37-54-203, MCA

REASON: The amendment will establish the requirement of verification of education hours on all applications to aid in board evaluation of applications.

"8.57.412 FEES (1)(a) through (e) will remain the same.

(f)	course approval per course ~~hour~~ payable by course provider ~~(with a minimum of $50.00 and a maximum of $200.00)~~	$ 10.00
(g)	Upgrade/Downgrade fee	$200.00
(h)	Federal registry fee	$ 25.00
(i)	Administrative/copying fee	$ 20.00
(j)	Late renewal fee	$100.00"

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-112, 37-54-201, 37-54-210, 37-54-211, 37-54-302, 37-54-310, 37-54-406, MCA

REASON: The proposed amendment will lower the course approval fee, establish the federal registry fee required of all states by the FIRREA and the Federal Subcommittee, and make the fees commensurate with the costs of upgrading or downgrading a license or certificate, and the costs of administrative and copying requests, and late renewals.

3. The proposed new rules will read as follows:

"I COMPLAINT PROCESS (1) The complaint process may be instituted by any person, including members of the board, by written complaint, on an affidavit form prescribed by the board, and filed with the board. The board may, upon its own motion, file a formal complaint against a licensee or certificate holder.

(2) An affidavit complaint form shall be sent to any individual making a complaint other than upon the board's form. A formal affidavit complaint form must be received by the board in order to initiate the complaint process.

(3) Upon receipt of an affidavit complaint form regarding a licensee or certificate holder, the board shall inform such licensee or certificate holder by letter, of the complaint and request a response on an affidavit form prescribed by the board. The board shall timely inform both the complainant and the licensee or certificate holder of the time and place the board will be discussing the complaint and related disciplinary proceedings. Both parties, or their representatives, may attend such meetings.

(4) If a formal affidavit complaint is received by the board, it shall review such complaint and related information. A majority of the board shall then determine:

(a) whether sufficient material has been presented with the affidavit complaint to allow the board to take action; or

(b) whether an investigation shall be requested, to be conducted by the Department of Commerce, or by a licensed or certified appraiser appointed by the board; or

(c) whether to defer any action until a later board meeting.

(5) The board shall notify the complainant and the licensee or certificate holder of the board's decision.

(6) Upon the board's vote to initiate disciplinary proceedings, the licensee or certificate holder shall be informed in writing of his/her right to request a hearing under Title 2, MCA."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-401

"II RECIPROCITY (1) Upon payment of the proper license or certificate fee, the board may issue a license/certificate to a person who, at the time of application, holds a current active license or certificate in good standing, as an appraiser, issued by the proper authority of any state in the United States, based upon qualifications that are determined

by the board to be substantially equivalent to Montana's requirements, and provided Montana has a reciprocity agreement with the other state.

(2) Verification of applicant's current license or certificate in good standing shall be requested by the applicant to be sent directly from the other state.

(3) Applicant shall comply with all requirements of 37-54-417, MCA, including submission of an irrevocable consent for service of process upon the Montana secretary of state."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-417,MCA

"III LICENSE AND CERTIFICATE UPGRADE AND DOWNGRADE

(1) An applicant desiring to upgrade from licensed to certified appraiser, or from certified residential to general certified shall apply in writing to the board on forms approved by the board. An applicant shall comply with all relevant statutes and rules regarding application for licensure or certificate under Title 37, chapter 54, MCA, and ARM chapter 57.

(2) Each applicant for upgrade from licensed real estate appraiser to certified real estate appraiser (any class) shall:

(a) specify the class or classes of certification for which applicant is applying;

(b) pass an examination prescribed by the board, except where applicant has successfully passed an examination for his current license which is the same examination given for the applied-for class of certificate;

(c) fulfill the education and experience requirements prescribed by statute and rule for each class of certification; and

(d) pay the appropriate upgrade fee as set by the board.

(3) Each applicant for upgrade from certified residential to general certified real estate appraiser shall:

(a) pass an examination prescribed by the board;

(b) fulfill the education and experience requirements prescribed by statute and rule for each class of certification; and

(c) pay the appropriate upgrade fee as set by the board.

(4) An applicant desiring to downgrade from certified general to certified residential or licensed, or from certified residential to licensed shall apply in writing to the board on forms approved by the board. An applicant shall comply with all relevant statutes and rules regarding application for licensure or certification under Title 37, chapter 54, MCA, and ARM chapter 57. Each applicant shall:

(a) specify the class or license for which applicant is applying;

(b) pay the appropriate downgrade fee as set by the board."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-202, 37-54-302, 37-54-303, 37-54-304, MCA

REASON: The new rules are being proposed to implement complaint process requirements, reciprocity requirements, and

license or certificate upgrades or downgrades as required by Title 37, Chapter 54, MCA, mandated by the 1991 Legislature.

4. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Board of Real Estate Appraisers, Arcade Building, 111 North Jackson, Helena, MT 59620-0407, to be received no later than 5:00 p.m., June 26, 1992.

5. If a person who is directly affected by the proposed adoption or amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Real Estate Appraisers, Arcade Building, 111 North Jackson, Helena, MT 59620-0407, to be received no later than 5:00 p.m., June 26, 1992.

6. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption or amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 12, based on the 117 licensees in Montana.

BOARD OF REAL ESTATE APPRAISERS
PATRICK ASAY, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 18, 1992.

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Proposed Adoption of Rules I and II relating to Montana Peace Officer Standards and Training	)))))	NOTICE OF PROPOSED ADOPTION OF RULES I AND II REGARDING PUBLIC SAFETY COMMUNICATIONS OFFICERS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 27, 1992, the Board of Crime Control Peace Officer Standards and Training Council proposes to adopt the following rules concerning minimum standards and certification requirements of public safety communications officers.

2. The proposed rules will read as follows:

RULE I MINIMUM STANDARDS FOR THE EMPLOYMENT OF PUBLIC SAFETY COMMUNICATIONS OFFICER (1) Any person employed in the state of Montana as a public safety communication officer after the effective date of this rule, must meet or exceed these minimum standards:

(a) must be a citizen of the United States;

(b) must be at least 18 years of age;

(c) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(d) may not have been convicted of a crime for which he/she could have been imprisoned in a federal or state penitentiary;

(e) must be of good moral character, as determined by a thorough back-ground investigation;

(f) must be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government.

(2) Any person employed prior to July 1, 1991 as a public safety communications officer in the state of Montana must meet all minimum employment standards with the following exception: the requirement for high school graduation or equivalent is waived.

(3) The term "public safety communications officer"is defined in 7-31-201, MCA.

AUTH: 7-31-202 MCA. IMP: 7-31-201, 7-31-202, 10-4-101 MCA.

RULE II REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS OFFICER CERTIFICATION (1) Communications officers must meet or exceed the minimum employment standards established for such officers.

(2) Communications officers shall have completed a forty (40) hour public safety communications officers basic course as provided by MLEA or equivalent training as determined by the POST advisory council.

(3) Communications officers shall have served at least six months with the present employment agency and shall be satisfactorily performing his/her duties as attested to by the head of that agency.

(4) Communications officers who have successfully met the minimum employment standards and who have successfully completed a forty (40) or eighty (80) hour public safety communicators basic training courses at MLEA from November 1984 through November 1991 are eligible for their basic certificate.

(5) A communications officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a six month term of employment shall, upon application to the POST advisory council, be issued a basic certificate by the council certifying that the communications officer has met all the basic qualifying public safety communications officer standards of this state.

AUTH: 7-31-203 MCA. IMP: 7-31-201, 7-31-202, 7-31-203, 10-4-101 MCA.

3. These rules are proposed for adoption to comply with House Bill 138. These rules are to establish qualifications and allow for certification of public safety communications officers.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules in writing to Ellis E. Kiser, Director, Peace Officer Standards and Training, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than June 25, 1992.

5. If a person who is directly affected by the proposed adoption wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to Ellis E. Kiser, Director, Peace Officer Standards and Training, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than June 25, 1992.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Administrator

By: Edwin L. Hall
EDWIN L. HALL, Administrator
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, Mar. 18, 1992

Judy Browning
Rule Reviewer

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

In the matter of the adoption of Rule I pertaining to the at-risk child care program	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I PERTAINING TO THE AT-RISK CHILD CARE PROGRAM

TO: All Interested Persons

1. On June 17, 1992, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rule I pertaining to the at-risk child care program.

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

[RULE I] AT-RISK CHILD CARE SERVICES (1) The purpose of the at-risk child care program is to provide child care assistance to low income families who are not currently receiving aid to families with dependent children (AFDC), need child care in order to work, and would be at risk of becoming eligible for AFDC without such assistance. The at-risk child care program will be operated only in a limited number of geographic areas of the state.

(2) Families who reside in an area of the state in which the department operates an at-risk child care program are eligible for at-risk child care if all eligibility requirements set forth in subsections (2)(a), (2)(a)(i), (2)(b)-(f)(i), and (3) are met. There will be a limited number of slots available based on funding and the average cost of child care per family paid by the department. At-risk child care assistance will be given on a first come, first served basis. In the event that two or more families apply for assistance at the same time, priority will be given as follows: first priority will be given to parents whose earned income is below 34% of the state median income; second priority will be given to families whose earned income is at or below 75% of the state median income but above 34% of the state median income and who within the last 24 month lost eligibility for transitional child care; third priority will be given to families whose earned income is below 75% of the state median income but above 34% of the state median income.

(a) A family is eligible for at-risk child care if a family member employed part-time or full-time needs assistance to pay for employment-related child care, and the family would be at risk of becoming eligible for AFDC if child care assistance were not available.

(i) A family is at risk and is income-eligible for assistance if its income is at or below the maximum income for

a family of its size set forth in the tables in subsection (3). Education income from scholarships, grants, loans and work study will be excluded as well as earned income tax credits, tribal per capita payments, VISTA volunteer stipends and independent living individual needs criteria (INC) payments for youth. All other gross family income will be counted.

(b) If the family member also attends school, the child care needed for the time the family member is in school must be paid for from another source. At-risk child care is only for employment-related child care.

(c) If anyone in the family receives either regular AFDC or AFDC-unemployed parent grants, the family is not eligible for at-risk child care.

(d) All children living in the home, who need to be cared for in order for a family member to work, are eligible under this funding source. They must be under age 13 or if age 13 or older, physically or mentally incapable of self-care or under court supervision. The children do not have to meet AFDC dependent child deprivation criteria. Children in common, step-children, supplemental security income (SSI) or Title IV-E foster care children are eligible.

(e) There is no resource limitation.

(f) Eligibility begins the first month of application if all eligibility criteria are met and there is an employment-related child care need. No assistance will be provided for months prior to the month of application.

(i) Eligibility continues as long as the family continues to meet income eligibility, needs the child care for a family member to work, and the department has funds available to provide assistance.

(ii) Eligibility will be reviewed every six months.

(iii) Ten days advance notice to the family is required prior to case closure.

(iv) Families must report income increases or decreases of $100 or more.

(g) Families may choose any legally operating child care provider to care for their children, as long as the person is age 18 or over and does not reside in the same household. If not already licensed or registered, the provider must register with the local child care resource and referral agency under contract with the department of family services in order to receive payment.

(h) The provider must allow unlimited parental access to the parent's children whenever they are in the care of the provider. The provider may not discriminate against children on the basis of race, national origin, ethnic background, sex, religion or handicap.

(i) A co-payment is required for participation in this program as set forth in the tables in subsection (3). The department's child care assistance payment to the family

cannot exceed the maximum child care reimbursement rates established in ARM 46.10.404(3)(e)-(g)(ii).

(3) The maximum income a family may have to be eligible for at-risk child care and the co-payment by the family required if the family is eligible are as follows:

Family Size	Gross Monthly Income	Monthly Copayment (1 child)	Monthly Copayment (2 children)*
2	0 - 740	$ 4	
	741 - 840	17	
	841 - 940	28	
	941 - 1040	42	
	1041 - 1140	57	
	1141 - 1240	74	
	1241 - 1340	93	
	1341 - 1440	115	
	1441 - 1540	139	
	1541 - 1640	148	
	1641+- ineligible		
3	0 - 928	$ 6	$ 8
	929 - 1028	20	26
	1029 - 1128	34	44
	1129 - 1228	49	64
	1229 - 1328	66	86
	1329 - 1428	86	113
	1429 - 1528	107	140
	1529 - 1628	130	170
	1629 - 1728	138	181
	1729 - 1828	165	216
	1829+- ineligible		
4	0 - 1117	$ 8	$ 10
	1118 - 1217	24	31
	1218 - 1317	40	52
	1318 - 1417	57	75
	1418 - 1517	76	100
	1518 - 1617	97	107
	1618 - 1717	120	157
	1718 - 1817	145	190
	1818 - 1917	153	200
	1918 - 2017	182	238
	2018+- ineligible		
5	0 - 1305	$ 10	$ 12
	1306 - 1405	28	37
	1406 - 1505	45	59
	1506 - 1605	64	84
	1606 - 1705	85	111
	1706 - 1805	108	141
	1806 - 1905	133	174
	1906 - 2005	160	210
	2006 - 2105	189	248
	2106 - 2205	198	259
	2206+- ineligible		

6	0 - 1493	$ 12	$ 14
	1494 - 1593	32	42
	1594 - 1693	51	67
	1694 - 1793	72	94
	1794 - 1893	95	124
	1894 - 1993	120	157
	1994 - 2093	147	193
	2094 - 2193	175	229
	2194 - 2293	206	270
	2294 - 2393	215	283
	2394 - ineligible		
7	0 - 1682	$ 14	$ 16
	1683 - 1782	36	47
	1783 - 1882	56	73
	1883 - 1992	79	103
	1993 - 2082	104	136
	2083 - 2182	131	172
	2183 - 2282	160	210
	2283 - 2382	191	250
	2383 - 2482	223	292
	2483 - 2582	232	304
	2583 - ineligible		

* Note: There will be no additional charge if a family places more than 2 children in child care; the maximum fee will be the 2 children rate.

AUTH: Sec. 53-2-201 and 53-4-212 MCA
IMP: Sec. 53-2-201, 53-4-212 and 53-4-231 MCA

3. Section 5081 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), Public Law 101-508, codified as section 402(i) of the Social Security Act, authorizes states to create child care programs for low-income families who are not receiving Aid to Families with Dependent Children (AFDC), need child care in order to work, and would be at risk of becoming eligible for AFDC without child care assistance. This optional program is known as the At-Risk Child Care Program. The federal regulations governing this program appear at 45 C.F.R., Part 257.

The Department of Social and Rehabilitation Services has chosen to create an At-Risk Child Care Program in Montana. It will provide child care assistance to non-AFDC families whose income is at or below approximately 75% of the state median income and who need help in paying for employment-related child care in order to work. The department's purpose in creating this program is to help such families remain independent so they will not require AFDC to support their families. The money spent on child care assistance for such families thus should result in savings in general fund dollars which would be spent on the state share of AFDC costs for these families.

Another benefit of this program is that it may enable low income working families who might otherwise have enrolled their children in substandard child care facilities due to lack of funds to pay for adequate care for their children. The long term cost of providing remedial care to children who have received inadequate care may be much greater than the cost of providing child care assistance to their families at the beginning of their lives.

The adoption of this rule is necessary to implement the At-Risk Child Care Program. The proposed rule sets forth the eligibility requirements and procedures under which the program will operate.

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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 25, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 18, 1992.

