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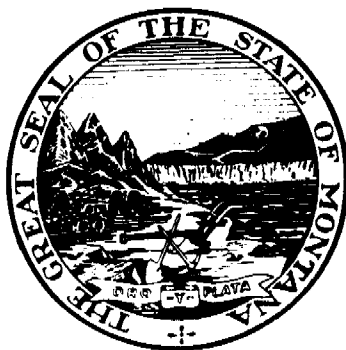
JUL 17 1992

OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

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1992 ISSUE NO. 13
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The Montana Administrative Register (MAR) is a twice monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED AMEND-
amendment of existing rules	)	MENT OF ARM 4.5.109
pertaining to the reporting	)	AND 4.5.112 PERTAINING
procedures, field evaluations	)	TO THE REPORTING/MONITORING
and council appointments for	)	PROCEDURES AND THE WEED
the noxious weed trust fund	)	MANAGEMENT COUNCIL

NO PUBLIC HEARING CONTEMPLATED

TO: All interested Persons:

1. On August 17, 1992 the Department of Agriculture proposes to amend ARM 4.5.109 and 4.5.112 relating to the reporting procedures and council appointment for the noxious weed trust fund.

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

4.5.109. REPORTING AND MONITORING PROCEDURES (1) The project sponsor or project manager shall monitor the progress and results of the project and evaluate its overall effectiveness. The project sponsor shall submit to the department quarterly progress and fiscal reports and written progress reports as determined by contract. ~~The department will conduct annual field evaluations.~~ If the department determines through field or office evaluations that improper progress or fiscal reports have been filed, the project sponsor shall initiate necessary corrective action.

AUTH: 80-7-802

IMP: 80-7-814

4.5.112. NOXIOUS WEED MANAGEMENT COUNCIL (1) The director of the department shall serve as chairman and also appoint the members of the noxious weed management council. Council appointments and terms will comply with 2-15-122, MCA. ~~Each appointed member shall serve a term of three years beginning 1986 except those members who are replacing members who resigned their membership prior to the expiration of their term or except for the provision in subpart (2).~~

~~(2) The following members shall initially serve an initial term of one year -- bio control, dealer or applicator. The following members shall serve an initial term of two years livestock, weed control and sports/wildlife. The following members shall serve an initial term of three years grain, consumer, and agriculture representatives at large. Following the completion of the first term the subsequent terms shall be three years.~~

AUTH: 80-7-802

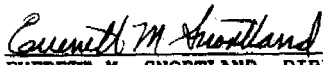
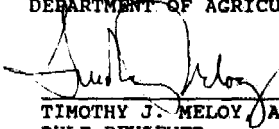
IMP: 80-7-814

3. The reason for the first proposed amendment to ARM 4.5.109 is to allow for efficient reporting of grant contracts based on the needs of the grant recipient and the department. The second amendment to this rule deletes the mandate for annual field evaluations. Field evaluations for weed control project grants will still be conducted based upon various factors such as type or magnitude of the project and problems relating to narrative and financial reports. The proposed amendment to ARM 4.5.112 will bring the noxious weed trust fund rules into compliance with state law, which requires that advisory council members be appointed every two years.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Gary Gingery, Administrator, ABSD, Department of Agriculture, Capitol Station, Helena, Montana 59620-0205, no later than August 13, 1992.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Department of Agriculture no later August 13, 1992.

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

By: 
EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

TIMOTHY J. MELOY, ATTORNEY
RULE REVIEWER
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State July 6, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED AMENDMENT
amendment and repeal of rules)	OF ARM 10.16.1108, 10.16.1110
relating to special education)	AND REPEAL OF ARM 10.16.1107
complaint procedures)	

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On August 17, 1992, the Superintendent of Public Instruction proposes to amend and repeal rules pertaining to special education complaint procedures.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows:

10.16.1108 OPPORTUNITY TO PRESENT COMPLAINTS (1) ~~Each agency shall establish written procedures which provide for parental presentation of complaints with respect to any matter relating to the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education for the child. The superintendent of public instruction has established the following written procedures to provide for the filing of complaints by individuals or organizations alleging that a Montana local education agency (school district) has failed to provide a child with disabilities a free appropriate public education.~~

(2) ~~Whenever a complaint has been received, the parents shall have an opportunity for an impartial due process hearing with respect to any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a qualified child, the complainant may request an impartial due process hearing in accordance with ARM 10.16.2401 through 10.16.2417.~~

(3) ~~If the complainant alleges the notice provided by the local school district or Montana public agency was not adequate under 34 CFR 300.505, the state compliance officer shall investigate the allegations and if the findings support a conclusion that the notice was inadequate, shall order the issuance of a notice in compliance with that section. Such a complaint may not be the basis of a due process hearing under ARM 10.16.2401 et seq.~~

(AUTH: 20-7-402, 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1110 STATE COMPLAINT PROCEDURES (1) ~~An organization or individual may file a written signed complaint that the school district or public agency is violating the Education of the Handicapped Act (20 USC, Sections 1401-1461). Individuals with Disabilities Education Act (20 USC, Sections 1401-1485) or its implementing regulations (34 CFR Part 300), the Montana codes statutes pertaining to special education for exceptional children (20 MCA Title 20, chapter 7, part 4) or the~~

administrative rules of promulgated by the superintendent of public instruction governing special education (10 ARM Title 10, chapter 16).

(a2) The complaint must include:

(i)a) A statement that the school district or public agency has violated a requirement of a federal or state statute, regulation or rule that applies to a child with disabilities or special education.

(i)b) The facts on which the statement is based.

(b3) The complaint must be filed with Department of Special Services, the Compliance Officer, Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620.

(24) Upon receipt of the written complaint, a confidential file shall be opened in the Department of Special Services the compliance officer shall send written notification to the local education agency and/or the public agency named in the complaint that a complaint has been filed, conduct an appropriate investigation of the allegations and prepare a final report stating the findings and conclusions of the compliance officer. The complaint, investigative records and the final report shall be filed in a confidential file retained by the compliance officer.

(a) Information as to the exact nature of the complaint shall be secured from the person making the complaint and placed in the file. If the complaint addresses matters listed in ARM 10.16.1108. The complainant shall be informed of the right to secure a hearing under the provisions of Rules of Procedure for All School Controversy Contested Cases Before the County Superintendents of the State of Montana (ARM 10.6.103) special education due process procedural rules (ARM 10.16.2401 et seq.). The complainant will be notified that unless s/he requests that their names not be released to the local education agency, the district will be notified of the name of the person(s) filing the complaint.

(b) Department personnel shall also discuss the complaint with the school district or agency involved in the complaint. Confidentiality will be maintained unless it is waived by the complainant. The compliance officer shall send written notice to the named school district or public agency which includes information about the nature of the allegations in the complaint within 10 days of receipt of the complaint.

(i) The compliance officer shall request the school district or public agency to file its written response to the allegations within 15 days of receipt of the written notice of filing of complaint by the compliance officer.

(ii) The school district or public agency may request a 10 day extension of the 15 day period. The compliance officer may grant an extension of 10 days if the district or public agency has shown good cause exists.

(c) The compliance officer shall write a preliminary report in regard to the investigation of the complaint and forward a copy to the school district or public agency and the complainant within 30 days of the receipt of the complaint. If an onsite investigation has not been conducted within that 30 day period.

the report will indicate whether an onsite investigation is required and inform the school district or public agency of the date of such investigation. The preliminary report will inform the complainant of the opportunity to submit additional information, either orally or in writing about the allegations in the complaint.

(d) Following an appropriate investigation, the compliance officer shall review all relevant information and make an independent determination as to whether the school district or public agency is violating a requirement of federal or state statute, regulation or rule concerning the provision of a free appropriate public education to a child with disabilities. The compliance officer shall write a final report within 60 days of receipt of the complaint. The final report will address each allegation in the complaint and state findings of fact and legal conclusions, if required. If the compliance officer concludes that an allegation is true and that corrective action is required to comply with federal or state law, the compliance officer will order the corrective action and shall include timelines for implementation of such action.

(3) The Department will write a report of preliminary information and send a copy to the complainant and to the school district or agency within 20 days of the receipt of the complaint.

(4) If the preliminary report indicates that further inquiry is justified and that the complainant has not been satisfied, a team of Department personnel shall conduct an on-site visit.

(a) If the team determines that the school district or agency is not in compliance with federal or state statutes, regulations or rules, a detailed compliance report will be written.

(b) The report will specify the problem, corrective actions and time lines and will be sent to the school district or agency and to the complainant within 30 calendar days after receipt of the complaint.

(5) In the event that within 60 days of the Department's receipt of the complaint, the school district or agency is not implementing the corrective actions within the time lines required by the compliance report, the Department will notify the school district or agency of the sanctions to be imposed.

(a) The Department will give the school district or agency an opportunity for a hearing prior to the execution of the sanctions. The hearing will be conducted according to the provisions of the Montana Administrative Procedures Act.

(b) An extension of time may be granted only if exceptional circumstances exist with respect to the complaint.

(6) (a) At any time during this process, if the Department compliance officer determines that the complaint has been resolved and compliance is achieved, the compliance officer shall inform the complainant and the school district or public agency of that fact in writing. The complainant is shall be given an opportunity to respond before the complaint is considered closed.