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

In the matter of the adoption of Rule I and the amendment of rules 46.2.201, 46.2.202, 46.12.509, 46.12.593, 46.12.595, 46.12.597, 46.12.1109, 46.12.1111, 46.12.1113, 46.12.1114, 46.12.1705 and 46.12.1919 and the repeal of rules 46.12.1208, 46.12.1209 and 46.12.1210 pertaining to hearing procedures for medicaid providers	))))))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I AND THE AMENDMENT OF RULES 46.2.201, 46.2.202, 46.12.509, 46.12.593, 46.12.595, 46.12.597, 46.12.1109, 46.12.1111, 46.12.1113, 46.12.1114, 46.12.1705 and 46.12.1919 AND THE REPEAL OF RULES 46.12.1208, 46.12.1209 AND 46.12.1210 PERTAINING TO HEARING PROCEDURES FOR MEDICAID PROVIDERS

TO: All Interested Persons

1. On June 17, 1992, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rule I and the amendment of rules 46.2.201, 46.2.202, 46.12.509, 46.12.593, 46.12.595, 46.12.597, 46.12.1109, 46.12.1111, 46.12.1113, 46.12.1114, 46.12.1705 and 46.12.1919 and the repeal of rules 46.12.1208, 46.12.1209 and 46.12.1210 pertaining to hearing procedures for medicaid providers.

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

[RULE I] ADMINISTRATIVE REVIEW AND FAIR HEARING PROCESS

(1) The following administrative review and fair hearing process applies to providers of inpatient and outpatient hospital services, inpatient psychiatric services for individuals under age 21, targeted case management and federally qualified health center services.

(2) Within 30 days of mailing of the department's written determination, the provider may request an administrative review. The request must be in writing, must state in detail the provider's objections, and must include any substantiating documents and information which the provider wishes the department to consider in the administrative review. The request must be submitted to the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, Helena, MT 59604-4210.

(a) Within the 30 days a provider may request in writing an extension of up to 15 days for submission of a request for administrative review. The department may grant further

extensions for good cause shown. Requests for further extensions must be in writing, must be received by the medicaid services division within the period of any previous extension, and must demonstrate good cause for the extension.

(b) The provider may also request a conference as part of the administrative review. If the provider requests an administrative review conference, the conference must be held no later than 30 days after the department or its designee receives the provider's written request for a conference. If a provider requests a conference as part of the administrative review, any substantiating materials the provider wishes the department to consider as part of the review may be submitted no later than the time of the conference. The conference may be conducted by the department or its designee and shall be based on the department's records and determination and the provider's written objections and substantiating materials, if any.

(c) No later than 60 days following receipt of the written objections and substantiating materials, if any, or the conference, whichever is later, the department must mail a written determination concerning the provider's objections and substantiating materials and the position the department takes concerning the determination.

(3) In the event the provider does not agree with the department's administrative review determination, the following fair hearing procedures will apply. The hearings officer may dismiss a fair hearing request if a provider fails to meet any of the requirements of subsections (3)(a) through (e).

(a) The written request for a fair hearing must be mailed or delivered to the Department of Social and Rehabilitation Services, Hearings Officer, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(b) The request must be signed by the provider or his designee.

(c) The fair hearing request must be received not later than the 30th calendar day following the date of mailing of the department's written administrative review determination.

(d) The fair hearing request must contain a short and plain statement of each reason the provider contends the department's administrative review determination fails to comply with applicable law, regulations, rules or policies.

(e) The provider must serve a copy of the hearing request upon the department's medicaid services division within 3 working days of filing the request.

(f) The hearings officer will conduct the fair hearing and may hold a pre-hearing conference and grant extensions of time as he deems necessary.

(g) The hearings officer will render a written proposed decision within ninety calendar days of final submission of the matter to him.

(4) In the event the provider or department disagrees with the hearings officer's proposed decision, a request for appeal to the board of social and rehabilitation appeals may be made by filing notice of appeal with the Montana Department

of Social and Rehabilitation Services, Office of Fair Hearings, P.O. Box 4210, Helena, Montana 59604-4210.

(a) The notice of appeal must be received in the office of fair hearings within thirty (30) days of mailing of the hearings officer's written proposed decision. The provider must serve a copy of the notice of appeal upon the medicaid services division within 3 working days of filing the notice of appeal.

(b) The notice of appeal must set forth the specific grounds for appeal. If no notice of appeal is filed within 30 days, the hearings officer's proposed decision shall become the final agency decision.

(c) All evidence in the record and offers of proof shall be transmitted to the board of social and rehabilitation appeals by the hearings officer. The decision of the board shall be based solely on the record transmitted by the hearings officer. Written briefs and oral arguments based on the record may be presented personally or through a representative of the provider or the department to the board.

(d) The board shall reduce its decision to writing and mail copies to the parties within ninety days of final submission of the matter to it. The provider shall be notified of its right to judicial review under the provisions of Title 2, chapter 4, part 7, MCA.

(5) This section applies to all administrative reviews, hearings, appeals to the board, related proceedings and any requests for such proceedings relating to inpatient psychiatric services, other than medical assistance providers appealing eligibility determinations as a real party in interest, occurring on or after November 1, 1991. This section applies to all administrative reviews, hearings, appeals to the board, related proceedings and any requests for such proceedings relating to medical assistance providers listed in ARM 46.2.202(4), other than medical assistance providers appealing eligibility determinations as a real party in interest, occurring on or after [the effective date of this rule].

(6) The provisions of this section apply in addition to the applicable provisions of ARM 46.2.201, et seq., except that the provisions of this section shall control in the event of a conflict with the provisions of ARM 46.2.201, et seq.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-111, 53-6-113 and 53-6-141 MCA

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

46.2.201 DEFINITIONS Subsections (1) through (2)(d) remain the same.

(e) an action by the department to deny, terminate or fail to renew certification or a provider agreement for the medicaid program to any skilled nursing facility or intermediate care facility; ~~or~~

(f) an action by the department to deny, suspend, reduce, revoke or terminate or fail to renew certification, licensure or the registration certificate of a provider~~.~~;

(g) an action by the department establishing the rate of reimbursement for a medical assistance provider or denying in whole or in part a medical assistance provider's claim for services or items; or

(h) any other department action or determination with respect to which a right to hearing is specifically granted by department rule, but for which a hearing process is not otherwise provided.

Subsections (3) through (7) remain the same.

(8) "Hearing officer" means an individual hired or appointed by the department to conduct a hearing under the authority of the Montana Administrative Procedure Act and ~~this chapter~~ the department's rules.

Subsections (9) through (12) remain the same.

AUTH: Sec. 2-4-201, 41-3-1142, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-3-107, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-5-504, 53-6-111, 53-6-113, 53-7-102 and 53-20-305 MCA

IMP: Sec. 2-4-201, 41-3-1103, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305 MCA

46.2.202 OPPORTUNITY FOR HEARING Subsections (1) through (1)(d) remain the same.

(2) Providers contesting actions by the department regarding payment for services performed by medical assistance providers or actions by the department to deny, suspend, terminate or fail to renew registration, certification or licensure, shall be granted the right to hearing as provided in this chapter, except as specifically provided in other department rules.

Subsection (2)(a) remains the same.

(3) ~~Providers~~ Nursing facilities and institutions for mental disease contesting ~~the rate of reimbursement for skilled nursing and intermediate care services~~ adverse department actions, other than medical assistance providers appealing eligibility determinations as a real party in interest, shall be granted the right to a hearing as provided in ARM 46.12.~~1210~~1268.

(4) Medical assistance providers of inpatient psychiatric services for individuals under age 21, inpatient hospital services, outpatient hospital services, federally qualified health center services and case management services for high risk pregnant women contesting adverse department actions, other than medical assistance providers appealing eligibility determinations as a real party in interest, shall be granted the right to a hearing as provided in [Rule I].

Subsections (4) and (5) remain the same in text but are renumbered (5) and (6).

AUTH: Sec. 2-4-201, 41-3-1142, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102 and 53-20-305 MCA
IMP: Sec. 2-4-201, 41-3-1103, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305 MCA

46.12.509 ALL HOSPITAL REIMBURSEMENT, GENERAL
Subsections (1) through (6)(e) remain the same.
(7) Providers contesting the computation of interim payments or final settlement for capital and medical education costs; coding errors resulting in incorrect DRG assignment; medical necessity determinations; outlier determinations; or, determinations of readmission and transfer shall have the opportunity for fair hearing in accordance with the procedures set forth in ~~ARM 46.2.202 et seq.~~ [Rule I].

AUTH: Sec. 2-4-201, 53-2-201, 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.593 INPATIENT PSYCHIATRIC SERVICES, COST REPORTING AND AUDITS (1) The procedures and forms for maintaining cost information and reporting ~~shall be as provided in ARM 46.12.1208, subsections (1) through (5).~~ are as follows:
(a) Generally accepted accounting principles shall be used by each provider to record and report costs. As part of the cost report these costs will be adjusted in accordance with these rules to determine includable costs.
(b) The accrual method of accounting shall be employed, except that, for governmental institutions that operate on a cash method or a modified accrual method, such methods of accounting will be acceptable.
(c) Cost finding means the process of allocating and prorating the data derived from the accounts ordinarily kept by a provider to ascertain its costs of the various services provided. In preparing cost reports, all providers shall utilize the methods of cost finding described at 42 CFR 413.24 which the department hereby adopts and incorporates herein by reference. 42 CFR 413.24 is a federal regulation setting forth methods for allocating costs. A copy of the regulation may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.
(d) Provider costs are to be reported based upon the provider's fiscal year using the financial and statistical report form provided by the department. The use of the department's financial and statistical report form is mandatory for participating facilities. These reports shall be complete and accurate; incomplete reports or reports containing inconsistent data will be returned to the provider for correction.
(i) Cost reports must be filed within 90 days after the end of the provider's fiscal year.

(ii) In the event a provider does not file within 90 days of the closing date of its fiscal year, or files an incomplete cost report, an amount equal to 10 percent of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete a second month, 20 percent shall be withheld. For each succeeding month the report is overdue or incomplete, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a maximum limitation of one 30-day extension.

(iii) Cost reports shall be executed by the individual provider, a partner of a partnership provider, the trustee of a trust provider, or an authorized officer of a corporate provider. The person executing the reports shall sign under penalties of false swearing, that he has examined the report including accompanying schedules and statements, and that to the best of his knowledge and belief, the report is true, correct, and complete, and prepared consistent with governing laws and regulations.

(e) Records of financial and statistical information supporting cost reports shall be maintained by the provider and the department for three years after the date a cost report is filed, or the date the cost report is due, whichever is later.

(i) Each provider will maintain, as a minimum, a chart of accounts, a general ledger and the following supporting ledgers and journals: revenue, accounts receivable, cash receipts, accounts payable, cash disbursements, payroll, general journal, resident census records identifying the level of care of all residents individually, all records pertaining to private pay residents and resident trust funds.

(ii) To support includable costs, all business records of any related party, including any parent or subsidiary firm, which relate to a provider under audit, shall be available at the facility for audit. To support includable costs, the owner's or related party's personal financial records relating to the facility shall be made available for audit. Any costs not so supported will not be includable.

(iii) Cost information as developed by the provider shall be complete, accurate and in sufficient detail to support payments made for services rendered to recipients and recorded in such a manner to provide a record which is auditable through the application of reasonable audit procedure. This includes all ledgers, books, records and original evidence of cost (purchase requisitions, purchase orders, vouchers, checks, invoices, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.) which pertain to the determination of reasonable cost.

(iv) All of the above records and documents shall be available at the facility at all reasonable times after rea-

sonable notice and subject to inspection, review or audit by the department, the federal department of health and human services, the Montana legislative auditor, and other appropriate governmental agencies. Upon refusal of the provider to make available and allow access to the above records and documents, all payments made by the department during the provider's fiscal year to which those records relate shall be recovered in full by the department. Failure to submit a cost report will result in recovery by the department of all amounts paid by the department for the fiscal period covered by the cost report.

Subsection (2) remains the same.

(3) A provider may object to audit findings through the administrative review and fair hearing process as provided in ~~ARM 46.12.1210~~ [Rule I].

Subsection (4) remains the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.595 INPATIENT PSYCHIATRIC SERVICES, OVERPAYMENT AND UNDERPAYMENT (1) ~~Overpayments and underpayments shall be treated in accordance with the provisions of ARM 46.12.1209.~~ Where the department finds that an overpayment has occurred, the department will notify the provider of the overpayment.

(2) Within 30 days of the day the department notifies the provider that an overpayment exists, the department will arrange to recover the overpayment by set-off against amounts paid for medical assistance or by repayments by the provider.

(3) If an agreement has not been reached, within 30 days of notifying the provider of the overpayment, which provides for full repayment within 60 days of the overpayment notice, the department will immediately commence offsetting from rate payments so as to complete recovery within sixty (60) days from the date of the initial request for payment or as soon thereafter as possible. The sixty (60) day recovery period coincides with requirements of section 1903(d)(2) of the Social Security Act, as amended. This section requires states to repay the federal share of medicaid payments within sixty (60) days of determination of a medicaid overpayment. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment. A request for administrative review or fair hearing shall not entitle a provider to delay repayment of any overpayment determined by the department.

(4) In the event an underpayment has occurred, the department will reimburse the provider promptly following the department's determination of the amount of the underpayment.

(5) Court or administrative proceedings for collection of overpayment or underpayment shall be commenced within five years following the due date of the original cost report or the date of receipt of a complete cost report whichever is later. In the case of a reimbursement or payment based on

fraudulent information, recovery of overpayment may be undertaken at any time.

(6) The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefitted from either the payment or from a transfer of assets.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.597 INPATIENT PSYCHIATRIC SERVICES, ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES (1) The right to administrative review and fair hearing shall be in accordance with the provisions of ~~ARM 46.12.1210~~ [Rule I].

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.1109 GENERAL REQUIREMENTS AND LIMITATIONS FOR INSTITUTIONS FOR MENTAL DISEASE (1) An IMD must follow the rules set forth at ARM 46.12.1246(2) through (2)(b), 46.12.1223(1) through (1)(e), 46.12.1223(1)(f), 46.12.1245, 46.12.1246, 46.12.1254, 46.12.1258, 46.12.1260, 46.12.1261, 46.12.1264 and 46.12.1268 ~~46.12.1202(ac), 46.12.1203(1)(a) through (1)(d), 46.12.1203 (1)(f), 46.12.1205(2), 46.12.1205 (4) through (8), and 46.12.1207 through 46.12.1210~~.

Subsections (2) through (6) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1111 REIMBURSEMENT Subsections (1) through (4) remain the same.

(5) The difference between the final payment rate and the interim payment rate will be settled through the overpayment and underpayment procedures set forth in ARM 46.12.~~1209~~ 1261.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1113 COST REPORTING (1) Providers shall submit annual cost reports in accordance with ARM 46.12.~~1208~~1260.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101, 53-2-201, and 53-6-113 MCA

46.12.1114 ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES (1) Providers shall be entitled to appeal decisions pertaining to their interim or final payment rates in accordance with ARM 46.12.~~1210~~1268.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-111 and 53-6-113 MCA

46.12.1705 FEDERALLY QUALIFIED HEALTH CENTERS, RECORD KEEPING AND REPORTS Subsections (1) through (6) remain the same.

(7) A provider who is dissatisfied with the department's interim rate determination, determination of overpayment or underpayment, or other adverse determination may request an administrative review or fair hearing in accordance with the requirements and procedures of ~~ARM 46.12.1210~~ [Rule I].