~~(7) The parties involved may request that the Secretary, U.S. Department of Education, review the final decision of the Department.~~

~~(f) If the complainant disagrees with the decision of the compliance officer, the complainant may request that the Secretary, U.S. Department of Education, Federal Office Building, 400 Maryland Ave. SW, Washington, DC 20202, review the decision.~~

~~(g) If within 60 days of issuance of the final report, the school district or public agency has not implemented the corrective action required by the final report, the complainant may file an allegation that the corrective action has not been implemented and request that the state education agency take appropriate sanctions against the school district or public agency. Such sanctions may include the withholding of federal and state funds provided to the school district or public agency.~~

~~(h) If the school district or public agency alleges that the state education agency has violated a state or federal special education statute, regulation or rule in ordering the corrective action required by the final report, the state education agency shall provide the school district or public agency with a hearing in accordance with 34 CFR 76.401(c)(2) through (7), and the Montana Administrative Procedure Act, sections 2-4-601 through 2-4-711, MCA, prior to implementing sanctions.~~

(AUTH: 20-7-402, 20-7-414, MCA; IMP: 20-7-403, MCA)

3. The proposed rule for repeal follows. Full text of the rule is located at page 10-232, ARM.

10.16.1107 INFORMAL NEGOTIATIONS (IS HEREBY REPEALED)

(AUTH: 20-7-402, 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

4. The rules are being changed in order to comply with Volume 34 CFR (Code of Federal Regulations) 76.780 through 76.783 of EDGAR (U.S. Education Department General Administrative Regulations). An increase in the volume of complaints requires extending the timeline for processing complaints from thirty (30) to sixty (60) days as permissible under EDGAR Reg. 76.781.

5. Interested persons may submit their data, views or arguments concerning the proposed rule changes in writing to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

6. If a person who is directly affected by the proposed amendment wishes to express his/her data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he may have to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

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(AUTH: 20-7-402, 20-7-414, MCA; IMP: 20-7-403, MCA)

3. The proposed rule for repeal follows. Full text of the rule is located at page 10-232, ARM.

10.16.1107 INFORMAL NEGOTIATIONS (IS HEREBY REPEALED)


(AUTH: 20-7-402, 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)


4. The rules are being changed in order to comply with Volume 34 CFR (Code of Federal Regulations) 76.780 through 76.783 of EDGAR (U.S. Education Department General Administrative Regulations). An increase in the volume of complaints requires extending the timeline for processing complaints from thirty (30) to sixty (60) days as permissible under EDGAR Reg. 76.781.

5. Interested persons may submit their data, views or arguments concerning the proposed rule changes in writing to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

6. If a person who is directly affected by the proposed amendment wishes to express his/her data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he may have to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

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


Bida J. Loyett
Rule Reviewer
Office of Public Instruction


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State July 6, 1992

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rule relating to) OF ARM 10.20.202
foundation payments)

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On August 17, 1992, the Superintendent of Public Instruction proposes to amend ARM 10.20.202 pertaining to foundation payments.

2. The rule, as proposed to be amended, new material underlined, deleted material interlined, provides as follows. Full text of the rule is located at pages 10-309 through 10-310, ARM.

10.20.202 PROCEDURE FOR COMPUTING ADDITIONAL STATE FOUNDATION AID (1) - (2)(f) remains the same.

~~(g) Calculate the additional state assistance for the district by multiplying the amount determined in subsection (f) by the basic county equalization level and subtracting the result from the amount determined in subsection (f). The district is entitled to the foundation program increase calculated in subsection (f) or the amount of the budget amendment adopted for the unusual enrollment increase, whichever is less.~~

(3) The superintendent of public instruction shall pay the additional district entitlement from the state equalization aid account.

(3) remains the same, renumbered (4).


(AUTH: 20-9-166, 20-9-314, MCA; IMP: 20-9-166, 20-9-314, MCA)

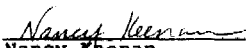
3. The rule is being changed because section 20-9-166, MCA, provides that a school district, which experiences an enrollment increase of greater than six percent (6%), may apply to the Superintendent of Public Instruction for an increased payment from the state public school equalization aid account for the foundation program. At present, the Office of Public Instruction pays only the state share of the increased foundation amount to which a district is entitled. The district does not receive the county share of the foundation payment increase. If a district is to receive its full entitlement, the payment must be made from the state equalization aid account because there is no mechanism to generate this revenue at the county level.

4. Interested persons may submit their data, views or arguments concerning the proposed rule changes in writing to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he may have to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

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


Beda J. Lovitt
Rule Reviewer
Office of Public Instruction


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State July 6, 1992

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rule relating to) OF ARM 10.22.104
spending and reserve limits)

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On August 17, 1992, the Superintendent of Public Instruction proposes to amend ARM 10.22.104 pertaining to spending and reserve limits.

2. The rule, as proposed to be amended, new material underlined, deleted material interlined, provides as follows. Full text of the rule is located at pages 10-328, ARM.

10.22.104 UNRESERVED FUND BALANCE REAPPROPRIATED

(1) - (4)(a) remains the same.

(5) If a district has unreserved fund balance reappropriated remaining after fully funding the general fund budget amount in excess of the foundation program, ~~its trustees shall notify the superintendent of public instruction by August 1.~~ The amount remaining must be accounted for in a separate reserve account and reappropriated to be used for property tax relief in the subsequent school fiscal year. The balance in this separate reserve account may, when combined with the balance in the cash reserve account, exceed the reserve limit established in ARM 10.22.103.

(AUTH: 20-9-102, MCA; IMP: 20-9-104, 20-9-105, MCA)


3. The rule is being changed because the notification requirement is unnecessary because the Office of Public Instruction does not use the information independently from the full budget document, which each school district is required to submit by September 1. If there are any problems with how a district accounts for the amount remaining after it fully funds its general fund budget, these problems will be detected through the OPI review system when the official budget document is filed with the office.

4. Interested persons may submit their data, views or arguments concerning the proposed rule changes in writing to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he may have to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on August 14, 1992.

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


Beda J. Lovitt
Rule Reviewer
Office of Public Instruction


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State July 6, 1992

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Organizational	)	PROPOSED AMENDMENT OF ARM 10.51.104
Rules	)	RESPONSIBILITY ASSIGNED BY STATUTE
	)	AND ARM 10.51.105 BOARD STAFF

To: All Interested Persons

1. On September 14, 1992 at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education offices 2500 Broadway, Helena, in the matter of the amendment of ARM 10.51.104 Responsibility Assigned by Statute and ARM 10.51.105 Board Staff.

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

10.51.104 RESPONSIBILITY ASSIGNED BY STATUTE (1) The board of public education is assigned numerous responsibilities by statute including the establishment of policies for: the accreditation of schools, teacher certification, distribution of state equalization aid, special education, school bus standards and regulations, and designation of school days and hours. The board is also assigned by statute the "general supervision" of the Montana school for the deaf and blind and ~~the Montana fire services training school~~ administrative responsibility for the certification standards and practices advisory council.

(1)(a) will remain the same.

(b) ~~The Montana fire services training school is an educational institution established by statute to provide fire safety training and firefighting instruction to paid, volunteer and private industrial firefighters and to provide public educational programs to promote fire prevention.~~ The certification standards and practices advisory council was statutorily created to investigate relevant issues and advise the board of public education on matters related to teacher, school administrator, and specialist certification of individuals admitted to practice in the elementary and secondary schools of Montana. The scope of this investigation and advice includes preservice and inservice education, professional practices and ethical conduct, teacher education programs, and renewal, denial, suspension, or revocation of certificates. The advisory council may conduct appropriate research related to the foregoing areas of investigation by such means as trial programs and collection of data from current programs. The advisory council must present its findings and recommendations to the board at least once each year and on other occasions as the advisory council deems necessary. The advisory council may not administer a program or function or set policy.

AUTH: Sec. 20-2-121, 20-8-103, and 20-31-102, MCA

IMP: Sec. 2-15-1522 and 20-2-121, MCA

13-7/16/92

MAR Notice No. 10-3-158

10.51.105 BOARD STAFF (1) The board of public education employs a full-time professional assistant who is designated by statute as executive secretary to the board and. The executive secretary is the person responsible for liaison between the board and superintendent of public instruction. The executive secretary functions as the chief executive officer of the board and the certification standards and practices advisory council. The board also employs a full-time administrative officer, administrative assistant, and secretary. All staff members report to and are supervised by the executive secretary.

AUTH: Sec. 20-2-111, 20-2-122, MCA IMP: Sec. 20-2-122, MCA

3. The Board proposes these amendments to the rules to include the Certification Standards and Practices Advisory Council, staff and to delete the Fire Services Training School.

4. Interested parties may submit their data, views or arguments in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 S. Last Chance Gulch, Helena, MT 59620, no later than August 30, 1992.

5. Bill Thomas, the Chairperson to the Board of Public Education, 33 S. Last Chance Gulch, Helena MT 59620, has been designated to preside over and conduct the hearing.



Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/06/92.

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

In the matter of the amendment of) NOTICE OF DATE CHANGE
rules 16.8.1304 and 16.8.1906, and) OF PUBLIC HEARING FOR
the proposed adoption of new rule I) AMENDMENT OF RULES AND
) ADOPTION OF NEW RULE I
(Air Quality Bureau)

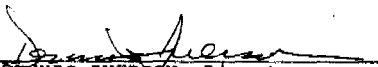
To: All Interested Persons

1. On July 31, 1992, at 9:30 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules and proposed adoption of new rule I. The hearing was previously scheduled for the Board's meeting on July 17, 1992 and has been rescheduled to July 31, 1992, at the request of the Board.

2. The proposed air rules and amendments to existing rules implement a fee program for the department's Air Quality Bureau, relating to major open burners, as defined in ARM 16.8.1301. Currently the bureau issues air quality permits to major open burners on an annual basis, as set forth in ARM 16.8.1304. The proposed rules and amendments implement a permit application fee requirement applicable to applications for such permits.

3. The rules, as proposed to be amended, appear in the Montana Administrative Register, 1992 Issue No. 12, dated June 25, 1992, pages 1300-1302.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 24, 1992.


DENNIS IVERSON, Director

Certified to the Secretary of State July 6, 1992.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF CORRECTIONS AND
HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMEND-
amendments of ARM 20.7.201) MENTS OF ARM 20.7.201
through 20.7.203, which) THROUGH 20.7.203
sets forth the resident reim-)
bursement at community cor-) NO PUBLIC HEARING
rectional centers) CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On August 17, 1992, the Department of Corrections and Human Services proposes to amend Rules 20.7.201 through 20.7.203, ARM to reduce general fund expense for the care and control of convicted adult felons residing in pre-release centers and to effectively normalize their understanding of living expenses by requiring them to significantly contribute to the cost of their incarceration.

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

20.7.201 RESIDENT REIMBURSEMENT (1) Upon arrival at the community correctional program, each resident will pay a minimum of \$7.00 3-00 for each day they reside at the program. In the event of a situation which causes a resident's absence from the program (i.e., hospitalization, court order, AWOL, etc.) all costs will be suspended after five consecutive days of absence; until such time as the resident may be reinstated.

(2) Those residents employed on a full time basis will contribute 20 25% of their earnings, after federal and state taxes and FICA, while in the program - less the following exemptions:

(a) through (d) remain the same.

(3) Residents using the above exemptions will still be required to pay the \$7.00 3-00/day minimum. ~~however, no resident of the center will be required to pay more than \$250.00 per month for reimbursement~~

AUTH: 53-1-501, MCA

IMP: 53-1-501, MCA

20.7.202 DETERMINATION OF ABILITY TO PAY (1) The director of the department of institutions corrections and human services may delegate the program managers of the respective centers to determine their residents' ability to pay and submit monthly reports (certification) of their residents' financial status.

(a) and (b) remain the same.

(c) Residents of state-operated centers shall submit payment by money order payable to the "Montana State Treasurer" and mail to the department of institutions

corrections and human services, corrections division. These funds will be deposited in the general fund.

AUTH: 53-1-501, MCA

IMP: 53-1-501, MCA

20.7.203 DAILY RATE - EXCEPTION (1) The program manager of the state-operated centers may request that the payment of board and room be waived based on the ability to pay should a resident become enrolled in a full time vocational, or educational or treatment program or in the event the resident is unable to pay based upon the reasonable discretion of the program manager. Payment will be charged for each day the resident is in the center until the actual date of attendance at the school, training or treatment program.

(a) Residents attending part time educational or training programs will be subject to pay \$3- a minimum of \$7.00 per day as set forth in 20.7.201(1).

AUTH: 53-1-501, MCA

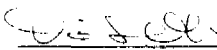
IMP: 53-1-501, MCA

3. The purpose of the rule revision is to reduce general fund expense for the care and control of convicted adult felons residing in pre-release centers and to effectively normalize their understanding of living expenses by requiring them to significantly contribute to the cost of their incarceration.

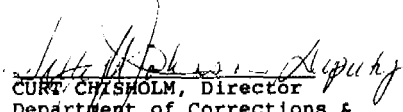
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Legal Unit, Department of Corrections and Human Services, 1539 11th Avenue, Helena, MT 59620, no later than August 15, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Legal Unit, Department of Corrections and Human Services, 1539 11th Avenue, Helena, Montana 59620, no later than August 15, 1992.

6. No public hearing is contemplated, but if the agency receives requests for a public hearing on the proposed amendment from either ten percent, or twenty-five persons, whichever is less of those persons who are directly affected by the proposed amendment, or from the administrative code committee; from a governmental agency or subdivision or from an association having no less than twenty-five members who will be directly affected, a public hearing will be held at a later date. Notice of such hearing will be published in the Montana administrative register. Ten percent of those persons directly affected has been determined to be 20 persons based on the number of pre-release beds available in Montana's communities.



DAVID L. OILER
Rule Reviewer



CURT CHISHOLM, Director
Department of Corrections &
Human Services

Certified to the Secretary of State July 6th, 1992.

BEFORE THE MONTANA LAW ENFORCEMENT ACADEMY
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of Rule 23.17.314) HEARING
pertaining to physical)
performance requirements)
for the basic course)

TO: All Interested Persons.

1. On August 20, 1992 at 1 p.m. a public hearing will be held in classroom two of the Montana Law Enforcement Academy at Bozeman, Montana, to consider the amendment of rule 23.17.314.

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

23.17.314 PHYSICAL PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE (1) (a) through (d) remain the same.

~~(2) The student must pass every test category by placing in the fortieth (40th) percentile of the national norms as defined by the institute of aerobics research, Dallas, Texas. Failure to perform at the fortieth (40th) percentile level during any one of the following testing times will result in immediate dismissal from the basic course.~~

- ~~(a) entry assessment;~~
- ~~(b) midterm assessment; and~~
- ~~(c) final assessment.~~

(2) A student may request a substitution for any of the above physical tests but before any substitution is granted, the request will be reviewed by the academy and the POST advisory council. The student may be asked to provide medical records documenting the need for the substitution and these medical records may be submitted for review by a physician designated by the academy before any request for substitution is granted.

~~(3) A manual detailing what is expected and how to prepare for the physical performance tests fitness standards, academy expectations and student preparation procedures will be furnished to all students registered who register for the basic course.~~

(4) Student performance will be measured at the following times during the basic course:

- (a) entry fitness assessment during week one;
- (b) midterm fitness assessment during week five; and
- (c) final fitness assessment during week ten.

(5) Students who arrive at the academy with an injury or condition that prevents them from attempting the entry fitness assessment will not be allowed to complete the basic course.

(6) At the midterm and final fitness assessments, the student must pass every physical test by placing in the fortieth

(40th) percentile of the national norms as defined by the institute of aerobics research, Dallas, Texas. At the midterm and final fitness assessments, students who fail to meet 40th percentile performance standards will be given one opportunity for retest in all four physical tests.

(7) All basic course students must successfully complete the midterm fitness assessment. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment may be dropped from the basic course session and required to reapply to complete a future session of the entire ten-week course. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment will be notified that they may be allowed to return to the academy within six months to complete only the remaining five weeks of training if:

(a) the student reapplies to complete the last five weeks of basic course training before the end of the original basic course session;

(b) the student's agency training officer meets with the academy administrator to discuss fitness performance and other aspects of student performance during the first half of the basic course;

(c) the academy and the affected agency negotiate and develop a plan to manage the student's fitness performance problems, keep the student's initial basic training updated, match the portions of the curriculum that are missed to those that will be taken, account for any increased costs which will arise as a result of the student's return and schedule attendance in accordance with the current basic course waiting list; and

(d) the student completes the academy midterm fitness assessment to 40th percentile performance standards immediately upon return to the last half of the basic course.

(8) Students who fail to complete the midterm fitness assessment because of an injury or an illness which occurs during the basic course may be allowed to continue in the basic course subject to:

(a) compliance with all reporting guidelines as detailed in the student handbook;

(b) a case-by-case review of the circumstances surrounding the incident during which an injury occurred; and

(c) medical review completed by a physician approved by the academy.

(9) All basic course students must successfully complete the final fitness assessment in order to complete the basic course and attend graduation. Students who successfully complete the midterm fitness assessment but fail the final fitness assessment will be given one opportunity for retest within six months of the course completion date. Failure to successfully complete a retest within six months will require reapplication and completion of the entire ten-week course.

(10) When an injury occurs subject to the guidelines noted in 23.17.314(8), students who have completed either the entry fitness assessment or the midterm fitness assessment to 40th

percentile performance standards but who do not attempt the final fitness assessment because of the injury will be allowed to attend graduation but will not be issued a diploma and will be required to return for a retest within six months. Injured students who never complete any fitness assessment to 40th percentile performance standards will not be allowed to attend graduation but may be allowed to retest within six months.

(AUTH: Sec. 44-10-102 MCA; IMP: Sec. 44-10-102 MCA.)


3. Amendment of this rule is necessary in order to update the physical performance standards for the basic course.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Greg Noose, Administrator, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715, and must be received no later than August 20, 1992. Sec. 2-4-302(4) MCA.

5. Jack Wiseman, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715 has been designated to preside over and conduct the hearing.



MARC RACICOT, Attorney General
DEPARTMENT OF JUSTICE



Judy Browning
Rule Reviewer

Certified to the Secretary of State July 6, 1992.

(40th) percentile of the national norms as defined by the institute of aerobics research, Dallas, Texas. At the midterm and final fitness assessments, students who fail to meet 40th percentile performance standards will be given one opportunity for retest in all four physical tests.

(7) All basic course students must successfully complete the midterm fitness assessment. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment may be dropped from the basic course session and required to reapply to complete a future session of the entire ten-week course. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment will be notified that they may be allowed to return to the academy within six months to complete only the remaining five weeks of training if:

(a) the student reapplies to complete the last five weeks of basic course training before the end of the original basic course session;

(b) the student's agency training officer meets with the academy administrator to discuss fitness performance and other aspects of student performance during the first half of the basic course;

(c) the academy and the affected agency negotiate and develop a plan to manage the student's fitness performance problems, keep the student's initial basic training updated, match the portions of the curriculum that are missed to those that will be taken, account for any increased costs which will arise as a result of the student's return and schedule attendance in accordance with the current basic course waiting list; and

(d) the student completes the academy midterm fitness assessment to 40th percentile performance standards immediately upon return to the last half of the basic course.

(8) Students who fail to complete the midterm fitness assessment because of an injury or an illness which occurs during the basic course may be allowed to continue in the basic course subject to:

(a) compliance with all reporting guidelines as detailed in the student handbook;

(b) a case-by-case review of the circumstances surrounding the incident during which an injury occurred; and

(c) medical review completed by a physician approved by the academy.