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-101, 53-6-111, and 53-6-113 MCA

46.12.1919 CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, FINANCIAL RECORDS AND REPORTING Subsections (1) through (7) remain the same.

(8) A provider who is dissatisfied with the department's interim rate determination, determination of overpayment or underpayment, or other adverse determination may request an administrative review or fair hearing in accordance with the requirements and procedures of ~~ARM 46.12.1210~~ [Rule I].

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-111 and 53-6-113 MCA

4. The rules 46.12.1208, 46.12.1209 and 46.12.1210 as proposed to be repealed are on pages 46-1603 through 46-1608 of the Administrative Rules of Montana.

The cites for 46.12.1208 and 1209 are: AUTH: 53-2-201 and 53-6-113; IMP: 53-2-201, 53-6-101, 111, 113 and 141. Cites for 46.12.1210 are: AUTH: 2-4-201, 53-2-201 and 53-6-113; IMP: 2-4-201, 53-2-201, 53-2-606, 53-6-111, 53-6-113, 53-6-141.

5. The proposed amendments are necessary to provide an informal and flexible administrative review process in the hospital appeals process prior to a request for a fair hearing. The provisions of ARM 46.2.201, et seq., currently apply to disputes involving hospital services. Under current practice, a provider must request a fair hearing from the department's office of fair hearings before an administrative review is available.

The proposed amendments are necessary to involve Medicaid Division staff at the earliest opportunity in a review of the provider's objection to the department's action. Disputes relating to inpatient and outpatient hospital services often can be resolved informally if the parties have an opportunity to exchange additional information and meet to discuss the issues. However, this often takes a significant amount of time to complete, because the disputes involve complicated issues which must be considered in the context of large volumes of data.

Although the involvement of a hearing officer at an early stage does not prevent such an informal process, such involvement is unnecessary and merely creates additional work for the hearing officer and the parties, who have to file formal documents, prepare extra correspondence, request and exchange status reports, seek extensions of deadlines set by the hearing officer, and perform other activities. The proposed amendments will eliminate unnecessary paperwork and contribute to better relations between the Medicaid Services Division and hospital administrators.

Section 2-4-201, MCA requires the department to adopt rules specifying requirements for formal and informal appeal procedures. The department is authorized by sections 53-2-201, 53-6-111 and 53-6-113, MCA to administer and supervise a program of medical assistance vendor payments. Given the large number of providers and potential disputes arising out of determinations of provider reimbursement and claims payment, the department believes it is necessary to establish methods and procedures by which to avoid unnecessary paperwork and litigation. The department believes that the informal administrative review process will benefit providers and the department.

The procedures specified in proposed Rule I provide for an administrative review to be conducted and a written determination issued by the department prior to a request for fair hearing and involvement of a hearing officer in the dispute. If the provider does not agree with the department's determination following the administrative review, the provider may request the more formal fair hearing procedure as specified in proposed Rule I. Rule I is the same rule currently contained in ARM 46.12.1210, with two minor changes. The only changes to this section are to specify where to submit an administrative review request and to clarify the applicability date. The department intends to locate Rule I in the rules applicable to inpatient and outpatient hospital providers.

Proposed amendments to ARM 46.2.201 are necessary to specify that the term "adverse action" includes medical assistance provider disputes and that such providers are entitled to administrative review and fair hearing as provided in the department's rules, whether under ARM 46.2.201, et seq. or as provided in other department rules such as proposed Rule I.

Proposed amendments to ARM 46.2.202 are necessary to specify whether the procedures specified in ARM 46.2.201, et seq. apply to disputes involving a particular medical assistance provider or whether other rules, such as proposed Rule I or ARM 46.12.1268, apply.

These amendments are also necessary to incorporate previous amendments to department rules. Effective November 1, 1991, ARM 46.12.1201 through 1207 were repealed and replaced by new

nursing facility rules (ARM 46.12.1221 through 1268). The rules regarding institutions for mental disease contain various references to rules which were repealed at that time. The amendments to ARM 46.12.1109 through 1114 are necessary to update these references to reflect the current versions of rules previously repealed and replaced.

The medical assistance providers listed in proposed ARM 46.2.202(4) include inpatient and outpatient hospital service providers and other providers already subject to the same administrative review and fair hearing rule. The reference to institution for mental disease is necessary to specify the currently applicable procedural rule for these providers. The proposed amendment to ARM 46.12.509 is also necessary to specify the procedures applicable to hospital providers.

6. The department proposes to repeal ARM 46.12.1208, 1209 and 1210 and to readopt their provisions under ARM 46.12.593, 595 and Rule I respectively. ARM 46.12.1208 and 1209 apply only to inpatient psychiatric providers and are more appropriately located in the rules governing that program, i.e., ARM 46.12.590 through 599. The repeal of ARM 46.12.1210 and its readoption as Rule I will locate that rule more appropriately with inpatient and outpatient hospital rules. The amendments to ARM 46.12.1705 and ARM 46.12.1919 will revise the current reference to ARM 46.12.1210 to refer to Rule I.

7. 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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 25, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 18, 1992.

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

In the matter of the correction relating to the amendment of rules 46.12.501 and 46.12.502 pertaining to exclusion of medicaid coverage of infertility treatment services	))))))	NOTICE OF CORRECTION RELATING TO THE PROPOSED AMENDMENT OF RULES 46.12.501 AND 46.12.502 PERTAINING TO EXCLUSION OF MEDICAID COVERAGE OF INFERTILITY TREATMENT SERVICES

TO: All Interested Persons

PLEASE NOTE: The Department of Social and Rehabilitation Services' proposed amendment notice published at page 982, 1992 Montana Administrative Register, issue number 9, incorrectly listed the time for the public hearing to be held in Helena, Montana.

1. The public hearing will be held on June 3, 1992, at 10:00 a.m., in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.501 and 46.12.502 pertaining to exclusion of medicaid coverage of infertility treatment services.

2. All other information for the public hearing will remain as originally published at page 982, 1992 Montana Administrative Register, issue number 9.

Dawn Sliva
Rule Reviewer

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 18, 1992.

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

In the matter of the amendment of rules 46.12.1222, 46.12.1223, 46.12.1226, 46.12.1228, 46.12.1229, 46.12.1231, 46.12.1235, 46.12.1237, 46.12.1240, 46.12.1243, 46.12.1245, 46.12.1246, 46.12.1249, 46.12.1251 and 46.12.1268 pertaining to medicaid nursing facility reimbursement	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.1222, 46.12.1223, 46.12.1226, 46.12.1228, 46.12.1229, 46.12.1231, 46.12.1235, 46.12.1237, 46.12.1240, 46.12.1243, 46.12.1245, 46.12.1246, 46.12.1249, 46.12.1251 AND 46.12.1268 PERTAINING TO MEDICAID NURSING FACILITY REIMBURSEMENT

TO: All Interested Persons

1. On June 19, 1992, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.1222, 46.12.1223, 46.12.1226, 46.12.1228, 46.12.1229, 46.12.1231, 46.12.1235, 46.12.1237, 46.12.1240, 46.12.1243, 46.12.1245, 46.12.1246, 46.12.1249, 46.12.1251 and 46.12.1268 pertaining to medicaid nursing facility reimbursement.

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

46.12.1222 DEFINITIONS Subsections (1) through (12) remain the same.

(13) "Nonemergency routine transportation" means transportation for routine activities, such as outings scheduled by the facility, nonemergency visits to physicians, dentists, optometrists or other medical providers. This definition includes such transportation when it is provided ~~within the community served by the facility or~~ within 20 miles of the facility~~, whichever is greater~~.

(14) "Nursing facility services" means nursing facility services provided in accordance with 42 CFR, Part 483, Subpart B, or intermediate care facility services for the mentally retarded provided in accordance with 42 CFR, Part 483, Subpart ~~C~~D. The department hereby adopts and incorporates herein by reference 42 CFR, Part 483, Subparts B and ~~C~~D, which define the participation requirements for nursing facility and intermediate care facility for the mentally retarded (ICF/MR) providers, copies of which may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210. The term "nursing facility services" includes the term

"long term care facility services". Nursing facility services include, but are not limited to, a medically necessary room, dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Payment for the services listed in this subsection is included in the per diem rate determined by the department under ARM 46.12.1226 or 46.12.1249 and no additional reimbursement is provided for such services. Nursing facility services include but are not limited to the following or any similar items:

Subsections (14)(a) through (14)(d) remain the same.

(e) items ~~distributed or used individually in small quantities~~ routinely provided to residents including but not limited to:

Subsections (14)(e)(i) through (14)(e)(xxx)(B) remain the same.

(C) therapeutic class 2 and class 6 antacids and laxatives including but not limited to:

(I) milk of magnesia;

(~~B~~II) mineral oil;

(~~C~~III) suppositories for evacuation (dulcolax and glycerine);

(~~D~~IV) maalox; and

(~~E~~V) mylanta;

Subsections (14)(e)(xxxi) through (14)(g) remain the same.

(h) ~~transportation of residents for~~ nonemergency routine ~~services~~ transportation as defined in subsection (13).

Subsections (15) through (20) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-111 MCA

46.12.1223 PROVIDER PARTICIPATION REQUIREMENTS Subsections (1) and (1)(a) remain the same.

(b) maintain a current license issued by the department of health and environmental sciences under Montana law for the category and level of care being provided, or, if the facility is located outside the state of Montana, maintain a current license under the laws of the state in which the facility is located for the category and level of nursing facility care being provided;

(c) maintain a current certification for Montana medicaid issued by the department of health and environmental sciences under applicable state and federal laws, rules, regulations and policies for the category and level of care being provided, or, if the facility is located outside the state of Montana, maintain current medicaid certification in the state in which the facility is located for the category and level of nursing facility care being provided;

(d) maintain a current agreement with the department to provide the level of care for which payment is being made, or,

if the facility is located outside the state of Montana, comply with the provisions of ARM 46.12.1251;

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

AUTH: Sec. 53-6-108, 53-6-111 and 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-106, 53-6-107, 53-6-111 and 53-6-113 MCA

46.12.1226 NURSING FACILITY REIMBURSEMENT (1) For nursing facility services, other than ICF/MR services, provided by nursing facilities located within the state of Montana, the Montana medicaid program will pay a provider, for each medicaid patient day, a per diem rate determined in accordance with this section, minus the amount of the medicaid recipient's patient contribution. The per diem rate shall be subject to the ~~minimum and~~ maximum levels specified in subsection (3). Except as provided in subsection (4), the per diem rate is the sum of the following components:

Subsection (1)(a) remains the same.

(b) a direct nursing personnel cost component, individually determined for each provider in accordance with ARM 46.12.1231; and

~~(c) an OBRA cost component, individually determined for each provider in accordance with ARM 46.12.1235; and~~

(~~d~~c) a calculated property cost component, individually determined for each provider in accordance with ARM 46.12.1237~~, or a grandfathered property component determined in accordance with ARM 46.12.1240, if the provider is entitled to a grandfathered property rate under the provisions of ARM 46.12.1240~~.

Subsections (2) and (3) remain the same.

(a) A provider's per diem rate for rate year 1993 shall not exceed the provider's average per diem rate, including the OBRA increment, in effect for rate year 1992 plus $6.00 per diem.

Subsections (4) through (8) remain the same.

(9) Reimbursement for medicare co-insurance days will be as follows:

(a) for dually eligible medicaid and medicare individuals, reimbursement is limited to the per diem rate, as determined under subsection (1) or ARM 46.12.1249, or the medicare co-insurance rate, whichever is lower, minus the medicaid recipient's patient contribution; and

(b) for individuals whose medicare buy-in premium is being paid under the qualified medicare beneficiary (QMB) program under ARM 46.12.4101 but are not otherwise medicaid eligible, payment will be made only under the QMB program at the medicare coinsurance rate.

(10) The department will not make any nursing facility per diem or other reimbursement payments for any patient day for which a resident is not admitted to a facility bed which is licensed and certified as provided in ARM 46.12.1223 as a nursing facility or skilled nursing facility bed.

(11) The department will not reimburse a nursing facility for any patient day for which another nursing facility is holding a bed under the provisions of ARM 46.12.1254(1), unless the nursing facility seeking such payment has, prior to admission, notified the facility holding a bed that the resident has been admitted to another nursing facility. The nursing facility seeking such payment must maintain written documentation of such notification.

Subsections (10) through (11) remain the same in text but will be renumbered (12) through (13).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1228 RATE EFFECTIVE DATES Subsections (1) through (3)(c) remain the same.

(4) The department will change a provider's property cost component on a date other than July 1 of the rate year only upon: ~~a change in provider's calculated property cost component as provided in ARM 46.12.1237(2)(c), upon loss of a grandfathered property cost component as provided in ARM 46.12.1240(2)(d), or as provided in ARM 46.12.1243(2)(e).~~

(a) certification of newly constructed beds as provided in ARM 46.12.1237(4);

(b) completion of an extensive remodeling (as defined in ARM 46.12.1222) as provided in ARM 46.12.1237(5); or

(c) as provided in ARM 46.12.1243(2)(e).

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

46.12.1229 OPERATING COST COMPONENT Subsections (1) through (2)(a)(i) remain the same.

(ii) Except as otherwise specified in ARM 46.12.1243, for rate years beginning on or after July 1, 1992 ~~1993~~, the base period is the provider's cost report period of at least six months with a fiscal year ending between January 1, 1991 and December 31, 1991 inclusive, if available or, if such a cost report has not been timely filed or is otherwise not available, the provider's cost report period of at least six months on file with the department before ~~July 1, 1992~~ April 1 immediately preceding the rate year.

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

(ii) For purposes of setting ~~state fiscal year 1993~~ rates for rate years beginning on or after July 1, 1992, if a provider has not filed a cost report for a period of at least six months with a fiscal year ending between January 1, 1991 and December 31, 1991 inclusive, such provider shall not be included in the array for purposes of calculating the median operating costs. A cost report which is not timely filed in accordance with ARM 46.12.1260 as of April 1 immediately preceding the rate year shall not be considered filed for purposes of inclusion in the array.

Subsections (2)(e) through (5) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1231 DIRECT NURSING PERSONNEL COST COMPONENT
Subsections (1) through (2)(a)(i) remain the same.

(ii) Except as otherwise specified in ARM 46.12.1243, for rate years beginning on or after July 1, 1992 ~~1993~~, the base period is the provider's cost report period of at least six months with a fiscal year ending between January 1, 1991 and December 31, 1991 inclusive, if available or, if such a cost report has not been timely filed or is otherwise not available, the provider's cost report period of at least six months on file with the department before ~~July 1, 1992~~ April 1 immediately preceding the rate year.

Subsections (2)(b) through (2)(f)(i) remain the same.

(ii) For purposes of setting ~~state fiscal year 1993~~ rates for rate years beginning on or after July 1, 1992, if a provider has not filed a cost report for a period of at least six months with a fiscal year ending between January 1, 1991 and December 31, 1991 inclusive, such provider shall not be included in the array for purposes of calculating the statewide median average wage. A cost report which is not timely filed in accordance with ARM 46.12.1260 as of April 1 immediately preceding the rate year shall not be considered filed for purposes of inclusion in the array.

Subsection (3) remains the same.