(9) All basic course students must successfully complete the final fitness assessment in order to complete the basic course and attend graduation. Students who successfully complete the midterm fitness assessment but fail the final fitness assessment will be given one opportunity for retest within six months of the course completion date. Failure to successfully complete a retest within six months will require reapplication and completion of the entire ten-week course.

(10) When an injury occurs subject to the guidelines noted in 23.17.314(8), students who have completed either the entry fitness assessment or the midterm fitness assessment to 40th


percentile performance standards but who do not attempt the final fitness assessment because of the injury will be allowed to attend graduation but will not be issued a diploma and will be required to return for a retest within six months. Injured students who never complete any fitness assessment to 40th percentile performance standards will not be allowed to attend graduation but may be allowed to retest within six months.

(AUTH: Sec. 44-10-102 MCA; IMP: Sec. 44-10-102 MCA.)

3. Amendment of this rule is necessary in order to update the physical performance standards for the basic course.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Greg Noose, Administrator, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715, and must be received no later than August 20, 1992. Sec. 2-4-302(4) MCA.

5. Jack Wiseman, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715 has been designated to preside over and conduct the hearing.



MARC RACICOT, Attorney General
DEPARTMENT OF JUSTICE



Rule Reviewer

Certified to the Secretary of State July 6, 1992.

(40th) percentile of the national norms as defined by the institute of aerobics research, Dallas, Texas. At the midterm and final fitness assessments, students who fail to meet 40th percentile performance standards will be given one opportunity for retest in all four physical tests.

(7) All basic course students must successfully complete the midterm fitness assessment. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment may be dropped from the basic course session and required to reapply to complete a future session of the entire ten-week course. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment will be notified that they may be allowed to return to the academy within six months to complete only the remaining five weeks of training if:

(a) the student reapplies to complete the last five weeks of basic course training before the end of the original basic course session;

(b) the student's agency training officer meets with the academy administrator to discuss fitness performance and other aspects of student performance during the first half of the basic course;

(c) the academy and the affected agency negotiate and develop a plan to manage the student's fitness performance problems, keep the student's initial basic training updated, match the portions of the curriculum that are missed to those that will be taken, account for any increased costs which will arise as a result of the student's return and schedule attendance in accordance with the current basic course waiting list; and

(d) the student completes the academy midterm fitness assessment to 40th percentile performance standards immediately upon return to the last half of the basic course.

(8) Students who fail to complete the midterm fitness assessment because of an injury or an illness which occurs during the basic course may be allowed to continue in the basic course subject to:

(a) compliance with all reporting guidelines as detailed in the student handbook;

(b) a case-by-case review of the circumstances surrounding the incident during which an injury occurred; and

(c) medical review completed by a physician approved by the academy.

(9) All basic course students must successfully complete the final fitness assessment in order to complete the basic course and attend graduation. Students who successfully complete the midterm fitness assessment but fail the final fitness assessment will be given one opportunity for retest within six months of the course completion date. Failure to successfully complete a retest within six months will require reapplication and completion of the entire ten-week course.

(10) When an injury occurs subject to the guidelines noted in 23.17.314(8), students who have completed either the entry fitness assessment or the midterm fitness assessment to 40th


percentile performance standards but who do not attempt the final fitness assessment because of the injury will be allowed to attend graduation but will not be issued a diploma and will be required to return for a retest within six months. Injured students who never complete any fitness assessment to 40th percentile performance standards will not be allowed to attend graduation but may be allowed to retest within six months.

(AUTH: Sec. 44-10-102 MCA; IMP: Sec. 44-10-102 MCA.)


3. Amendment of this rule is necessary in order to update the physical performance standards for the basic course.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Greg Noose, Administrator, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715, and must be received no later than August 20, 1992. Sec. 2-4-302(4) MCA.

5. Jack Wiseman, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715 has been designated to preside over and conduct the hearing.



MARC RACICOT, Attorney General
DEPARTMENT OF JUSTICE



Judy Browning
Rule Reviewer

Certified to the Secretary of State July 6, 1992.

(40th) percentile of the national norms as defined by the institute of aerobics research, Dallas, Texas. At the midterm and final fitness assessments, students who fail to meet 40th percentile performance standards will be given one opportunity for retest in all four physical tests.

(7) All basic course students must successfully complete the midterm fitness assessment. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment may be dropped from the basic course session and required to reapply to complete a future session of the entire ten-week course. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment will be notified that they may be allowed to return to the academy within six months to complete only the remaining five weeks of training if:

(a) the student reapplies to complete the last five weeks of basic course training before the end of the original basic course session;

(b) the student's agency training officer meets with the academy administrator to discuss fitness performance and other aspects of student performance during the first half of the basic course;

(c) the academy and the affected agency negotiate and develop a plan to manage the student's fitness performance problems, keep the student's initial basic training updated, match the portions of the curriculum that are missed to those that will be taken, account for any increased costs which will arise as a result of the student's return and schedule attendance in accordance with the current basic course waiting list; and

(d) the student completes the academy midterm fitness assessment to 40th percentile performance standards immediately upon return to the last half of the basic course.

(8) Students who fail to complete the midterm fitness assessment because of an injury or an illness which occurs during the basic course may be allowed to continue in the basic course subject to:

(a) compliance with all reporting guidelines as detailed in the student handbook;

(b) a case-by-case review of the circumstances surrounding the incident during which an injury occurred; and

(c) medical review completed by a physician approved by the academy.

(9) All basic course students must successfully complete the final fitness assessment in order to complete the basic course and attend graduation. Students who successfully complete the midterm fitness assessment but fail the final fitness assessment will be given one opportunity for retest within six months of the course completion date. Failure to successfully complete a retest within six months will require reapplication and completion of the entire ten-week course.

(10) When an injury occurs subject to the guidelines noted in 23.17.314(8), students who have completed either the entry fitness assessment or the midterm fitness assessment to 40th

percentile performance standards but who do not attempt the final fitness assessment because of the injury will be allowed to attend graduation but will not be issued a diploma and will be required to return for a retest within six months. Injured students who never complete any fitness assessment to 40th percentile performance standards will not be allowed to attend graduation but may be allowed to retest within six months.

(AUTH: Sec. 44-10-102 MCA; IMP: Sec. 44-10-102 MCA.)

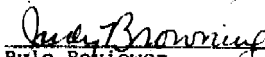
3. Amendment of this rule is necessary in order to update the physical performance standards for the basic course.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Greg Noose, Administrator, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715, and must be received no later than August 20, 1992. Sec. 2-4-302(4) MCA.

5. Jack Wiseman, Montana Law Enforcement Academy, 620 South 16th Avenue, Bozeman, Montana 59715 has been designated to preside over and conduct the hearing.



MARC RACICOT, Attorney General
DEPARTMENT OF JUSTICE



Judy Browning
Rule Reviewer

Certified to the Secretary of State July 6, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL) NOTICE OF THE PROPOSED REPEAL
of ARM 42.2.201 relating to) of ARM 42.2.201 relating to
taxpayer or licensee lists) taxpayer or licensee lists

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 28, 1992, the Department of Revenue proposes to repeal ARM 42.2.201 relating to taxpayer or licensee lists.
2. The Department proposes to repeal the following rule:

42.2.201 RESTRICTION ON USE OF TAXPAYER OR LICENSEE LISTS,
found at page 42-211 of the Administrative Rules of Montana.

AUTH: Secs. 15-1-201, 16-1-303, 16-10-104, and 16-11-103, MCA

IMP: Sec. 2-6-106, MCA

3. ARM 42.2.201 is proposed to be repealed because it conflicts with an Attorney General opinion and with the statute.

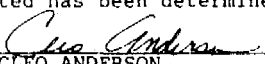
4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to:


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

no later than August 14, 1992.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than August 14, 1992.

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


CLEO ANDERSON
Rule Reviewer


DENIS ADAMS
Director of Revenue

Certified to Secretary of State July 6, 1992.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rules pertaining to voting	)	ON PROPOSED ADOPTION OF
by facsimile transmission for	)	NEW RULES FOR VOTING BY
members of the United States	)	FACSIMILE TRANSMISSION
military service.	)	FOR MEMBERS OF THE UNITED
	)	STATES MILITARY SERVICE.

TO: All Interested Persons:

1. On August 5, 1992 at 10:00 a.m. a public hearing will be held in the conference room of the Secretary of State's office, Room 225 Capitol Building, Helena, MT to consider the adoption of the above stated rules.

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

3. The proposed rules provide as follows:

RULE I FACSIMILE MACHINE ACCESS (1) A county election administrator desiring to offer this service, must use a facsimile machine that is secure from unauthorized access. Access to the facsimile machine must be limited by the following means:

(a) It is physically located in the office of the election administrator; or

(b) It has the technological ability to store the ballots that are faxed and that ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE II HANDLING OF FACSIMILE BALLOTS (1) Facsimile ballots for electors in the United States service shall be handled in the same manner as absentee ballots when the facsimile balloting rules do not specify procedure.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE III BALLOT TRANSMISSION (1) Upon request for a facsimile ballot, an election administrator who has received a valid application from an elector in the United States service shall send by facsimile transmission a transmission slip and ballot containing the following information:

(a) The transmission slip shall include instructions to the elector and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot by a panel of no less than two election judges;

(b) Original transmission slip and original ballot shall be retained in a secure absentee envelope.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE IV RECEIVING BALLOTS (1) The election administrator shall receive all facsimile ballots. As the ballots are printed out by the machine they shall be checked by the election administrator to ensure that they are:

(a) readable in that the transmission has not made it unable for the election judges to determine the elector's intentions; and

(b) the elector has signed an affirmation.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE V BALLOT LOG (1) The election administrator shall keep an official log of all ballots transmitted and received via a facsimile device.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE VI ELECTOR AFFIRMATION (1) If the affirmation is missing or the ballot unreadable, the election administrator shall attempt to notify the elector of this problem.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE VII BALLOT ACCEPTANCE (1) If the returned faxed ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot until the ballots are ready to be transcribed.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE VIII TRANSCRIPTION OF BALLOTS (1) On or before election day, the election administrator shall have the ballots transcribed using the procedure prescribed for assistance to handicapped voters.