~~(a) For purposes of subsection (3), the provider's inflated base period composite nursing wage rate shall not be less than 85% of the statewide median average wage, as determined from inflated base year cost report information for all providers.~~

Subsection (4) remains the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1235 OBRA COST ~~COMPONENT~~ REIMBURSEMENT (1) For rate years beginning on or after July 1, 1992, ~~the OBRA cost component for a provider is the sum of the OBRA increment, as provided in subsection (2), and a facility-specific certified nurse aide wage increment, as provided in subsection (3)~~ OBRA costs will be reimbursed under the per diem rate determined under ARM 46.12.1226. No further reimbursement will be provided for such costs except as specifically provided in these rules.

~~(2) For all providers, the OBRA increment will be $2.00 per patient day.~~

~~(a) The OBRA increment covers the medicaid share of nurse aide certification training costs incurred to meet OBRA requirements and all other fiscal year 1992 costs of complying with the requirements of the Omnibus Budget Reconciliation Acts of 1987, 1989 and 1990, public laws 100-203, 101-239 and 101-508, and all state and federal laws and regulations adopted thereunder, including but not limited to the costs of~~

~~training for nurse aides other than the costs of actual testing required for nurse aides.~~

(~~b~~2) Each provider must document and submit to the department on a quarterly basis information on the nurse aide certification training costs, including but not limited to the costs of training for nurse aides other than the costs of actual testing required for nurse aides, incurred at the facility. The required information must be submitted quarterly on the nurse aide certification/training survey reporting form provided by the department and must include the total dollars incurred in each of the categories of facility personnel, supplies and equipment, and subcontracted services. The reporting form must include a brief description of the items included in each of the three categories.

Subsections (2)(c) and (2)(d) remain the same in text but will be renumbered (2)(a) and (2)(b).

~~(3) The certified nurse aide wage increment is the amount, if any, for a particular provider calculated in accordance with this subsection.~~

~~(a) A certified nurse aide wage increment will be computed for each facility which:~~

~~(i) provided the department with monthly reporting/billing forms for the previous reporting periods of July 1, 1990 through April 30, 1991; and~~

~~(ii) received certified nurse aide wage increase payments for the reporting periods July 1, 1990 through April 30, 1991 under the department's rules then in effect.~~

~~(b) The per diem nurse aide wage increment for a provider is the sum of nurse aide wage increase payments to the provider for the reporting periods July 1, 1990 through April 30, 1991, which have been actually paid as of June 14, 1991, divided by the facility's total medicaid bed days for the period July 1, 1990 through April 30, 1991, as identified in the department's medicaid bed day report for fiscal year 1991, dated June 12, 1991.~~

~~(i) Payments for the period July 1, 1990 through April 30, 1991 processed after June 14, 1991 will not be considered for calculation of the nurse aide wage increment.~~

~~(ii) Calculated amounts ending in fractions of cents will be rounded to the nearest cent, with amounts of .5 cent or higher being rounded up to the next cent.~~

~~(c) Providers must continue to keep the original documentation to support hours, wages, and employer contributions reported to the department regarding nurse aide wage increases for the period July 1, 1990 through April 30, 1991. This documentation is subject to audit and evaluation in accordance with ARM 46.12.1260. This documentation must be maintained by the facility for 3 years from the date the forms were submitted to the department, or until final resolution of any dispute to which the documentation relates, whichever is later.~~

~~(i) If the department determines that the documentation is not adequate to support the claim for certified nurse aide wage increases or employer contributions, or that an overpayment has occurred, the nurse aide wage increment as determined~~

~~in this subsection will be recalculated and overpayments under this subsection will be subject to recovery in accordance with ARM 46.12.1261.~~

(3) For periods beginning on or after April 1, 1992, medicaid nursing facility reimbursement for the costs associated with training and competency evaluation programs for nurse aides employed in medicare and medicaid nursing facilities, as required under the Omnibus Budget Reconciliation Act of 1987 (OBRA), shall be as follows:

(a) Nurse aide certification training costs documented in accordance with subsection (2) will be reimbursed under the per diem rate determined under ARM 46.12.1226. No further reimbursement will be provided for such costs.

(b) Medicaid reimbursement for nurse aide competency evaluation (testing) will be reimbursed quarterly according to the following procedures and requirements.

(i) The department will reimburse the nursing facility as provided in this subsection for the medicaid share of the facility's test costs for qualifying nurse aide tests.

(ii) Qualifying nurse aide tests are those tests which:

(A) demonstrate competency through testing methods which address each course requirement and include successful completion of both a written or oral examination and a demonstration of the skills required to perform the tasks required of a nurse aide;

(B) are performed at either a nursing facility which is currently in compliance with medicaid nursing facility participation requirements or at a regional testing site at regularly scheduled testing times;

(C) are administered to nurse aides actually employed by the facility seeking reimbursement; and

(D) do not exceed a third attempt by the individual nurse aide to successfully complete the portion of the test for which reimbursement is sought. The written/oral examination and the skills demonstration may be taken separately if the nurse aide passed only one portion of the test in a previous exam.

(iii) Facility test costs will be determined by the department based upon information provided from the testing entity's records, including the identity and employment status of the nurse aides tested, the number and type of tests actually administered, the facility or site at which the tests were administered, and the basic fee for each test charged by the testing entity to the facility.

(A) The payment under this subsection for a facility's nurse aide test costs shall include only the testing entity's basic fee charged to the facility and shall not include reimbursement for any fees, service charges or any costs not associated with actual completion of a competency examination. Any other such costs incurred may be reported by the facility on its annual cost report required under ARM 46.12.1260, subject to allowable cost limitations specified in these rules.

(iv) The medicaid share of the facility's test cost is determined by multiplying the facility's medicaid utilization percentage by the facility's total test costs for the period.

(A) The facility's medicaid utilization percentage will be determined based upon the form MA-15 staffing reports on file with the department for the period of November 1991 through January 1992, by dividing the total medicaid patient days reflected in the staffing reports for such period by the total patient days reflected in the staffing reports for such period.

(v) The department will reimburse nursing facilities quarterly through an adjustment to the provider's claim payment information for the amount due under this subsection. The department will issue quarterly to each facility a summary sheet itemizing the nurse aide competency testing reimbursement allowed to the provider for that quarter.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1237 CALCULATED PROPERTY COST COMPONENT ~~(1) This section specifies the formula used by the department to determine the calculated property cost component for a specific facility for rate years beginning on or after July 1, 1991. The calculated property cost component is expressed in dollars and cents per patient day.~~

~~(2) A provider's calculated property cost component (M) for rate years beginning on or after July 1, 1991, in dollars and cents per patient day, is calculated according to the formula specified in subsection (a) using the terms as specified and defined in subsection (b).~~

~~(a) The provider's calculated property cost component (M) is as follows:~~

~~(i) M = N x Z except for facilities extensively remodeled or with new beds constructed after July 1, 1984;~~

~~(ii) M = N(1) for facilities with new beds constructed after July 1, 1984; or~~

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

~~(b) As used in this section, the following definitions apply:~~

~~(i) "A" is the total square footage of the original nursing facility structure.~~

~~(ii) "B" is the square footage added to the nursing facility with the construction of new beds.~~

~~(iii) "D" is the property rate as of June 30, 1985 for the original structure.~~

~~(iv) "I" is ((C divided by H) x .80) amortized over 360 months at 12% per annum.~~

~~(v) "H" is the total number of licensed beds in the nursing facility after extensive remodeling.~~

~~(vi) "C" is total allowable remodeling costs.~~

~~(vii) "N" is the calculated property cost component per patient day.~~

~~(viii) "N" is the provider's property rate as of June 30, 1985. For entire facilities built after June 30, 1985, N is $7.60. For facilities new to the medicaid program, but constructed prior to June 30, 1982, a June 30, 1985 rate will be computed according to property rules effective as of June 30, 1985. That rate will be indexed forward to the current rate year using the formula N = N x Z.~~

~~(ix) "N(1)" equals the lower of 8.90 or ((((A x D) + (B x 7.60)) divided by (A + B)) x 1.171).~~

~~(x) "N(2)" equals the lower of 8.90 or ((D x 1.171) + ((F x 12) divided by 365)).~~

~~(xi) "Z" is 1.171.~~

~~(c) The department will increase or decrease a provider's calculated property cost component on a date other than July 1 of the rate year only upon:~~

~~(i) certification of newly constructed beds; or~~

~~(ii) completion of extensive remodeling, as defined in ARM 46.12.1222.~~

~~(d) Subsection (c) shall not be construed to prevent the department from assigning to a provider a calculated property cost component and revising the provider's per diem rate accordingly on a date other than July 1 of the rate year upon loss of a grandfathered rate as provided in ARM 46.12.1240.~~

(1) This section specifies the method used by the department to calculate the property cost component for a specific provider for rate years beginning on or after July 1, 1992. Such property cost component is expressed in dollars and cents per patient day.

(2) As used in this section, the following definitions apply:

(a) "Base period" means the provider's cost reporting period from which property costs are determined for a given year.

(i) Except as otherwise specified in ARM 46.12.1243, for rate years beginning on or after July 1, 1992, the base period is the provider's cost report period of at least six months with a fiscal year ending between January 1, 1991 and December 31, 1991 inclusive, if available or, if such a cost report has not been timely filed or is otherwise not available, the provider's cost report period of at least six months on file with the department before April 1 immediately preceding the rate year.

(b) "Property costs" means allowable patient-related costs for building depreciation, equipment depreciation, capital-related interest, building lease, and equipment leases, subject to the provisions of ARM 46.12.1258, not included in the operating or direct nursing personnel cost component.

(c) "Base year per diem property costs" means the provider's total allowable property costs divided by the number of provider's patient days for the base period.

(d) "Property rate cap" means the maximum calculated property cost component which the department will pay to a provider.

(i) For rate years beginning on or after July 1, 1992, the property rate cap is $9.47.

(e) "1992 property component" means the provider's calculated or grandfathered property component determined for rate year 1992 in accordance with ARM 46.12.1237 or 46.12.1240.

(i) For any provider providing nursing facility services in a facility constructed prior to June 30, 1982 and for whom a calculated or grandfathered property component has not been determined by the department in accordance with ARM 46.12.1237 or 46.12.1240 for rate year 1992, the 1992 property component shall equal the June 30, 1985 property rate computed for the facility according to the rules in effect as of June 30, 1985 and indexed forward to the 1992 rate year according to the rules in effect for rate year 1992.

(3) For rate years beginning on or after July 1, 1992, the provider's calculated property cost component is as follows:

(a) If the provider's 1992 property component is greater than the provider's base year per diem property costs, then the provider's calculated property cost component is the lesser of the provider's 1992 property component or the property rate cap of $9.47.

(b) If the provider's base year per diem property costs exceed the provider's 1992 property component by more than $0.57, then the provider's calculated property cost component is the sum of the provider's 1992 property component plus $0.57.

(c) If the provider's base year per diem property costs exceed the provider's 1992 property component by $0.57 or less, then the provider's calculated property cost component is the provider's base year per diem property costs.

(4) Upon certification of newly constructed beds, a provider's calculated property cost component shall be adjusted to a property cost component calculated as follows:

(a) the adjusted component shall be the lesser of $9.47 or a blended rate determined by dividing the sum of the product of pre-construction square footage and the provider's July 1 calculated property cost component and the product of the additional constructed square footage and $9.47, by the total square footage after construction.

(5) Upon completion of an extensive remodeling, a provider's calculated property cost component shall be adjusted to a property cost component calculated as follows:

(a) the adjusted component shall be the lesser of $9.47 or the existing component plus a per diem amount determined by amortizing 80% of the amount derived by dividing the total allowable remodeling cost by the number of licensed beds after remodeling. Such amount shall be amortized over 360 months at 12% per annum. A per diem amount shall be determined by multiplying the monthly amortization amount by 12 months and dividing the result by 365.

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

46.12.1240 GRANDFATHERED PROPERTY COST COMPONENT

(1) For rate years beginning on or after July 1, 1992, all grandfathered property cost components shall be eliminated and no provider shall be entitled to any grandfathering protection. ~~This section specifies the circumstances under which the property cost component for a provider will be based upon a historical rate rather than calculated under the provisions of ARM 46.12.1237. When a provider's property rate is not a calculated property cost component, it is referred to as a "grandfathered" property cost component.~~

~~(2) A provider shall be entitled to a grandfathered property cost component only as specified in this section.~~

~~(a) No provider who is delivering services in a nursing facility newly constructed after June 30, 1982 shall be entitled to a grandfathered property cost component under this section.~~

~~(b) Nursing facilities located within the state of Montana and providing intermediate care facility services for the mentally retarded shall be reimbursed under the provisions of ARM 46.12.1249 and may not receive a grandfathered property cost component under this section.~~

~~(c) Nursing facilities located outside the state of Montana shall be reimbursed under the provisions of ARM 46.12.1251 and may not receive a grandfathered property cost component under this section.~~

~~(d) Any grandfathered property cost component to which a provider, facility or owner may otherwise be entitled under this section shall immediately expire if there is a change in the June 30, 1982 provider, as defined in ARM 46.12.1241. The new provider's per diem rate will be as determined under the provisions of ARM 46.12.1243, beginning upon the effective date of any change in provider.~~

~~(3) A provider not disqualified under subsection (2) is entitled to a grandfathered property cost component only if:~~

~~(a) the provider was providing services in the same nursing facility on June 30, 1982;~~

~~(b) the property cost component calculated in accordance with ARM 46.12.1237 is less than the interim property rate in effect for the provider on June 30, 1982, except that, if property costs to a provider have decreased since June 30, 1982, this requirement is met only if the property cost component calculated in accordance with ARM 46.12.1237 is less than actual costs; and~~

~~(c) the calculated property rate in effect on June 30, 1985, multiplied by 1.171, does not exceed:~~

~~(i) the interim property rate in effect for the provider on June 30 1982; or~~

~~(ii) if property costs to a provider have decreased since June 30, 1982, actual costs.~~

~~(4) For purposes of subsection (3), a decrease in costs includes a decrease which results from provider activities,~~

~~including but not limited to refinancing of a debt or renegotiation of a lease. Decreased costs resulting from normal changes in interest and principal payments over the terms of an existing mortgage or lease will not be considered a decrease in costs for purposes of this section.~~

~~(5) If a provider is entitled to a grandfathered property cost component under this section, such rate shall be as follows:~~

~~(a) for providers providing services in facilities which have completed construction of new beds after July 1, 1984, the amount derived, subject to the definitions in subsection (b), by the following calculation:~~

~~(i) [(V x S) + (Y x 8.90)] divided by (V + Y).~~

~~(b) in subsection (a)(i), the following definitions apply:~~

~~(i) "V" is the total square footage of the original structure before construction of new beds.~~

~~(ii) "Y" is the square footage added to the facility as a result of the construction of new beds.~~

~~(iii) "S" is the interim property rate in effect for the provider on June 30, 1982, or, if property costs to a provider have decreased since June 30, 1982, actual costs. For purposes of this definition, a decrease in costs includes a decrease which results from provider activities, including but not limited to refinancing of a debt or renegotiation of a lease. Decreased costs resulting from normal changes in interest and principal payments over the terms of an existing mortgage or lease will not be considered a decrease in costs for purposes of this definition.~~

~~(c) for providers providing services in facilities which have completed an extensive remodeling after July 1, 1984, the amount derived, subject to the definitions in subsection (d), by the following calculation:~~

~~(i) the lower of $8.90 or [S + ((F x 12) divided by 365)].~~

~~(d) in subsection (c)(i), the following definitions apply:~~

~~(i) "F" is ((B divided by D) x .80) amortized over 360 months at 12% per annum.~~

~~(ii) "D" is the number of licensed beds in the facility.~~

~~(iii) "B" is the total allowable remodeling costs as defined in ARM 46.12.1222.~~

~~(iv) "S" is as defined in subsection (b)(iii).~~

~~(e) for all other providers entitled to a grandfathered property rate, the grandfathered property rate shall equal S, as defined in subsection (b)(iii).~~

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

46.12.1243 INTERIM PER DIEM RATES FOR NEWLY CONSTRUCTED FACILITIES AND NEW PROVIDERS Subsection (1) remains the same.

(2) For in-state providers, other than ICF/MR providers, which as of July 1 of the rate year have not filed with the department a cost report covering a period of at least six months participation in the medicaid program:

(a) in a newly constructed facility or as a new provider not resulting from ~~following~~ a change in provider as defined in ARM 46.12.1241, the interim per diem rate shall be the bed-weighted median per diem rate for all nursing facility providers. The interim rate shall be determined based upon all non-interim provider rates determined by the department and effective as of July 1 of the rate year;

(b) as a ~~If the~~ new provider resulting from a change in provider as defined in ARM 46.12.1241, the new provider's interim rate will be determined in accordance with ARM 46.12.1226, 1229, 1231 and 1237, based upon the most recent medicaid cost report covering a period of at least six months as filed by the previous provider, and ~~is~~ subject to the applicable minimum or maximum rate under the provisions of ARM 46.12.1226(3) as applied to the facility's average per diem rate in effect for the entire previous rate year, as if no change in provider had occurred. ~~The interim rate shall be determined based upon all non-interim provider rates determined by the department and effective as of July 1 of the rate year.~~

(a~~c~~) The provider's interim rate shall become effective on the date a provider begins providing medicaid services in a newly constructed facility, as a new provider or on the effective date of a change in provider as defined in ARM 46.12.1241.

(~~b~~d) The provider's interim rate shall remain in effect until the provider has filed with the department a complete and accurate cost report covering a period of at least six months participation in the medicaid program in a newly constructed facility, as a new provider or following a change in provider as defined in ARM 46.12.1241.

(~~c~~e) After the provider files a complete and accurate cost report as specified in subsection (~~b~~d), the department will determine a per diem rate based upon such cost report according to the provisions of ARM 46.12.1226, 1229, 1231 and 1237. Such per diem rate shall be determined using the period covered by the cost report as the provider's base period. The per diem rate determined in accordance with this subsection shall be effective retroactive to the date the interim rate set under subsection (2) became effective. Any overpayment or underpayment shall be adjusted in accordance with the cost settlement rules specified in ARM 46.12.1261.

(3) For purposes of calculating a per diem rate as provided in subsection (2)(~~c~~e), the following shall apply with respect to patient assessment scores used to calculate the direct nursing personnel cost component:

Subsection (3)(a) remains the same.

(b) For providers who have received an interim rate under the provisions of this section based upon provision of services in a new facility or as a new provider, the pro-

vider's direct nursing personnel cost component shall be calculated based upon a patient assessment score determined as follows:

Subsections (3)(b)(i) through (3)(b)(iii) remain the same.

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

46.12.1245 SEPARATELY BILLABLE ITEMS Subsections (1) through (1)(am) remain the same.

~~(an) urinary collection and retention system, drainage bag with tube;~~

Subsections (1)(ao) through (1)(df)(iii) remain the same in text but will be renumbered (1)(an) through (1)(de)(iii).

Subsections (2) through (5) remain the same.

(6) Nonemergency routine transportation for activities other than those described in ARM 46.12.1222(13), may be billed separately in accordance with department rules applicable to such services. Emergency transportation may be billed separately by an ambulance service in accordance with department rules applicable to such services.

Subsections (7) through (9) remain the same.

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

46.12.1246 ITEMS BILLABLE TO RESIDENTS Subsections (1) through (1)(n) remain the same.

(o) over-the-counter drugs other than the routine stock items, such as acetaminophen, aspirin, and therapeutic class 2 and class 6 antacids and laxatives including but not limited to milk of magnesia, mineral oil, suppositories for evacuation, maalox and mylanta, which are reimbursed as part of the per diem rate.

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

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

46.12.1249 REIMBURSEMENT FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED Subsections (1) through (2)(e) remain the same.

(f) For fiscal years ending after June 30, 1992 and on or before June 30, 1993, the payment rate will not exceed total allowable costs per day for the 12-month period ended June 30, with increases in subsequent years indexed to June 30 of the rate year by an index not to exceed the final medicare market basket index applicable to the rate year.

Subsections (3) through (6) remain the same.

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

46.12.1251 REIMBURSEMENT TO OUT OF STATE FACILITIES Subsections (1) through (4)(d)(i) remain the same.

(e) a copy of the preadmission-screening determination for the resident completed by a department long-term care specialist;

Subsections (4)(e)(i) through (4)(h) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1268 ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES (1) Within 30 days of mailing of the department's written determination, including a rate or audit determination, a provider may request an administrative review. The request must be in writing, must state the provider's objections in detail and must include any substantiating information and documentation which the provider wishes the department to consider in the administrative review. The request for administrative review and any supporting information or documentation must be mailed to the Administrator, Medicaid Services Division, P.O. Box 4210, Helena, MT 59604-4210.

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

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

3. The proposed changes to the medicaid nursing facility reimbursement rule are necessary to:

(1) implement legislative funding increases for nursing facility reimbursement for state fiscal year 1993;

(2) rebase rate formula components to more current cost report data and adjust rate formula components, percentages and caps to take into account new base year cost information;

(3) update the property cost component based upon prior reimbursement levels and costs, revise the property cost component upper limit to account for new construction cost information, and eliminate grandfathering protection for property rates;

(4) revise the methodology for establishing interim rates to discourage facility transfers designed only to increase reimbursement and to prevent extreme rate decreases which would discourage bona fide transfers;

(5) specify requirements and establish a reimbursement methodology for nurse aide testing and competency evaluation programs;

(6) establish fiscal year 1993 as a new base period for purposes of calculating ICF/MR reimbursement limits; and

(7) revise and clarify the department's rules regarding payment for nonemergency routine transportation, items routinely supplied to residents (including antacids and laxatives), medicare coinsurance days, and bed hold days; clarify that nursing facility reimbursement is available only for services provided to residents admitted to beds licensed and certified for nursing or skilled nursing facility level of care; and make other miscellaneous clarifications to the department's rules.

These changes are explained in greater detail below.

1. The proposed rule is necessary to implement authorized funding increases in aggregate nursing facility reimbursement.

The proposed rule is necessary to implement legislative funding increases for nursing facility reimbursement for state fiscal year 1993. The 1991 legislature appropriated funds under House Bill (HB) 2 and HB 93 for increases in medicaid rates to nursing facilities. HB 2, in addition to the base funding for nursing facility reimbursement, appropriated increases for "rebasing" of the nursing facility reimbursement system. HB 93 provides additional funding from a provider bed fee for fiscal year 1993 of $2.00 per patient day. The proposed rule would implement the funding increases appropriated under HB 2 and HB 93. Medicaid nursing facility reimbursement is a combination of federal and state funds and patient contributions.

The funding appropriated by the 1991 legislature and the additional reimbursement for increased patient contributions for the period July 1, 1992 through September 30, 1992 results in aggregate fiscal year 1993 reimbursement to nursing facilities in the amount of $67.15 per patient day (PPD) or a total of $98,503,123 of combined state funds, federal funds, and patient contributions. This represents an aggregate increase in reimbursement of $3.93 PPD over the fiscal year 1992 reimbursement level.

The amendments to ARM 46.12.1226(1) through (3)(a), 46.12.1228, 46.12.1235(1), 46.12.1237, 46.12.1240 and 46.12.1243, incorporate this increased funding into the reimbursement system (and accomplish other necessary changes noted below). These changes are necessary to implement the department's statutory authority to set rates for the medicaid program, taking into consideration various factors including the availability of appropriated funds.

2. The proposed rule is necessary to rebase the reimbursement system to more current cost data and to adjust rate formula

components, percentages and caps to take into account new base year cost information.

The current rule provides that rate year 1993 rates will be set using 1991 cost report information. As part of the negotiations regarding adoption of the new reimbursement methodology for fiscal year 1992, the department committed itself to this rebasing. The department proposes to implement this rebasing and to continue use of the new reimbursement methodology with modification of the per diem rate increase cap, elimination of the minimum 5.5% rate increase, elimination of the wage floor for the direct nursing component, modification of the calculated property cost component and elimination of grandfathering protection for property rates.

The 1991 legislature appropriated substantial new funds for the purpose of increasing medicaid reimbursement to nursing facilities. In fiscal year 1992, the department implemented a new reimbursement methodology utilizing three separate cost centers and corresponding rate components. The cost centers are "operating", "direct nursing", and "property". This new methodology for reimbursement was adopted to meet the following requirements and goals: (1) to comply with applicable federal standards for medicaid reimbursement to nursing facilities; (2) to encourage providers to provide high quality care to nursing facility residents; (3) to provide reimbursement rates that are fair and equitable to individual providers, yet consistent with efficiency and economy; (4) access to care; and (5) decreased cost shifting to private paying residents.

The fiscal year 1992 reimbursement formula was based upon the 1989 medicaid cost reports to determine reimbursement levels for the operating and direct nursing cost components. The 1992 reimbursement level was the total of the operating, direct nursing, property, $2.00 Omnibus Budget Reconciliation Act of 1987 (OBRA) increment, and a facility specific nurse aide wage increase add-on. The amount of increase in a provider's per diem rate was subject to a minimum increase of 5.5% over the FY 1991 rate, and a maximum $8.00 increase over the FY 1991 rate.

The reimbursement formula utilizes a methodology which determines indexed bed weighted median cost components for the operating and direct nursing cost components and applies limits at 110% and 125% respectively. The formula also provides for an operating incentive at 40% of the difference between the provider's indexed cost and the operating cost limit, or 5% of the indexed median operating cost, whichever is lower. The 1992 property reimbursement was based upon a 3% increase to account for inflation.

The department proposes for purposes of determining rate year 1993 nursing facility reimbursement rates to continue the reimbursement formula percentages at 110% of median operating

costs, 125% of the statewide median average wage and the operating incentive at 40% of the difference between the provider's indexed cost and the operating cost limit, or 5% of the indexed median operating cost, whichever is lower.

The department proposes a $6.00 cap on the amount of increase in a provider's rate from rate year 1992 to rate year 1993. This cap approximates 175% of the DRI-HC change in year average from the second quarter of 1993 multiplied by the bed weighted median rate. This cap is necessary as part of the continuing transition to the new reimbursement methodology to mitigate wide fluctuations in rates from 1992 to 1993 and to achieve more equitable rates to providers as a whole.

The department proposes to revise the rule to eliminate the 5.5% minimum rate increase which was used in rate year 1992 to assure that all providers received a rate increase. The department does not believe that this minimum increase is warranted for rate year 1993.

The base period will be the provider's medicaid cost report covering a period of at least six months, with a fiscal year ending during calendar year 1991. If no such cost report is available, a cost report for a later period which includes at least six months participation by the provider will be used. If no such cost report is available, the provider would receive an interim rate. The proposed changes also provide that 1991 will continue to be the base year until a new base year is specifically designated by the department.

The 1991 cost reports cover the period in which facilities were required to implement the Omnibus Budget Reconciliation Act of 1987 (OBRA) requirements. During that period of implementation, the department paid facilities a separate OBRA increment to cover the costs of implementing OBRA requirements. In rate year 1991 (7/1/90 - 6/30/91) the department reimbursed provider's $1.90 PPD for OBRA related costs, and in 1992 (7/1/91 - 6/30/92) the department reimbursed provider's $2.00 PPD for OBRA related costs. Because the 1991 medicaid cost reports cover rate periods in which providers were incurring OBRA costs, the department believes that OBRA costs will now be included in the 1991 base period costs. Therefore, the department proposes to eliminate all separate OBRA-related increments for rate year 1993. This includes both the $2.00 per day amount and the nurse aide wage increase increment. Reimbursement for these costs will be included in the per diem operating and direct nursing cost components.

Taking together all proposed parameters of the system, the department believes that the rates generated will comply with federal requirements, will further the department's goals, and will equitably reimburse individual providers. However, the proposals are based upon the analysis completed to date on cost report information only recently received and providers

continue to request changes to the cost data in response to the department's request for verification of rate setting information. Accordingly, the proposed changes are not to be considered as the final decisions of the department. Because new base year cost information will be used to set rates, the department will continue the analysis and findings process for rate year 1993. The proposed parameters of the system for rate year 1993 are subject to change prior to a final implementation decision, depending upon further analysis and findings. The proposed amendments will not be adopted unless final findings establish that rates meet federal requirements.

The amendments to ARM 46.12.1226(1) through (3)(a), 46.12.1229, 46.12.1231, 46.122.1235(1) and, 46.12.1235(1), incorporate these changes. These changes are necessary to implement the department's statutory authority to set rates for the medicaid program, taking into consideration various factors including the actual cost of providing services.

The proposed amendments will also require that the cost report be timely received prior to April 1 immediately preceding the rate year. This requirement will allow the department time to review the cost reports, make necessary corrections and enter the cost data into the data base for purposes of analysis and findings prior to proposing rates for new rate years. The proposed changes to ARM 46.12.1229, 46.12.1231 and 46.12.1237 implement these changes. These changes are necessary to exercise the department's statutory authority to administer and supervise the medicaid program.

The proposed amendments to ARM 46.12.1235(2) are necessary to clarify and continue the documentation requirement for nurse aide training and competency evaluation costs. Providers will be required to continue submission of documentation of nurse aide training costs to the department. These amendments are necessary to exercise the department's statutory authority to administer and supervise the medicaid program.

3. The proposed changes are necessary to revise the property reimbursement methodology.

The proposed amendments are necessary to update the property cost component based upon prior reimbursement levels and costs, revise the property cost component upper limit to account for new construction cost information, and eliminate grandfathering protection for property rates. The department proposes to modify reimbursement for the property cost component using property reimbursement levels set for 1992 and per diem costs per day as computed from the 1991 medicaid cost reports. This methodology would increase the new construction rate from $8.90 to $9.47.

The proposed property reimbursement methodology will provide for rate increases for a majority of providers up to $.57 per

patient day. One provider will experience a property rate decrease and all others will either remain at their 1992 property reimbursement level or receive an increase in property reimbursement up to their cost per day computed from their 1991 cost reports. The proposed change in property reimbursement will allow the department to eliminate all "grandfathered" property rate provisions currently contained in ARM 46.12.1240.

These property reimbursement proposals would be implemented by the proposed changes to ARM 46.12.1226(1)(c), 46.12.1228, 46.12.1237 and 46.12.1240. These changes are necessary to exercise the department's statutory authority to set rates for the medicaid program, taking into consideration a variety of factors, including the actual cost of providing services.