(2) No less than two election judges shall participate in the transcription process to transfer the electors vote from the faxed ballot to the standard ballot used in the precinct.

(3) There shall be noted next to the electors name in the precinct register "Fax Ballot".

(4) A faxed ballot code number shall be written on the original transcribed ballot and the facsimile ballot.

(5) The election judges who transcribed the ballot shall sign in the log next to the name of the elector.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

RULE IX ELECTION JUDGES AND BALLOT SECRECY (1) No one participating in the fax ballot process may reveal any information about the elector's ballot.

AUTH: 13-13-278, MCA

IMP: 13-13-277, MCA

4. Statement of necessity. Pursuant to Sections 13-13-276 through 13-13-279 of the Montana Code Annotated, an individual in the United States service, as defined in 13-2-211, MCA, may vote and send his or her ballot(s) by facsimile transmission to the appropriate county election administrator. It is necessary to prepare rules that ensure the integrity and privacy of the elector are protected to the fullest extent possible.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Joe Kerwin, Chief
Elections & Legislative Bureau
Office of the Secretary of State
Room 225, Capitol Building
Helena, MT 59620

no later than August 13, 1992.

6. Joe Kerwin has been designated to preside over and conduct the hearing.


MIKE COONEY
Secretary of State


Garth Jacobson
Rule Reviewer

Dated this 6th day of July.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rules 46.10.105	)	THE PROPOSED AMENDMENT OF
and 46.10.106 pertaining to	)	RULES 46.10.105 AND
aid to families with	)	46.10.106 PERTAINING TO AID
dependent children	)	TO FAMILIES WITH DEPENDENT
disqualification for fraud	)	CHILDREN DISQUALIFICATION
	)	FOR FRAUD

TO: All Interested Persons

1. On August 5, 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 amendment of rules 46.10.105 and 46.10.106 pertaining to aid to families with dependent children disqualification for fraud.

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

46.10.105 REFERRALS TO THE DEPARTMENT OF REVENUE

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

(2) The program-integrity audit and compliance bureau is the liaison between the department of social and rehabilitation services and the department of revenue. Referrals of fraud and requests for investigation must be sent to the Program-Integrity Audit and Compliance Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, before they are referred to the department of revenue. When the department of revenue makes a direct request to the county department of public welfare or office of human services for case information, the information may be sent directly to the department of revenue.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

46.10.106 FRAUD INTENTIONAL PROGRAM VIOLATIONS (1) If a person appears to have ~~received assistance fraudulently committed an intentional program violation~~, the county welfare department or office of human services must report all facts of the matter to the program-integrity audit and compliance bureau, who ~~will in turn~~ may refer the matter to the department of revenue or the county attorney of the county where the recipient resides for further action.

(2) An intentional program violation is an action taken or an omission by an individual for the purpose of establishing or maintaining the family's eligibility for AFDC or to

increase or prevent a reduction in the amount of the AFDC benefit which is intentionally:

(a) a false or misleading statement or a misrepresentation, concealment; or

(b) an act or omission intended to mislead or to misrepresent, conceal or withhold facts.

(23) If it appears that any person who receives assistance or benefits under any of the programs administered by the economic assistance division is guilty of abusing or misusing said assistance or benefits, any or all of the assistance or benefits, may be discontinued after has committed an intentional program violation as defined in subsection (2) of this rule and who, on the basis of a plea of guilty or nolo contendere or otherwise, is found by a court of law to have committed theft or any other crime relating to the unlawful receipt of aid to families with dependent children (AFDC) benefits as a result of any act or omission described in subsections (2)(a) or (b) of this rule shall be disqualified from the AFDC program:

(a) an investigation has been made to determine whether public assistance was improperly granted for a period of six months for the first offense;

(b) the recipient has been notified that benefits will be discontinued, and given the opportunity to request a fair hearing for a period of twelve months for the second offense; and

(c) if a hearing is held and it is found that public assistance was improperly granted, then no further payments shall be authorized permanently for the third offense.

(4) The disqualification shall begin in the first month following the month in which the individual receives written notice of the disqualification if that notice was mailed at least ten days prior to the first day of the next month. Otherwise, the disqualification shall begin the first day of the second month following the month in which the individual receives written notice.

(a) If the individual is not otherwise eligible for AFDC at the time the disqualification period is to begin, the disqualification will be deferred until the individual next applies and is determined eligible for AFDC.

(b) Once a disqualification period begins, it shall continue without interruption until completed regardless of whether the disqualified individual's household continues to be eligible for AFDC.

(5) The finding in a court of law that an individual has committed an act or omission which is the substantial equivalent of an intentional program violation as defined in subsections (2)(a) or (b) of this rule shall be conclusive for purposes of determining whether an individual shall be disqualified, subject to the individual's right to appeal the court's ruling to the appropriate appellate court.

(a) A disqualified individual is entitled to a fair hearing only with regard to whether a court of law has made such a finding or the number of prior offenses on which the length of the disqualification period is based pursuant to subsections (3)(a) through (c).

(b) An individual who has been disqualified after a court of law has found the individual to have committed an act or omission which is the substantial equivalent of an intentional program violation as defined in subsections (2)(a) or (b) of this rule is not entitled to a fair hearing on the issue of whether he or she committed an intentional program violation.

(6) When one member of an assistance unit is disqualified, the other members of the assistance unit shall continue to receive AFDC if they are otherwise eligible. However, in determining the assistance unit's eligibility for AFDC and the amount of AFDC benefits during the disqualification period:

(a) the disqualified individual's needs shall not be considered;

(b) the disqualified individual's income and resources shall be considered.

(7) In addition to disqualifying an individual pursuant to this rule, the department may also recover any overpayment of benefits which occurred due to the intentional program violation which was the cause of the disqualification.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

3. Recently adopted federal regulations at 45 CFR 235.112 implementing the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) allow state agencies administering the Aid to Families with Dependent Children (AFDC) program the option of disqualifying individuals who commit fraud from the AFDC program. These regulations also provide for an enhanced federal matching rate of 75% instead of 50% for costs of operating a fraud control program.

The regulations provide that a state agency has the option to disqualify an AFDC recipient based on a determination by either an administrative hearing officer or a court of law that the recipient has committed an intentional program violation. The regulations also define what constitutes an intentional program violation, prescribe the duration of the disqualification period for the first, second and third offense and specify how the disqualification penalty shall be applied.

As authorized by these regulations, the department has chosen to disqualify AFDC recipients who commit intentional program violations from the program. The department has further

chosen the option of disqualifying recipients based on conviction of fraud by a court of law rather than conducting AFDC administrative disqualification hearings itself. The department will refer AFDC recipients alleged to have received AFDC benefits unlawfully as a result of an intentional program violation for criminal prosecution. If convicted, the recipient will then be disqualified from the AFDC program. The department will be reimbursed at the enhanced federal match rate of 75% for costs attributable to the disqualification process such as costs of investigative activities.

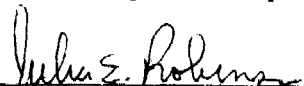
ARM 46.10.106(2) currently authorizes the department to discontinue benefits to an AFDC recipient if the assistance was improperly granted and the recipient is guilty of abusing or misusing the benefits. However, the rule is vague as to what acts constitute misuse or abuse of benefits and how long the benefits will be discontinued. The amendment of ARM 46.10.106 is therefore necessary to put the public on notice of the length of the disqualification periods, when the disqualification periods begin, and what specific acts will trigger disqualification. The amended rule also specifies that a court of law will determine whether an intentional program violation has been committed and that benefits for the entire AFDC household will not be discontinued but only benefits for the household member who committed the intentional program violation.

The amendment of ARM 46.10.105 is also necessary to change the reference to the "program integrity bureau" which is now known as the "audit and compliance bureau" and to the "county welfare office" which is now also known as "the office of human services."

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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 August 13, 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 July 6, 1992.

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to exam-) 8.6.407 EXAMINATION
inations)

TO: All Interested Persons:

1. On April 16, 1992, the Board of Architects published a notice of proposed amendment of the above-stated rule at page 721, 1992 Montana Administrative Register, issue number 7.

2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF ARCHITECTS
KEITH RUPERT, PRESIDENT

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, July 6, 1992.

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to exam-) 8.6.407 EXAMINATION
inations)

TO: All Interested Persons:

1. On April 16, 1992, the Board of Architects published a notice of proposed amendment of the above-stated rule at page 721, 1992 Montana Administrative Register, issue number 7.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF ARCHITECTS
KEITH RUPERT, PRESIDENT

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, July 6, 1992.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to fees) 8.17.501 FEE SCHEDULE

TO: All Interested Persons:

1. On April 16, 1992, the Board of Dentistry published a notice of proposed amendment of the above-stated rule at page 725, 1992 Montana Administrative Register, issue number 7.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF DENTISTRY
WAYNE L. HANSEN, D.D.S.,
CHAIRMAN

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, July 6, 1992.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)
of a rule pertaining to non-)
profit corporations)
CORRECTED NOTICE OF
8.97.1411 LOAN PROGRAMS
FOR COMMERCIAL, MULTI-
FAMILY AND NON PROFIT
CORPORATIONS - TERMS AND
LOAN LIMITS

TO: All Interested Persons:

1. On December 26, 1991, the Board of Investments published a notice of public hearing regarding the proposed amendment of the above-stated rule (MAR Notice No. 8.97-37) at page 2546, 1992 Montana Administrative Register, issue number 24. The Board subsequently adopted the proposed amendment with changes at page 1014, 1992 Montana Administrative Register, issue number 9.