4. The proposed amendments are necessary to revise the interim rate provisions for certain providers.

The proposed amendments to ARM 46.12.1243 would revise the methodology for establishing interim rates to discourage facility transfers designed only to increase reimbursement and to prevent extreme rate decreases which would discourage bona fide transfers. If a new provider results from a change in provider as defined in the department's rules, the new provider would receive an interim rate calculated in the usual fashion based upon the previous provider's most recent cost report for a period of at least 6 months. This approach makes sense because costs do not change materially from one provider to the next. The interim rate would be adjusted and settled upon filing of the new provider's first cost report covering at least 6 months participation in the program. These changes are necessary to exercise the department's statutory authority to set rates for medicaid services.

5. The proposed amendments are necessary to specify requirements and establish a reimbursement methodology for nurse aide testing and competency evaluation programs.

The proposed rules will specify the conditions under which facilities will be reimbursed for nurse aide testing costs. The medicaid share of costs for such testing and evaluation will be reimbursed through a separate payment system based upon information provided to the department from the testing entity. The department will reimburse the medicaid share of the full cost of testing charged by the testing entity to the facility. In accordance with requirements of federal law, this reimbursement will be provided for periods beginning on or after April 1, 1992. These proposed changes to ARM 46.12.1235(3) implement these changes. These changes are necessary to exercise the department's statutory authority to set rates and to administer and supervise the medicaid program.

6. The proposed amendments are necessary to establish a new base year for ICF/MR reimbursement.

The proposed amendments to ARM 46.12.1249 are necessary to establish fiscal year 1993 as a new base period for purposes of calculating ICF/MR reimbursement limits. The proposed rule is necessary to allow the department to reimburse ICFs/MR for actual allowable costs during fiscal year 1993. It is appropriate that ICF/MR costs be rebased in fiscal year 1993 to take into account increasing and changing costs for these facilities, rather than being subject to a medicare market basket upper limit based upon different operating conditions in prior years. These changes are necessary to exercise the department's statutory authority to set rates for the medicaid program, taking into consideration a variety of factors, including the actual cost of providing services.

7. The proposed amendments are necessary to revise and clarify the departments rules in various areas.

The proposed amendments to ARM 46.12.1222(13) and (14)(h) and 46.12.1245(6) are necessary to revise the department's rules regarding payment for nonemergency routine transportation. The amendment would specify that transportation is routine within 20 miles of the facility and would eliminate the concept of the "community served by the facility." This term was difficult to apply and administer, and resulted in different mileages being applied to different facilities. These changes are necessary to exercise the department's statutory authority to determine the amount, scope and duration of services under the medicaid program.

The proposed amendments to ARM 46.12.1222(14)(e) would specify that items "routinely supplied to residents" are considered part of the nursing facility services reimbursed under the per diem rate. This concept would replace the existing language "items routinely supplied in small quantities." These changes are necessary to exercise the department's statutory authority to determine the amount, scope and duration of services under the medicaid program.

The proposed amendments to ARM 46.12.1222(14)(e)(xxx)(C) and 46.12.1246 would describe the therapeutic class of antacids and laxatives considered part of routine nursing services. This description would allow pharmacies to identify the class of items for which ancillary reimbursement is not allowed. These changes are necessary to exercise the department's statutory authority to determine the amount, scope and duration of services under the medicaid program.

The proposed amendments to ARM 46.12.1226(9) would specify department policy regarding payment for medicare coinsurance days. For dually eligible (i.e., medicare and medicaid) patients the department will pay the lesser of the medicaid

per diem rate or the medicare coinsurance rate. For patients participating in medicare through a medicaid qualified medicare beneficiary (QMB) buy-in, the department will not provide nursing facility reimbursement but will pay the benefits allowed through the QMB program. These changes are necessary to exercise the department's statutory authority to set rates for the medicaid program.

The proposed amendments to ARM 46.12.1226(11) would specify department policy regarding bed hold days where one facility is holding a bed for a patient who is out of the facility receiving medical services elsewhere. Where the facility continues to hold a bed and the patient is then admitted to another nursing facility, disputes arise as to which facility can receive payment for the overlapping days. The proposed rule would require the new admitting facility to notify the facility holding a bed of the admission and to document the notification. These changes are necessary to exercise the department's statutory authority to administer and supervise the medicaid program.

The proposed amendments to ARM 46.12.1251 would specify that preadmission screenings for admissions to out of state facilities must be made by the department's long term care specialists. These changes are necessary to exercise the department's statutory authority to administer and supervise the medicaid program.

The proposed amendments to ARM 46.12.1223 and 46.12.1226(10) are necessary to specify that nursing facility reimbursement is available only for services provided to residents admitted to beds licensed and certified for nursing or skilled nursing facility level of care, and for a level of care covered in an agreement with the department. These changes are necessary to exercise the department's statutory authority to administer and supervise the medicaid program.

The proposed amendments are necessary to make additional minor miscellaneous changes and corrections to the department's rules. The proposed amendment to ARM 46.12.1221(14) would correct an erroneous citation to an incorporated federal regulation. The proposed amendment to ARM 46.12.1225 (1)(an) would eliminate an unnecessarily repeated statement. The proposed amendment to ARM 46.12.1268 would specify that a request for an administrative review must be submitted to the medicaid services division rather than to the office of fair hearings.

4. The department proposes that the amendments be applied retroactively to July 1, 1992 to coincide with the new rate year. This would allow the department to distribute retroactive to July 1 increases in funding granted by the legislature. It is anticipated that new rates for rate year 1993 will be implemented in time to allow payment of claims for the

period beginning July 1 at the new rates, since such claims are not submitted until approximately August 1.

The department was unable to file this proposal earlier because all of the 1991 cost reports which will be used to set fiscal year 1993 rates were not available sufficiently in advance to complete analysis and develop the rule proposal for an earlier filing date. Those cost reports were filed by providers as late as May 13, 1992. This notice will have been published and a public hearing held prior to the proposed July 1, 1992 effective date.

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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 25, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 18, 1992.

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

In the matter of the amendment of rules 46.12.801, 46.12.802 and 46.12.805 pertaining to durable medical equipment	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.801, 46.12.802 AND 46.12.805 PERTAINING TO DURABLE MEDICAL EQUIPMENT

TO: All Interested Persons

1. On June 17, 1992, at 11:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.801, 46.12.802 and 46.12.805 pertaining to durable medical equipment.

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

46.12.801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITIONS Subsections (1) through (3) remain the same.

(4) "Prior authorization" means the medicaid program's review and approval of an item's medical necessity and coverage by medicaid prior to the delivery of the item.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS Subsections (1) through (2)(d) remain the same.

(e) A determination of the medical necessity of an item made by the medicare program is applicable to the medicaid program.

Subsection (3) remains the same.

(a) medicare covered items determined not to be medically necessary by the medicare program;

(ab) ~~O~~orthopedic shoes, corrections, and shoe repairs unless the shoes are attached to a brace or ~~other~~ orthotic device, which cannot be accomodated in a regular shoe. This information must be indicated on the physician's prescription;

(~~b~~c) ~~C~~convenience and comfort items~~.~~;

(ed) ~~P~~payment for provider's travel~~.~~;

(~~d~~e) ~~N~~nutrient solutions except when they are for parenteral and enteral nutrition therapy, are the ~~only~~ primary source of nutrition for patients, and are ~~determined~~ medically appropriate ~~and prior authorized by the department.~~; and

(f) purchase of air fluidized beds.

(4) The date of service for custom molded or fitted items is the date upon which the provider completes the mold

or fitting and either orders the equipment from another party or makes an irrevocable commitment to the production of the item.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

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

(c) A prior authorization ~~must be attached to each claim~~ is required for the following:

(i) for any line item of prosthetic device, durable medical equipment and medical supplies on which charges exceed $1000.00; ~~$200.00 for any line item; and~~

(ii) ~~with respect to those items specified in the department's fee schedule maintained in accordance with the methodology described in ARM 46.12.806(2).~~ rental of air fluidized beds;

(iii) augmentative communication devices;

(iv) purchase of hospital beds; and

(v) purchase of wheel chairs.

Subsections (1)(d) and (1)(e) remain the same.

(2) ~~Regardless of the provisions of subsection (1)(c), oxygen supplies and oxygen equipment need not be prior approved.~~ For items that require prior authorization, the authorization must be attached to the submitted claim.

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

AUTH: Sec. 53-6-113 MCA;
IMP: Sec. 53-6-101 and 53-6-141 MCA

3. The amendments to ARM 46.12.801, 46.12.802 and 46.12.805 are necessary to improve the administration of the medicaid program in relation to the delivery of prosthetic devices, durable medical equipment, and medical supplies.

The proposed amendment to ARM 46.12.801, providing a definition of "prior authorization" is necessary to clarify that prior authorization encompasses both the determination of the medical necessity of an item and the determination of medicaid coverage for the item.

The proposed amendments to ARM 46.12.802 improve the administration of items purchased through medicaid. By providing that determinations of medical necessity made for purposes of medicare are determinative as to their necessity for purposes of the medicaid program, the program will forego consultative exams for determining medical necessity. The exclusion of the purchase of air fluidized beds from the program is necessary to reduce the possibility that the program will be financially burdened by the expense of these items. The specification of the date of service in relation to custom molded or fitted items will protect providers from incurring costs on items

that at the time of delivery may not be reimbursable because of changes in the medicaid status of the recipient.

Currently, prior authorization for items purchased through medicaid require a significant commitment of staff time. The proposed amendments of ARM 46.12.805 specify those items that are subject to prior authorization at any cost and raise the threshold for authorization from $200 to $1,000 for all other items. The amendments to ARM 46.12.805 will reduce staff time devoted to administration of this realm of medicaid while maintaining review for higher priced items and requiring review of some items no matter what their costs.

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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 25, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 18, 1992.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.43.431 regarding the purchase of military service in the Sheriffs' Retirement System.	NOTICE OF REPEAL

TO: All Interested Persons.

1. On March 26, 1992, the Public Employees' Retirement Board proposed repeal of ARM 2.43.431 concerning purchase of military service in the Sheriffs' Retirement System at page 466 of the 1992 Montana Administrative Register, issue number 6.

2. The board has repealed ARM 2.43.431, found on page 2-3143 of the Administrative Rules of Montana.
AUTH: 19-7-201, MCA
IMP: 19-7-301, MCA

3. No comments or testimony were received.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 8, 1992

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to incorporation by reference and amendment of codes, standards and fees	)))))	NOTICE OF AMENDMENT OF 8.70.101, 8.70.102, 8.70.103, 8.70.104, 8.70.105, 8.70.110, 8.70.302, 8.70.601 PERTAINING TO BUILDING CODES

TO: All Interested Persons:

1. On January 30, 1992, the Building Codes Bureau published a notice of public hearing at page 111, 1992 Montana Administrative Register, issue number 2. The public hearing was held on February 24, 1992, at 9:00 a.m., in the downstairs conference room of the Department of Commerce, Helena, Montana.

2. The Building Codes Bureau has amended ARM 8.70.101, 8.70.102, 8.70.103, 8.70.104, 8.70.105, 8.70.110 and 8.70.601 exactly as proposed. The Bureau has amended ARM 8.70.302 as proposed but with the following change to correct a typographical error:

"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) through (1)(b) will remain the same as proposed.

(i) Delete sections 20.3, 30.1, 30.2, 30.3, 30.4, 30.5 and 30.6. These sections are replaced with provisions of Title 50, chapter 60, MCA. "No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 50-60-503 or 50-60-506, MCA. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this ~~action~~ part. Factory-built buildings covered by an insignia issued by the building standards section need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on site work, as provided for in these rules."

(ii) through (2) will remain the same as proposed."

Auth: Sec. 50-60-203, 50-60-504, 50-60-508, MCA; IMP, Sec. 50-60-203, 50-60-504, 50-60-508, MCA

3. The Building Codes Bureau has thoroughly considered all comments and testimony received. Almost all of the opposition to the proposed rule amendments was directed to portions of the proposed rules which provide for below grade use of LPG appliances in Single Family Dwellings, as directed by House Bill 655, passed by the 52nd Legislature. Even the comment in support which contained a suggested change was directed to a portion of those amendments. Because the Uniform Plumbing Code adopted in many states, including Montana, prohibits below grade installation of LPG appliances,

the Department was required to amend portions of the Uniform Plumbing Code which have been incorporated by reference as rules of the Department. The same situation applies to the Uniform Mechanical Code which also prohibits below grade installation of LPG appliances. The opponents set forth the following arguments in opposition to the LPG rules:

COMMENT: The LPG detector/solenoid fuel valve required by the rules is cost prohibitive.

RESPONSE: The LPG detector/solenoid fuel valve required by the rules is not cost prohibitive. The Department's investigation into the cost of complying with the proposed rule resulted in an estimated cost of between $300.00 to $500.00 per system installed. An opponent to the proposed LPG rules originally stated an opinion that the cost of a system would be $797.00 and corrected its written comment submission with a cost of $539.00. The Department feels that the additional cost of this system is not excessive when considering the risk to life and property without same. A study of the Crow Tribal Housing Authority installation of 112 units on the Crow Reservation, Montana, established that the estimated cost totaled $350.00 per system.

COMMENT: The shut off valve system is susceptible to power outages and surges which can result in frozen plumbing and other damage.

RESPONSE: A shut off valve system that is not susceptible to power outages and surges can be obtained to prevent frozen plumbing and other damage. The Department has determined that at least two different types of detector/solenoid valve systems are available within the cost range set forth above. One system is designed to re-energize/re-open the solenoid gas valve when power is restored after an outage. Another system is designed to be utilized with an optional battery back-up system to maintain energy to the system during power outages for up to three hours. When power is restored the unit is automatically re-charged. Heating units are readily available with electronic ignition that will automatically re-start when the solenoid gas valve re-opens in a system without the optional battery back-up. A system with battery back-up will stay on during power failure.

COMMENT: The system must be manually reset to resume service upon interruption.

RESPONSE: The detector/solenoid gas valve systems are designed to require a two to five minute waiting/warm-up period before the appliance can be re-fired. Although a manual reset can be avoided by using a system with a battery back-up or electronic ignition, even where a reset is necessary an audible alarm will deter the homeowner from attempting to re-energize the system, and will precipitate a call for assistance. The Crow Tribal Housing Authority has stated that with at least 112 systems in place for over two years, they have had less than one call per month concerning a system shut-down.

COMMENT: The detectors are overly sensitive.
RESPONSE: The detectors are not overly sensitive as evidenced by the performance of these systems on the Crow Reservation. Other contractors who have installed these systems in Montana have reported that they have never had to reset or re-energize a system.

COMMENT: The National Fire Protection Association has no standards regarding LPG leak detection devices.
RESPONSE: The detectors that are readily available have either been tested or have a proven record of performing well in the state of Montana. According to Pittsburgh Testing Laboratory, the Fumi-Tech HGD II detector has been tested and meets the basic requirements of UL #1484. Additionally, the 4S1GVC from Macurco, Inc. has a proven record of performing well in the state of Montana.

COMMENT: There is no unified code or authority to control the use of equipment and installation.
RESPONSE: The legislature did not intend to place the installation of below grade LPG appliances in Single Family Dwellings within the regulatory jurisdiction of the Department of Commerce, Building Codes Bureau. Thus, neither a permit nor inspection is necessary; however, the legislation requires that the Department by rule amendment make allowance for below grade LPG installations, notwithstanding the current prohibition under the Uniform Plumbing Code and Uniform Mechanical Code.

COMMENT: The gas appliance system check-up program, created and implemented by the National Propane Gas Association is a satisfactory substitute for the detector/solenoid fuel valve system required by the proposed rules.
RESPONSE: The gas appliance system check-up program, created and implemented by the National Propane Gas Association is an excellent attempt by the LPG industry to establish some standards for the safe installation of LPG appliances. However, because of the substantial risk of injury and/or damage should leak and explosion occur in a below grade installation, the program is not a satisfactory substitute for the detector/solenoid fuel valve system required by the proposed rules. NFPA 54 and NFPA 58, which were advocated by a person in opposition to the proposed rules, have not been adopted by the Department as rules, nor are they recognized as the standards for the installation of heating, ventilating, and air-conditioning systems. The Uniform Plumbing Code and Uniform Mechanical Code are the relevant standards which have been adopted by the Department.

COMMENT: Several people who supported the agency's proposed rule 8.70.105(1)(d)(v) and 8.70.302(1)(b)(xv)(E) requiring an installer to promptly report any accidents/incidents where LPG may have been a factor, or could become a contributing factor, in a death, serious personal injury or where property damage exceeds $500.00, suggested

that the rule be changed. It was the feeling of those persons that there is no basis upon which the rule should be limited solely to LPG.

RESPONSE: The Department has overruled this suggestion based upon the inherent danger of LPG. Other fuels have been allowed in below grade appliance installations under the current Uniform Plumbing Code and Uniform Mechanical Code. The Department believes that it is reasonable to require reporting of injury, death or substantial property damage related to LPG usage, in below grade appliances, to enable it to assess the impact of the proposed rules.

COMMENT: One person opposed the amendment of 8.70.302(1)(b)(xi). This amendment removes PB (Polybutylene) from the list of approved materials for water pipe and fittings.

RESPONSE: The Department believes it is justified in removing PB from the approved materials list for water pipe and fittings because it was removed from the Uniform Plumbing Code by the code conference, as an acceptable material for water pipe and fittings. The Code as adopted will continue to allow PB for use in a non-pressure application. PB was removed as approved material in a pressure application as the result of a vote by the code conference.

DEPARTMENT OF COMMERCE
BUILDING CODES BUREAU
CHARLES A. BROOKE, DIRECTOR

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 18, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of amendment of Accreditation Standards requirements of Administrators	))))	NOTICE OF AMENDMENT OF ARM 10.55.703 ADMINISTRATORS, 10.55.704 AND 10.55.705 ADMINISTRATIVE PERSONNEL

TO: All Interested Persons

1. On February 27, 1992 the Board of Public Education published a notice of proposed amendment concerning ARM 10.55.703, 10.55.704 and 10.55.705 Administrative Personnel, at page 280 of the Montana Administrative Register, Issue No. 4.

2. The Board is amending the rules as proposed with the following changes:

10.55.703 CERTIFICATION AND DUTIES OF BUILDING LEVEL ADMINISTRATORS: PRINCIPAL (1) (a) will be remain the same.

(b) ~~Except as provided in ARM 10.55.704 (2) (a) (ii), (b) (ii), and (c) (iii),~~ have a certificate endorsed at the level assigned as an administrator~~,~~ except where a district superintendent is serving as both high school and elementary administrator under 10.55.705 (1) (a) or (b), where the superintendent may hold either a high school or elementary administrative endorsement;

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS ~~(1) (a) will remain the same. (1) For assignment of district superintendents prior to 7/1/92 see ARM 10.55.705 (1). (Eff. 7/1/92).~~
~~(2)~~(1) ~~Beginning~~ Effective 7/1/92 district superintendents shall be assigned as follows:

(a) A combined elementary-high school district:

(i) A full or part-time district superintendent shall be employed for a district with fewer than 5 9 FTE certified staff.

(ii) A ~~half-time (.5 FTE)~~ full or part-time district superintendent shall be employed for a district with 5 9-29 FTE certified staff. AOne full-time individual may fulfill the positions of ~~half-time~~ district superintendent and half-time building administrator(s) as defined in ARM 10.55.705 (1). A

superintendent that also serves as principal(s) shall devote full-time to administration and supervision.

(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(b) A county high school district:

(i) A full-time or part-time district superintendent shall be employed for a district with fewer than 5 9 FTE certified staff.

(ii) A ~~half-time (.5 FTE)~~full or part-time district superintendent shall be employed for a district with 5 9-29 FTE certified staff. AOne full-time individual may fulfill the positions of ~~half-time~~ district superintendent and half-time building administrator(s) as defined in ARM 10.55.705 (1). A superintendent that also serves as principal shall devote full-time to administration and supervision.

(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(c) An independent elementary school district:

(i) A full or part-time district superintendent shall be employed for a district with fewer than 5 9 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of district superintendent as outlined in ARM 10.55.702.

(ii) A ~~half-time (.5 FTE)~~full or part-time district superintendent and a full or half-time building administrator as defined in ARM 10.55.705(1) shall be employed ~~at~~for a district with 5 9-17 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the ~~services~~ duties of the district superintendent as outlined in ARM 10.55.702. One full-time individual may fulfill the positions of district superintendent and half-time building administrator as defined in ARM 10.55.705 (1). A superintendent that also serves as principal(s) shall devote full-time to administration and supervision.

(iii) A ~~half-time (.5 FTE)~~full or part-time district superintendent shall be employed for a district with 18-29 FTE certified staff. AOne full-time individual may fulfill the positions of ~~half-time~~ district superintendent and half-time building administrator(s) as defined in ARM 10.55.705(1). A superintendent that also serves as half-time principal shall devote full-time to administration and supervision.

(iv) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(3) A combined elementary-high school district or a county high school district or an independent elementary school

district with 100 or more FTE certified staff shall employ a full-time curriculum coordinator to supervise the educational program. The curriculum coordinator must hold a Class 3 administrative certificate.

(4) Any district may seek alternatives to the above requirements including sharing a district superintendent (see "Alternative Standard", ARM 10.55.604). Where a district superintendent is shared, one superintendent may serve all the cooperating districts. If a district superintendent is shared within the requirements of ARM 10.55.704, an alternative standard need not be applied for by the district.

~~(5) through (8) will remain the same.~~

~~(5) A combined elementary high school district or a county high school district or an independent elementary district with 18-29 FTE certified staff shall employ at least a half-time district superintendent in addition to the required building administrator.~~

~~(6) A combined elementary high school district or a county high school district or an independent elementary district with 30 or more FTE certified staff, or 551 or more students, shall employ a full-time district superintendent.~~

~~(7) A combined elementary high school district or a county high school district or independent elementary district with 100 or more certified FTE shall employ a full time curriculum coordinator to supervise the educational program.~~

~~(8) Any district may seek alternatives to the above requires including sharing a district superintendent (see "Alternative Standards", ARM 10.55.604). Where a district superintendent is shared, one superintendent may serve all the cooperating districts.~~

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF BUILDING ADMINISTRATORS ~~(1) (a) will remain the same.~~

~~(1) Prior to 7/1/92 requirements for the services of principals are determined by enrollments of school or school districts.~~

~~(a) Any school with an enrollment of fewer than 150 students and not under the supervision of a district superintendent shall provide for supervision at the minimum average of two days per teacher per year through the office of the county superintendent.~~

~~(b) In any combined elementary and high school district with an enrollment of more than 50 but less than 150 students and where the superintendent serves as both the elementary and secondary principal, the superintendent shall devote half time in each school to administration and supervision.~~

~~(c) In any combined elementary and high school district~~

~~where the combined enrollment exceeds 150 but is less than 300, the superintendent may serve as half-time elementary or high school principal. The district must employ a half-time elementary or high school principal for the other unit in the district. The superintendent shall devote half-time as principal of the assigned school, or, in any combined elementary and high school district where the combined enrollment exceeds 150 but is less than 300, and where the superintendent serves as both elementary and secondary principal, the district must employ a half-time assistant administrator. The assistant administrator shall be defined as a person who holds a bachelor's degree, a current Montana teaching certificate and~~

~~(i) be enrolled in a planned program leading to administrative endorsement with an accredited college or university, or~~

~~(ii) presents evidence of enrollment in an administrative or supervisory intern program approved by the board of public education, or~~

~~(iii) currently holds an appropriate administrative or supervisory endorsement. Assistant administrators lacking an appropriate administrative or supervisory endorsement may observe and supervise but shall not formally evaluate certified staff except as authorized by the board of public education.~~

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

~~(d) Any elementary or secondary school with an enrollment of 150 to 300 shall employ a principal (in addition to the superintendent) who shall devote half time to supervision and administration.~~

~~(e) Any school with an enrollment exceeding 300 shall employ a principal (in addition to the superintendent) who shall devote full time to supervision and administration.~~

~~(f) Any senior high school, junior high school, middle school and grades 7 and 8 budgeted at high school rates with an enrollment of over 500 students shall employ an assistant principal who shall devote at least on half of each school day to supervision and administration.~~

~~(g) Any elementary school with an enrollment of over 650 students shall employ and assistant principal who shall devote at least one half of each school day to supervision and administration.~~ ~~(Eff. 7/1/89; Repeal 7/1/92)~~

~~(2)~~(1) Beginning 7/1/92 schools districts shall employ appropriately endorsed building administrators, ~~except as provided in ARM 10.55.704 (2) (a) (ii), (b) (ii), and (c) (iii),~~ as follows:

(a) A district superintendent or supervising teacher and county superintendent for schools with less than 5 9 FTE certified staff.

(b) .5 FTE for schools with 5 9-17 FTE certified staff.
(c) through ~~(g)~~ (f) will remain the same.
(g) 5 FTE for schools with 2051 or more students.
~~(Effective 7/1/92)~~

~~(3)~~(2) Beginning 7/1/92 in schools with more than one building administrator, the first administrator shall be appropriately endorsed as principal. The additional administrators shall have administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflect their supervisory responsibilities. For example, a school may assign a properly certified and endorsed curriculum coordinators to supervise the appropriate instructional programs.

~~(4)~~(3) Beginning 7/1/92 in schools with at least three FTE building administrators who are administratively endorsed, release time of department coordinators or chairpersons may be counted toward additional building administration. Department coordinators or chairpersons counted toward building administration may observe and supervise but shall not formally evaluate classroom instruction.

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

3. The Board is adopting the amendment to the rules because this change is needed to clarify the original intent of the rule with regard to appropriately endorsed building administrators in small schools (those employing between 4 and 17 FTE). The change would clarify that a single administrator with either a secondary or elementary endorsement may serve as an administrator in small schools with both elementary and secondary students. The change is also needed to correct an error in the present rule which leaves a gap between schools with 4-11 FTE and 18-29 FTE.

WAYNE BUCHANAN, EXECUTIVE SECRETARY
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State, May 18, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of amendment of State Aid Distribution Schedule	)))	NOTICE OF AMENDMENT OF REPORTING AND ACCREDITATION REQUIRE- MENTS ARM 10.67.102

TO: All Interested Persons

1. On March 12, 1992 the Board of Public Education published a notice of proposed amendment concerning ARM 10.67.102 Reporting and Accreditation requirements on pages 364-366 of the 1992 Montana Administrative Register, issue #5.

2. The board has amended rule 10.67.102 as proposed.

3. The board proposed this amendment because the board has determined that this subsection of the rule exceeds the authority delegated to the board under MCA 20-9-334 (3)(b).

Wayne G Buchanan

WAYNE BUCHANAN, EXECUTIVE SECRETARY
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State May 18, 1992.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS OF THE STATE OF MONTANA

In the Matter of the Adoption of New Rules Relating to Shooting Range Development Grants	))))	NOTICE OF ADOPTION OF NEW RULES I (12.10.101) THROUGH VI (12.10.106) RELATING TO SHOOTING RANGE DEVELOPMENT GRANTS

To: All interested persons

1. On February 27, 1992, in the Montana Administrative Register Issue No. 4 at page 290, the department published notice of proposed adoption of new rules (12.10.101 through 12.10.106) pertaining to shooting range development grants.

2. The department has adopted the new rules as proposed with no changes.

3. No comments or testimony were received.

K.L. Cool
Director

Rule Reviewer

Certified to the Secretary of State May 18, 1992.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1992. This table includes those rules adopted during the period April 1, 1992 through June 30, 1992 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, 1992, 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 1991 and 1992 Montana Administrative Registers.

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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 April, 1992, are published. Vacancies scheduled to appear from June 1, 1992, through August 31, 1992, are also listed, as are current recent vacancies due to resignations or other reasons.

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 May 5, 1992.

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: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Athletics (Commerce)			
Dr. John Halseth	Governor	reappointed	4/25/1992
Great Falls			4/25/1995
Qualifications (if required): public member			
Mr. Gary Langley	Governor	Atchinson	4/25/1992
Helena			4/25/1995
Qualifications (if required): public member			
Dr. Andrew Vandolah	Governor	reappointed	4/25/1992
Conrad			4/25/1995
Qualifications (if required): public member			
Board of Hail Insurance (Agriculture)			
Mr. Louis Beirwagon	Governor	reappointed	4/18/1992
Big Sandy			4/18/1995
Qualifications (if required): public member			
Board of Optometrists (Commerce)			
Mr. Larry J. Bonderud	Governor	reappointed	4/3/1992
Shelby			4/3/1996
Qualifications (if required): optometrist			
Board of Professional Engineers and Land Surveyors (Commerce)			
Dr. Fred E. Walter	Governor	reappointed	4/23/1992
Butte			7/1/1995
Qualifications (if required): engineer			
Board of Veterans Affairs (Military Affairs)			
Mr. George G. Hageman	Governor	Pawlowski	4/28/1992
Jordan			5/18/1997
Qualifications (if required): honorably discharged from military services			

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Capital Finance Advisory Council (Administration)			
Ms. Karen Barclay-Fagg	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): reps. Dept. of Natural Resources & Conservation			
Rep. Francis Bardanouve	Governor	none specified	4/6/1992
Harlem			4/6/1994
Qualifications (if required): rep. Montana Legislature			
Mr. Charles A. Brooke	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): reps. Dept. of Commerce & MT Science & Tech			
Senator Delwyn "Del" Gage	Governor	none specified	4/6/1992
Cut Bank			4/6/1994
Qualifications (if required): rep. Montana Legislature			
Mr. Dennis Iverson	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): reps. Dept. of Health & Environmental Sciences			
Dr. Amos Little	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): rep. Health Facilities Authority			
Mr. Bob Marks	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): Department of Administration			
Mr. Tom Mather	Governor	none specified	4/6/1992
Great Falls			4/6/1994
Qualifications (if required): rep. Montana Board of Housing			

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Capital Finance Advisory Council (Administration) cont.			
Mr. William L. Mathers	Governor	none listed	4/6/1992
Miles City			4/6/1994
Qualifications (if required): none specified			
Mr. John Rothwell	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): reps. Dept. of Transportation			
Mr. Everett Snortland	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): reps. Dept. of Agriculture & Ag Loan Authority			
Mr. Warren Vaughan	Governor	none specified	4/6/1992
Billings			4/6/1994
Qualifications (if required): rep. Board of Investments			
Mr. Steve Yeakel	Governor	none specified	4/6/1992
Helena			4/6/1994
Qualifications (if required): reps. office of Budget & Program Planning			
Council on Physical Fitness and Sports (Governor)			
Ms. Mary Kay Bennett	Governor	none listed	4/17/1992
Helena			4/17/1994
Qualifications (if required): none specified			
Mr. Don Byers	Governor	none listed	4/17/1992
Great Falls			4/17/1994
Qualifications (if required): none specified			
Mr. Pat Dodson	Governor	none listed	4/17/1992
Missoula			4/17/1994
Qualifications (if required): none specified			