2. Language that currently exists in ARM 8.97.1411(2) was inadvertently omitted from the Notice of Public Hearing and the Notice of Adoption. The text was never intended to be deleted from the rule. ARM 8.97.1411(2) will appear as follows in the replacement pages. (The omitted language is underlined below.) Subsections (1) and (2)(a) through (i) will remain the same as shown in the Notice of Adoption.

"8.97.1411 LOAN PROGRAMS FOR COMMERCIAL, MULTI-FAMILY AND NON-PROFIT CORPORATIONS - TERMS AND LOAN LIMITS (1) ...

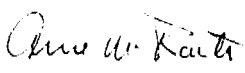
(2) The maximum loan-to-value ratio will be based upon the lower of the appraised value, market value or cost-purchase amount. Interim interest, closing costs and other soft costs will not be considered as part of the cost-purchase amount when calculating the loan-to-value ratio. The maximum loan-to-value ratio applies to the following types of collateral:

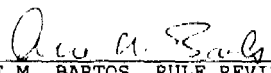
(a) ..."

3. The replacement pages for this rule were submitted for the June 30, 1992, filing date.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 6, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of Accreditation	)	OF ARM 10.55.601
Standards	)	ACCREDITATION STANDARDS:
	)	PROCEDURES

To: All Interested Persons

1. On April 30, 1992, the Board of Public Education published a notice to amend ARM 10.55.601, Accreditation Standards at page 139 of the Montana Administrative Register, Issue No. 8.

2. The board adopted the proposed amendments with the following changes:

10.55.601 ACCREDITATION STANDARDS: PROCEDURES (1) through (4) will remain the same.


(5)(a) Effective on January 1, 1992, schools unable, for financial reasons, to meet the requirements of ARM 10.55.712 (2) (a): 10.55.904 (4)(h); 10.55.709 (2); 10.55.902 (5)(j); 10.55.903 (2)(i); 10.55.710 (2); 10.55.705 (2)(d), may file a notice of deferral with the office of public instruction.

(5)(b) through (e) will remain the same.

~~{{}}--2-FTE-for-schools-with-511-to-1050-students-~~

AUTH: Sec. 20-4-114, MCA IMP: Sec. 20-2-121, MCA

3. The Board proposed this amendment because a number of school districts have petitioned the Board to include the accreditation standard relating to additional building administrative personnel in those standards which may have their implementation deferred for financial reasons.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State, July 6, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

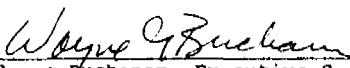
In the matter of the	)	NOTICE OF AMENDMENT
amendment of Student	)	OF ARM 10.56.101 STUDENT
Assessment	)	ASSESSMENT

To: All Interested Persons

1. On May 14, 1992, the Board of Public Education published a notice of proposed amendment concerning ARM 10.56.101, Student Assessment on pages 975-976 of the Montana Administrative Register, issue #9.

2. The board has amended rule 10.56.101 as proposed.

3. The board proposed this amendment to this rule to address reporting concerns expressed by school districts. School districts have complained that the June reporting date does not give them enough time to receive the results from the testing agencies.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State July 6, 1992

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

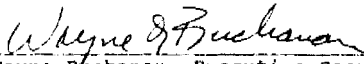
In the matter of the	)	NOTICE OF REPEAL OF
repeal of Health	)	ARM 10.57.210 HEALTH
Examination	)	EXAMINATION

To: All Interested Persons

1. On April 30, 1992, the Board of Public Education published a notice to repeal ARM 10.57.210, Health Examination on page 838 of the Montana Administrative Register, issue #8.

2. The board has repealed rule 10.57.210.

3. The board proposed to repeal this rule because the Board has determined that this rule exceeds the authority granted to the Board in 20-4-104 MCA which was amended by the 1991 Montana State Legislature to delete former subsection (1)(b) which read "He has a certificate of a licensed physician attesting to his satisfactory health".


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State, July 6, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

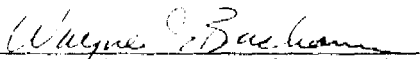
In the matter of the	)	NOTICE OF AMENDMENT
amendment of Certification	)	OF ARM 10.58.528 ENDORSEMENT
	)	OF COMPUTER SCIENCE TEACHERS

To: All Interested Persons

1. On April 30, 1992, the Board of Public Education published a notice to amend ARM 10.58.528, Endorsement of Computer Science Teachers on pages 840-841 of the Montana Administrative Register, issue #8.

2. The board has amended rule 10.58.528 as proposed.

3. The board proposed to amend this rule to reflect the intent of the Board Certification Committee that computer science teachers be prepared in two areas for certification and to make minor editorial changes in the title and text of the rule in conformity with similar rules.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State, July 6, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

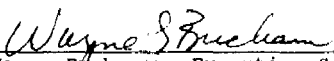
In the matter of the	)	NOTICE OF AMENDMENT
amendment of External Diploma	)	OF ARM 10.66.201 OPERATIONS,
Program	)	10.66.202 ELIGIBILITY,
	)	10.66.203 ENROLLMENT, 10.66.205
	)	RECORDS, 10.66.206
	)	NON-COMPLETION OF PROGRAM,
	)	AND 10.66.207 ANNUAL REPORT

To: All Interested Persons

1. On April 30, 1992, the Board of Public Education published a notice to amend ARM 10.66.201 Operations, 10.66.202 Eligibility, 10.66.203 Enrollment, 10.66.205 Records, 10.66.206 Non-completion of program and 10.66.207 Annual Report on pages 842-845 of the Montana Administrative Register, issue #8.

2. The board amended the rules as proposed.

3. The Board proposed to amend these rules because the American council of education has established stringent rules for the external diploma program and there is no longer any reason for the Superintendent of Public Instruction to duplicate this service.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State, July 6, 1992.

BEFORE THE DEPARTMENT OF CORRECTIONS AND
HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF AMENDMENTS OF ARM
ments of ARM 20.3.202,	)	20.3.202, 20.3.208, 20.3.209,
20.3.208, 20.3.209, 20.3.212	)	20.3.212 THROUGH 20.3.216 AND
through 20.3.216 and adoption)	)	ADOPTION OF NEW RULES
of New Rules 20.3.217 and	)	20.3.217 AND 20.3.218 PER-
20.3.218 pertaining to de-	)	TAINING TO DEFINITIONS, OR-
finitions organization and	)	GANIZATION AND MANAGEMENT,
management, personnel, staff	)	PERSONNEL, STAFF DEVELOPMENT
development and certification)	)	AND CERTIFICATION AND SEVEN
and seven treatment component)	)	TREATMENT COMPONENT REQUIRE-
requirements.	)	MENTS.

TO: ALL INTERESTED PERSONS

1. On April 30, 1992, the Department of Corrections and Human Services published a Notice of Proposed Amendments to ARM 20.3.202, 20.3.208, 20.3.209, 20.3.212 through 20.3.216 and proposed adoption of ARM 20.3.217 and 20.3.218 pertaining to definitions, organization and management, personnel, staff development, and certification and seven treatment component requirements at page 849 of the Montana Administrative Register, Issue number 8.

2. The Department of Corrections and Human Services has adopted new rules I and II and amended the rules as proposed with the following changes:

The specific comments on the proposed rules are offered in chronological order. Recommendations for language modifications appear as underlined and capitalized (new language) or ~~strikeout~~ (deletions).

20.3.208 ALL PROGRAMS - ORGANIZATION AND MANAGEMENT

(l) through (j)(vii)(A) same as proposed.

(B) availability of the selected level of care. A treatment failure at any given level of care MAY indicates the need for treatment at a higher level of care. Note: Nationally recognized samples of dimensional admission, continued stay, and discharge criteria are available at the department of corrections and human services, alcohol and drug abuse division.

(k) through (q) same as proposed.

20.3.212 DETOXIFICATION (EMERGENCY CARE) COMPONENT REQUIREMENTS (l) Patient placement criteria shall be developed and address the following:

(a) Non-hospital detoxification -- Admission of clients to a chemical dependency detoxification component shall be limited to persons who need detoxification services with 24-

hour supervision and do not manifest signs and symptoms of a condition which warrants acute care and treatment in a hospital. Persons shall demonstrate at least one of the following: a significant likelihood of withdrawal syndrome; previous history of having failed at attempts at outpatient withdrawal; the presence of a medical condition serious enough to warrant inpatient (non hospital) management and/or isolated medical symptom of concern: AS IDENTIFIED BY A LICENSED PHYSICIAN. Services are provided in a non-hospital approved chemical dependency program.

(b) Hospital detoxification - Admission to this level of care is designated for persons requiring a hospital setting due to acute intoxication, unconsciousness, withdrawal of significance or other physical or psychiatric conditions RELATED TO THE PATIENT'S CHEMICAL DEPENDENCY. An acute care hospital license is required for this service; an approval designation is not required.

(1)(c) through (7) same as proposed.