Appointee	Appointed by	Succeeds	Appointment/End Date
Council on Physical Fitness and Sports (Governor) cont.			
Ms. Jeri Dommi Helena Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Dr. Jack Halseth Great Falls Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Dick Hart Bozeman Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. John Kinna Bozeman Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Joe Kusek Billings Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Ms. Heather Lewis Helena Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Tim Love Townsend Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Ms. Judy Martz Butte Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Council on Physical Fitness and Sports (Governor) cont.			
Dr. Alex McNeil Bozeman Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Ms. Marilyn Miller Helena Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Bob Moon Helena Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Arnold Olsen Butte Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Tom Osborne Billings Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Hal Rawson Helena Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Mr. Spencer Sartorius Helena Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994
Ms. Kari Swenson Steamboat Springs Qualifications (if required): none specified	Governor	none listed	4/17/1992 4/17/1994

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Council on Physical Fitness and Sports (Governor) cont.			
Mr. Jim Turner	Governor	none listed	4/17/1992
Helena			4/17/1994
Qualifications (if required): none specified			
Mr. Manuel White	Governor	none listed	4/17/1992
Helena			4/17/1994
Qualifications (if required): none specified			
Mr. Joe Wren	Governor	none listed	4/17/1992
Butte			4/17/1994
Qualifications (if required): none specified			
Eleventh Judicial District Judge (Judicial)			
Mr. Ted O. Lympus	Governor	Erickson	4/20/1992
Kalispell			1/1/1994
Qualifications (if required): none listed			
Executive Bd of MT College of Mineral Science & Technology (Education)			
Mr. Truxton Fisher	Governor	reappointed	4/16/1992
Butte			4/17/1995
Qualifications (if required): resides in county where unit is located			
Executive Board of Eastern Montana College (Education)			
Mr. Bill Tierney	Governor	reappointed	4/16/1992
Billings			4/17/1995
Qualifications (if required): resides in the county where unit is located			

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Family Services Advisory Council (Family Services)			
Ms. Judy Garrity	Governor	none listed	4/15/1992
Helena			4/15/1994
Qualifications (if required): none specified			
Ms. Barbara Sample	Governor	none listed	4/15/1992
Billings			4/15/1994
Qualifications (if required): none specified			
Montana State University Executive Board (Education)			
Mr. Dick Roehm	Governor	Johnson	4/16/1992
Bozeman			4/17/1995
Qualifications (if required): resides in county where unit is located			
Northern Montana College Executive Board (Education)			
Ms. Eleanor C. Wink	Governor	reappointed	4/16/1992
Havre			4/17/1995
Qualifications (if required): resides in county where unit is located			
Public Employees' Retirement Board (Administration)			
Ms. Carole Carey	Governor	Batista	4/1/1992
Ekalaka			4/1/1997
Qualifications (if required): member public employees' retirement system			
Ms. Eleanor D. Pratt	Governor	Thomas	4/1/1992
Glasgow			4/1/1994
Qualifications (if required): member public employees' retirement system			
University of Montana Executive Board (Education)			
Ms. Arlene Breum	Governor	reappointed	4/16/1992
Missoula			4/17/1995
Qualifications (if required): resides in county where unit is located			

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Western Montana College Executive Board (Education)			
Ms. Patricia J. Blade	Governor	reappointed	4/16/1992
Dillon			4/17/1995
Qualifications (if required): resides in county where unit is located			
Youth Justice Council (Justice)			
Mr. Craig Anderson	Governor	not listed	4/15/1992
Glendive			4/15/1994
Qualifications (if required): none specified			
Ms. Gail Cleveland	Governor	not listed	4/15/1992
Great Falls			4/15/1994
Qualifications (if required): none specified			
Mr. Al Davis	Governor	not listed	4/15/1992
Helena			4/15/1994
Qualifications (if required): none specified			
Mr. Gordon Eldridge	Governor	not listed	4/15/1992
Billings			4/15/1994
Qualifications (if required): none specified			
Mr. Kelly Ferriter	Governor	not listed	4/15/1992
Helena			4/15/1994
Qualifications (if required): none specified			
Ms. Susan Good	Governor	not listed	4/15/1992
Great Falls			4/15/1994
Qualifications (if required): none specified			
Mr. Tony Harbaugh	Governor	not listed	4/15/1992
Miles City			4/15/1994
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Youth Justice Council (Justice) cont.			
Ms. Randi Mae Hood Helena Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Ms. Nicole K. Johnson Helena Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Representative Royal Johnson Billings Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Ms. Joan-Nell Macfadden Great Falls Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Ms. Chris Negus Helena Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Mr. Steve P. Nelson Bozeman Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Judge Thomas A. Olson Bozeman Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Mr. Garry Rafter Hobson Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994

BOARD AND COUNCIL APPOINTEES: APRIL, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Youth Justice Council (Justice) cont.			
Ms. Sally Stansbury Missoula Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Ms. Margaret Stuart Helena Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994
Mr. Don Wetzel Harlem Qualifications (if required): none specified	Governor	not listed	4/15/1992 4/15/1994

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Governor)		
Father Carl Erickson, Fort Benton	Governor	7/18/1992
Qualifications (if required): none specified		
Mr. Ray Fisher, Philipsburg	Governor	7/18/1992
Qualifications (if required): none specified		
Mr. R.H. (Buff) Hultman, Drummond	Governor	7/18/1992
Qualifications (if required): representative of Region V		
Ms. Ena Simpson, Polson	Governor	7/18/1992
Qualifications (if required): none specified		
Agricultural Development Board (Agriculture)		
Mr. Charles A. Brooke, Helena	Governor	7/1/1992
Qualifications (if required): Director of Department of Commerce		
Mr. Larry Johnson, Kremlin	Governor	7/1/1992
Qualifications (if required): actively engaged in agriculture		
Mr. John C. Witte, Poplar	Governor	7/1/1992
Qualifications (if required): actively engaged in agriculture		
Alfalfa Leaf Cutting Bee Advisory Council (Agriculture)		
Dr. Gary Jensen, Bozeman	Governor	7/1/1992
Qualifications (if required): member from Montana State University Extension Service		
Mr. Allen Whitmer, Bloomfield	Governor	7/1/1992
Qualifications (if required): member of alfalfa seed growers		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Board of Architects (Commerce)		
Ms. Shirley R. Pappin, Great Falls	Governor	7/1/1992
Qualifications (if required): public member		
Board of Banking (Commerce)		
Mr. Lynn D. Grobel, Glasgow	Governor	7/1/1992
Qualifications (if required): officer of National Bank		
Mr. Dayton B. Kolstad, Gt. Falls	Governor	7/1/1992
Qualifications (if required): public member		
Board of Barbers (Commerce)		
Ms. Donna Elaine Buska, Billings	Governor	7/1/1992
Qualifications (if required): barber		
Board of Cosmetologists (Commerce)		
Ms. Mary L. Brown, Helena	Governor	7/1/1992
Qualifications (if required): licensed cosmetologist		
Board of Hearing Aid Dispensers (Commerce)		
Ms. Patricia Ingalls, Butte	Governor	7/1/1992
Qualifications (if required): hearing aid dispenser		
Board of Morticians (Commerce)		
Mr. L. M. Clayton III, Wolf Point	Governor	7/1/1992
Qualifications (if required): licensed mortician		
Mr. Jack H. Severns, Great Falls	Governor	7/1/1992
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Board of Nursing (Commerce)		
Ms. Doris Lorraine Evans, Havre	Governor	7/1/1992
Qualifications (if required): licensed practical nurse		
Dr. Kathleen Long, Bozeman	Governor	7/1/1992
Qualifications (if required): registered professional nurse with 5 yr teaching experience		
Board of Pharmacy (Commerce)		
Mr. R. G. Glatz, Winnett	Governor	7/1/1992
Qualifications (if required): public member		
Board of Physical Therapy Examiners (Commerce)		
Mr. Thomas K. Meagher, Butte	Governor	7/1/1992
Qualifications (if required): practicing physical therapist		
Board of Private Security Patrolmen and Investigators (Commerce)		
Mr. Gary Gray, Great Falls	Governor	8/1/1992
Qualifications (if required): contracted security		
Ms. Mary'l G. Luntsford, Kalispell	Governor	8/1/1992
Qualifications (if required): proprietary security		
Board of Public Accountants (Commerce)		
Ms. Elizabeth Hallowell, Helena	Governor	7/1/1992
Qualifications (if required): public member		
Board of Radiologic Technologists (Commerce)		
Dr. Michael Richards, Great Falls	Governor	7/1/1992
Qualifications (if required): doctor of radiology		
Mr. Jim Winter, Great Falls	Governor	7/1/1992
Qualifications (if required): licensed radiologic technologist		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Board of Regents of Higher Education (Education)		
Ms. Katherine Sue Rebish, Missoula	Governor	7/1/1992
Qualifications (if required): full time student at unit of higher education		
Board of Sanitarians (Commerce)		
Mr. Samuel R. Kalafat, Black Eagle	Governor	7/1/1992
Qualifications (if required): registered sanitarian		
Board of Trustees of the State Historical Society (Education)		
Mr. Harold L. Poulsen, Great Falls	Governor	7/1/1992
Qualifications (if required): none specified		
Dr. Richard Roeder, Helena	Governor	7/1/1992
Qualifications (if required): none specified		
Mr. Ward A. Shanahan, Helena	Governor	7/1/1992
Qualifications (if required): none specified		
Board of Veterinary Medicine (Commerce)		
Dr. Gerald J. Killen, Forsyth	Governor	7/31/1992
Qualifications (if required): veterinarian		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. William F. Osborne, Kalispell	Governor	7/1/1992
Qualifications (if required): not specified		
Burial Preservation Board (Commerce)		
Mr. Germaine DuMonteir, Pablo	Governor	8/22/1992
Qualifications (if required): rep. Little Shell Tribe		
Mr. Gilbert Horn, Harlem	Governor	8/22/1992
Qualifications (if required): rep. Gros Ventre and Assiniboine Tribes		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Burial Preservation Board (Commerce) cont.		
Mr. Mickey Nelson, Helena	Governor	8/22/1992
Qualifications (if required): rep. from Montana Coroners' Association		
Mr. Richard Periman, Butte	Governor	8/22/1992
Qualifications (if required): rep. Montana archaeological association		
Mr. John Pretty On Top, Crow Agency	Governor	8/22/1992
Qualifications (if required): rep. Crow Tribe		
Mr. John Sunchild, Box Elder	Governor	8/22/1992
Qualifications (if required): rep. Chippewa-Cree Tribe		
Child Care Advisory Council (Family Services)		
Ms. Nell Baar, Manhattan	Governor	6/30/1992
Qualifications (if required): parent representative		
Ms. Jean Broadhead, Gardiner	Governor	6/30/1992
Qualifications (if required): child care provider		
Ms. Clarice Cryder, Billings	Governor	6/30/1992
Qualifications (if required): parent representative		
Ms. Joann Erickson, Havre	Governor	6/30/1992
Qualifications (if required): parent representative		
Ms. Mildred Wehrman, Shepherd	Governor	6/30/1992
Qualifications (if required): child care provider		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)		
Mr. John L. Delano, Helena	Governor	7/1/1992
Qualifications (if required): 1 of 4 handicapped members on board		
Mr. Ben Havdahl, Helena	Governor	7/1/1992
Qualifications (if required): 1 of 4 handicapped members on board		
Mr. Floyd J. McDowell, Great Falls	Governor	7/1/1992
Qualifications (if required): 1 of 2 non-handicapped, 1 not telecommmunication business		
Electrical Board (Commerce)		
Mr. Edgar Justesen, Glendive	Governor	7/1/1992
Qualifications (if required): none specified		
Family Support Services Advisory Council (Social and Rehabilitation Services)		
Mr. Dan Anderson, Helena	Governor	6/30/1992
Qualifications (if required): public member		
Mr. Bud Lee, Miles City	Governor	6/30/1992
Qualifications (if required): parent representative		
Health Facility Authority Board (Commerce)		
Mr. Kent Brubaker, Terry	Governor	6/30/1992
Qualifications (if required): not specified		
Ms. Dalyce K. Flynn, Townsend	Governor	6/30/1992
Qualifications (if required): not specified		
Mr. Greg L. Hanson, Missoula	Governor	6/30/1992
Qualifications (if required): Atty. licensed to practice law in Montana		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Historical Records Advisory Council (Education)		
Ms. Kathryn Otto, Helena Qualifications (if required): State Archivist	Governor	8/21/1992
Mr. Timothy Alan Bernardis, Crow Agency Qualifications (if required): none specified	Governor	8/21/1992
Mr. James Dopp, Missoula Qualifications (if required): none specified	Governor	8/21/1992
Ms. Connie Flaherty-Erickson, Helena Qualifications (if required): none specified	Governor	8/21/1992
Ms. Peggy Jean Lamberson, Great Falls Qualifications (if required): none specified	Governor	8/21/1992
Ms. Georgia Lomax, Miles City Qualifications (if required): none specified	Governor	8/21/1992
Ms. Wilma Simon-Matte, Harlem Qualifications (if required): none specified	Governor	8/21/1992
Mr. Lawrence Sommer, Helena Qualifications (if required): none specified	Governor	8/21/1992
Montana Mint Committee (Agriculture)		
Mr. Dale Sonstelie, Kalispell Qualifications (if required): actively involved growing mint	Governor	7/1/1992

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Petroleum Tank Release Compensation Board (Health and Environmental Sciences)		
Mr. Al Audet, Great Falls	Governor	6/30/1992
Qualifications (if required): rep. petroleum service industry		
Mr. John Dove, Missoula	Governor	6/30/1992
Qualifications (if required): representative of insurance industry		
Mr. Howard Wheatley, Great Falls	Governor	6/30/1992
Qualifications (if required): rep. independent petroleum marketers & chain retailers		
Special Education Advisory Council (Office of Public Instruction)		
Mr. Tom Arensmeyer, Townsend	Superintendent of Schools	7/1/1992
Qualifications (if required): regular education		
Ms. Margery Brown, Missoula	Superintendent of Schools	7/1/1992
Qualifications (if required): none specified		
Ms. Judith Oberst, Helena	Superintendent of Schools	7/1/1992
Qualifications (if required): parent of child with handicapping condition		
Ms. Joanne Putnam, Missoula	Superintendent of Schools	7/1/1992
Qualifications (if required): higher education		
Teachers' Retirement Board (Administration)		
Mr. James E. Cowan, Seeley Lake	Governor	7/1/1992
Qualifications (if required): public member		
Tourism Advisory Council (Commerce)		
Ms. Maureen Averill, Bigfork	Governor	7/1/1992
Qualifications (if required): from Glacier Country		
Mr. Greg A. Bryan, Whitefish	Governor	7/1/1992
Qualifications (if required): not specified		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1992 through August 31, 1992

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce) cont.		
Mr. Alan Elliott, Billings	Governor	7/1/1992
Qualifications (if required): from Custer Country		
Mr. Kenneth Hickel, Billings	Governor	7/1/1992
Qualifications (if required): representative of Russell Country		
Wheat and Barley Committee (Agriculture)		
Ms. Karen R. Mattson, Chester	Governor	8/20/1992
Qualifications (if required): resides in district III affiliated with Democratic Party		
Mr. Roger L. Simonson, Saco	Governor	8/20/1992
Qualifications (if required): resides in District III affiliated with Republican Party		