20.3.213 INPATIENT - HOSPITAL COMPONENT REQUIREMENTS

(1) Patient placement criteria shall address the following:

(a) Persons requiring intensive residential care for the treatment of chemical dependency in a hospital or suitably equipped medical setting shall be admitted to this component. Persons needing detoxification shall not be admitted or retained but shall be referred or transferred to an approved chemical dependency detoxification program or a unit within a licensed hospital which provides detoxification due to acute intoxication, withdrawal, AND/OR other physical and/or psychiatric EMOTIONAL/BEHAVIORAL conditions RELATED TO THE PATIENT'S CHEMICAL DEPENDENCY or whose chemical dependency has progressed to the point where a hospital setting is required to provide the treatment intensity necessary to address the severity of the condition. Typically, admission to this level requires a patient likely to develop a withdrawal syndrome of significance if not medically treated; the presence of significant---psychiatric---problems---requiring---inpatient management; and/or the presence of significant numbers of neurological and neuropsychological signs IN RELATION TO THE PATIENT'S CHEMICAL DEPENDENCY. The presence of significant or unstable medical disorders or physical symptoms related to deteriorated personal health CONCOMITANT TO CHEMICAL DEPENDENCY also warrants admission at this level.

(b) and (c) same as proposed.

(d) Continued stay criteria shall be based on the above criteria to justify continuance at this level of care or transfer to a more or less restrictive treatment environment. A continued stay/utilization review must be documented at least once, preferably at 10 TO 20 days: AFTER ADMISSION.

(e) same as proposed.

(2) Inpatient services shall include:

(a) Admission and screening services in accordance with admission criteria which substantiate the appropriateness of

treatment and include based on a comprehensive biopsychosocial assessment by a certified counselor, based on corresponding to the dimensional admission criteria. Additionally, a clinical impression DETERMINATION of chemical dependency must be confirmed by the use of at least 3 cross-referenced diagnostic/assessment instruments tools.

(2)(b) through (7) same as proposed.

20.3.214 INPATIENT - FREE STANDING CARE COMPONENT REQUIREMENTS

(1)(a) same as proposed.

(b) Persons requiring this level of care must exhibit at least two of the following: a significant likelihood of withdrawal syndrome; previous history of having failed at attempts at outpatient withdrawal; the presence of a medical condition serious enough to warrant inpatient (non-hospital) management; AS DETERMINED BY THE LICENSED PHYSICIAN; the presence of isolated medical symptoms of concern; external mandates for inpatient treatment; a recent history of inability to function without some externally applied behavior controls; and significant denial of the severity of his/her own addiction. In addition, environmental factors likely to prevent a patient from maintaining treatment progress merits admission to this level of treatment.

(c) same as proposed.

(d) Continued stay criteria shall be based on the above criteria to justify continuance at this level of care or transfer to a more or less restrictive treatment environment. A continued stay/utilization review must be documented at least once, preferably at 10 TO 20 days: AFTER ADMISSION.

(e) same as proposed.

(2) Inpatient - free standing care services shall include:

(a) Admission and screening services in accordance with admission criteria which substantiate the appropriateness of treatment and include based on a comprehensive biopsychosocial assessment by a certified counselor, based on corresponding to the dimensional admission criteria. Additionally, a clinical impression DETERMINATION of chemical dependency must be confirmed by the use of at least 3 cross-referenced diagnostic/assessment tools.

(2)(b) through (7) same as proposed.

20.3.216 OUTPATIENT COMPONENT REQUIREMENTS

(1)(a) same as proposed.

(b) Persons should demonstrate stable physical or psychiatric EMOTIONAL/BEHAVIORAL conditions, sufficient motivation, and supportive environmental factors to participate in this component. This level of care involves weekly sessions usually supplemented by involvement in self help groups. The intensity typically does not exceed 9 contact hours per week.

(1)(c) through (6) same as proposed.

RULE I. 20.3.217 DAY TREATMENT COMPONENT REQUIREMENTS

(1)(a) same as proposed.

(b) Persons admitted to this level of care require the presence of only minimal, if any, symptoms of substance withdrawal; the ability to safely respond to and benefit from ambulatory detoxification, if necessary; the absence of significant or unstable physical or psychiatric EMOTIONAL/BEHAVIORAL complicating conditions; the presence of a current impending episode of loss of control of chemical use or a current threat of loss of control of chemical use in a previously successful patient. Due to significant life disruptions and/or lack of social supports the patient requires an intensive outpatient treatment free from the distractions of work, school, family, and/or social problems to focus on recovery. Although the patient may acknowledge a need for change, ambivalence about treatment and problems in several dimensions require the resources of a multidisciplinary team.

(1)(c) through (2) same as proposed.

Rule II. 20.3.218 INTENSIVE OUTPATIENT TREATMENT COMPONENT REQUIREMENTS

(1)(a) Persons should have only minimal (if any) continuing symptoms of intoxication or withdrawal; the presence of stable physical and psychiatric EMOTIONAL/BEHAVIORAL conditions (if any); a recent history of behavioral deterioration with increasing life impairment. The client requires structured outpatient counseling involving 10 - 30 hours of program contact time per week in order to provide the necessary intensity of services without an inpatient placement. The client must be sufficiently accepting of treatment and have an environment which is adequate to support recovery efforts. This level of care affords the client the opportunity to interact with the real world environment while still benefiting from a programmatic structured therapeutic milieu.

(b) through (e) same as proposed.

(2) Intensive outpatient services shall include:

(a) Admission and screening in accordance with dimensional admission criteria which substantiate the appropriateness of treatment based on a biopsychosocial assessment corresponding to the dimensional admission criteria via utilization review. Additionally, ASSESSMENTS SHALL INCLUDE at least 3 cross-referenced diagnostic/assessment tools confirming a clinical impression DETERMINATION of chemical dependency. This assessment must be conducted by a certified chemical dependency counselor.

(b) through (c) same as proposed.

(d) The structured educational series shall be presented in a logical, progressive format which contains the essential elements necessary for recovery, e.g.: a thorough approach to the first five steps of A.A.:

(2)(e) through (6) same as proposed.

COMMENT: Valencia Lane, Legislative Council, stated "The department did not sufficiently explain why rules must be adopted now and not at some other time under the reasonable necessity and rational section".

RESPONSE: FY92 funding priorities and the mission statement for the four year Montana State Plan on Chemical Dependency services require the most appropriate, effective and cost efficient utilization of services via patient placement criteria and expanded utilization review. The rule expansion is necessary for this endeavor. Additionally, development of intensive outpatient and day treatment components are essential to offering a full continuum of care at the least restrictive and cost efficient level.

Given the declining federal and state dollars and difficulty with third party payers, it is crucial that patient placement criteria be developed to justify the utilization of services as soon as possible.

COMMENT: Mike Craig, Supervisor, Licensure Program, Licensing and Certification Bureau, Health Services Division submitted proposed amendments and comments on the proposed rules.

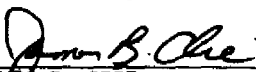
RESPONSE: The Department accepted the majority of suggestions and has incorporated the suggestions as rule amendments as noted in the preceding pages.


Remaining suggestions will be addressed in the interpretive guidelines and application of nationally recognized criteria (ASAM) as follows:

- * Dimensional admission criteria and psychotherapy will be defined in interpretive guidelines.
- * Terminology of concern containing qualitative judgements will be clearly defined in the interpretive guidelines and application of nationally recognized criteria (ASAM) e.g. a particular score will be required based on symptomatology to qualify as a significant likelihood.

COMMENTS: Kathe Randle, Director Lake County Chemical Dependency, suggested the specific phrasing "e.g. a thorough approach to the first five steps of A.A." be removed.

RESPONSE: Ms. Randle defended her position very well and the Department has deleted the phrase as evidenced on the preceding pages.


JAMES B. OBIE
Rule Reviewer


CURT CHISHOLM, Director
Department of Corrections
and Human Services

Certified to the Secretary of State July 2, 1992.

BEFORE THE DEPARTMENT OF CORRECTIONS AND
HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF AMENDMENT OF ARM
ments of ARM 20.7.1101,) 20.7.1101.
setting forth conditions on)
probation or parole.)

TO: ALL INTERESTED PERSONS

1. On May 14, 1992, the Department of Corrections and Human Services published a Notice of Proposed Amendment to ARM 20.7.1101 concerning conditions on probation or parole at page 977 of the Montana Administrative Register, Issue number 9.

2. The Department of Corrections and Human Services has amended the rule with minor editorial changes in the rationale and sites. Text of the rule was adopted as proposed.

3. The following comments were received:

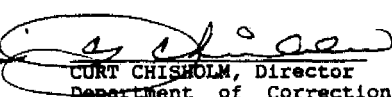
Comment: Valencia Lane of the Legislative Council noted a typo-graphical error on page 1, 3rd paragraph, of the purpose of the rule revision "is to bring the rule into compliance with the 1987 U.S. Supreme Court decision on Griffin vs. Wisconsin concluding a warranted search was acceptable on probationers if reasonable cause was determined." This should have been warrantless instead of warranted. Authority and implementing Sections were stated as 53-24-204. This should be 53-1-203 and 46-23-1002. Implementation should be 46-23-1011 instead of 46-23-1101.

Response: The typographical errors and authority and implementation section have been noted and corrected.

Comment: Statement from Valencia Lane of the Legislative Council inquiring if the department wanted to include parolees in the Purpose Section.

Response: Because parolees are subjected to the same rules as probationers and in fact are on a conditional release from prison, it is obvious that parolees are subject to the same search provisions as probationers.


JAMES F. OBIE
Rule Reviewer


CURT CHISHOLM, Director
Department of Corrections &
Human Services

Certified to the Secretary of State June 26, 1992.

BEFORE THE DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment, the repeal	)	ARM 20.14.302, REPEAL
and the Adoption of New Rules	)	OF ARM 20.14.303,
pertaining to the application	)	20.14.304, 20.14.305,
for voluntary admissions to the	)	20.14.306, AND ADOP-
state hospital.	)	TION OF NEW RULES I,
	)	20.14.307 and II
	)	20.14.308 (VOLUNTARY
	)	ADMISSIONS TO MONTANA
	)	STATE HOSPITAL)

TO: ALL INTERESTED PERSONS

1. On May 14, 1992, the Department of Corrections and Human Services published a notice of public hearing on the proposed amendment of ARM 20.14.302, the repeal of ARM 20.14.303 through 20.14.306 and the adoption of ARM 20.14.307 and 20.14.308, at page 979 of the Montana Administrative Register, Issue number 9. The public hearing was held June 11, 1992, at 10:00 a.m. in the downstairs conference room at the Department of Corrections and Human Services building, 1539 11th Avenue, Helena, MT.

2. No testimony was received at the hearing.

3. The following comments were received:

COMMENT: Valencia Lane, Legislative Council, commented orally that Section 53-21-111, MCA, was cited as authority for implementing the rules and this is more correctly stated as Section 53-1-203, MCA.

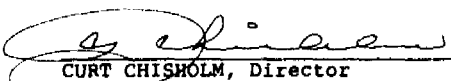
RESPONSE: The agency agrees that 53-1-203 is the proper citation and this has been corrected in the adopted rules.


COMMENTS: Valencia Lane, Legislative Council, commented orally that the statement of necessity was insufficient and it did not address why it was necessary to adopt new rules.

RESPONSE: The statement of necessity has been rewritten to explain why the new rules are necessary.

The new rules are necessary to prevent inappropriate admissions to the Montana State Hospital. A recent lawsuit against the Montana State Hospital resulted in a determination by the agency that voluntary admissions to the State Hospital under 53-21-111 need more strict limits. The current rules did not allow for the necessary control on voluntary admissions to the Montana State Hospital and the proposed rules will correct this issue.

4. The agency has amended Rule 20.14.302, Repealed Rules 20.14.303 through 20.14.306 and adopted new rules I and II as proposed.


CURT CHISHOLM, Director
Department of Corrections and
Human Services


JAMES OBIE
Rule Reviewer

Certified to the Secretary of State June 26th, 1992.

BEFORE THE DEPARTMENT OF CORRECTIONS AND
HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENTS OF
amendments of ARM 20.14.501) ARM 20.14.501 AND
and 20.14.503 through 20.14.512.) 20.14.503 THROUGH
certification of Mental Health) 20.14.512.
professional persons.)

TO: ALL INTERESTED PERSONS

1. On April 30, 1992, the Department of Corrections and Human Services published notice of proposed amendments to ARM 20.14.501 and 20.14.503 through 20.14.512 concerning certification of Mental Health professional persons at page 865 of the 1992 Montana Administrative Register, issue number 8.

2. The Department of Corrections and Human Services has amended ARM 20.14.501, 20.14.504, 20.14.505, 20.14.506, 20.14.507, 20.14.508, 20.14.509 and 20.14.511 exactly as proposed. The Department has amended ARM 20.14.512 with minor editorial changes but substantially as proposed. The Department has amended ARM 20.14.503 and 20.14.510 as proposed but with the following changes:

20.14.503 DEFINITIONS

(1) through (6) same as proposed.

(7) An approved training program must be supervised DIRECTED by a professional person with full mental health certification WHO IS RESPONSIBLE FOR ITS OVERALL IMPLEMENTATION AND MAINTENANCE AND FOR PERIODIC REVIEW OF EACH TRAINEE'S PROGRESS., and that professional person must review each trainee's clinical performance at least each week. The clinical experience component of the approved training program must be directly supervised by a professional person with either full or facility certification and must include instruction in, observation of, and supervised participation in all facility procedures involving or requiring the privileges specified in ARM 20.14.511. THE TRAINEE'S CLINICAL EXPERIENCE MUST BE DIRECTLY SUPERVISED BY A PROFESSIONAL PERSON WITH EITHER FULL OR FACILITY MENTAL HEALTH CERTIFICATION WHO WILL REPORT TO THE TRAINING DIRECTOR ON A REGULAR SCHEDULE.

(8) and (9) same as proposed.

20.14.510 REQUIREMENTS FOR LIMITED FACILITY MENTAL HEALTH CERTIFICATION

(1) same as proposed.

(2) For a period of six months following the effective date of these rules the certification committee may grant

facility mental health certification to any individual who:

(a) has been employed by the facility in a position requiring the exercise of the privileges specified in ARM 20.15.511 for at least six months;

(b) has received training and supervision substantially equivalent to the facility's approved training program as evidenced by a letter from the professional person directing the approved training program;

(c) has successfully completed the facility's clinical competency evaluation; and

(d) meets the specified educational requirements for facility mental health certification.

3. The Department has thoroughly considered all comments received. Those comments and the Department's responses are as follows:

COMMENT:

Several Montana State Hospital staff members commented that the rules being proposed for facility certification will place an extreme burden on professional staff at Montana State Hospital and that the hospital will have difficulty implementing a training program that meets the requirements contained in the rules.

RESPONSE:

The change from "limited" to "facility" certification was initiated at the request of the administration of Montana State Hospital to allow the hospital to more readily meet its requirements for certified staff and was developed according to recommendations from hospital administration. Many existing training and evaluation procedures will be adaptable to the certification process.

COMMENT:

Written comments from Susan Beausoliel and Edward Amberg of Montana State Hospital stated that it is impractical for a trainee for facility mental health certification to be supervised by and meet weekly with a person who has full certification.

RESPONSE:

Modifications have been made to 20.14.503 (7) deleting the requirement for weekly review and providing for clinical supervision of trainees by persons with either full or facility mental health certification.

COMMENT:

Written comment from Susan Beausoliel of Montana State Hospital pointed out the need to allow current non-certified employees credit for training they have already received and provide an interim means for them to become certified without waiting an additional six months.

RESPONSE:

The comment has merit and 20.14.510 (2) has been added to address this problem.

COMMENT:

Written comment from Edward Amberg of Montana State Hospital proposed that a uniform clinical competency evaluation for facility professional person certification should be developed by the Department of Corrections and Human Services rather than be designed by the facility as required by the rule.

RESPONSE:

If the evaluation procedure were to be devised by the Department, it could not possibly reflect adequately the facility-defined training program to impart knowledge of facility-specific policies, procedures, administrative structure, and treatment structure which is the basis for this category of certification.

COMMENT:

Written comment from Edward Amberg of Montana State Hospital pointed out that no minimum amount of continuing education is specified for renewal of facility certification.

RESPONSE:

It is appropriate for the facility to determine the amount of continuing training needed to ensure its employees remain competent.

COMMENT:

Written comment from Edward Amberg and from Archie McPhail, Jr., both of Montana State Hospital, stated that people currently holding limited mental health certification should be "grandfathered" into facility certification without having to pass the clinical competency evaluation.

RESPONSE:

The purpose of the new facility certification category is to allow persons to become certified professional persons by demonstrating their competency to perform the duties and privileges attached to certification and without spending an excessive length of time gaining experience which may or may not be relevant to those duties and privileges. Therefore, it is reasonable to require that people currently holding limited certification demonstrate that they also are competent in these areas. This requirement is mitigated by the fact that such people will have between one and three years of "grandfathered" facility certification before being required to pass the clinical competency evaluation.

COMMENT: Three Montana State Hospital staff members who hold full mental health professional person certification, Jeffrey K. Ritow, Ph.D., John Van Hassel, Ph.D., and Ray M. Lappin, M.S.W., jointly objected to the

proposed rule changes because they would "require professional persons with full certification to supervise training programs for facility certification ... [which] amounts to an expansion of fully certified professional's job descriptions ... "

RESPONSE: The rule requires that a training program be directed by a person with full mental health certification. It makes no requirements on all professional persons or on any specific professional person, but expands the privileges for professional persons. The job duties required of a professional person are a matter for negotiation between the employer and the professional person.


COMMENT: Jeffrey K. Ritow, Ph.D., John Van Hassel, Ph.D., and Ray M. Lappin, M.S.W. also asserted that under the modified rule there would be different standards for certification for each facility, which would undermine certification standards for such things as assessing dangerousness.

RESPONSE: Certification standards are specified by this rule and by statute and will not be different for different facilities. Standards for performing the privileges of a facility professional person are also set by administrative rule and by statute. What will be different between facilities will be the process for training and assessing applicants for facility certification. This is, in fact, the purpose of the change from limited to facility certification. The facility-certified individual will have been specifically trained in, and evaluated for competence in, the facility's policies and practices as they relate to the privileges of professional persons, as well as in state laws governing those duties.

COMMENT: David S. Niss, staff attorney for the Administrative Code Committee suggested in written comment that the Department publish a new statement of reasonable necessity for the amendments.

RESPONSE: The Department of Corrections and Human Services has proposed changes in the Administrative Rules governing certification of mental health professional persons in order to permit individuals to be certified for a set of circumscribed duties and privileges in a reasonable time span by demonstrating a specified degree of competence in performing those privileges. Mental health facilities, particularly the Montana State Hospital, have experienced difficulties in maintaining legally-mandated coverage by certified professional persons due to long periods of job experience required for certification as limited mental health professional persons. In fact, the Montana State Hospital is currently under court order to increase the number of certified staff.

The rules as amended will permit mental health facilities to obtain certification for new and existing staff members more quickly by providing them with relevant training and directly demonstrating their ability to properly perform the privileges for which they are certified. The public and the facilities' clientele and patients can be more confident that certified staff are competent under the new process because the previous process granted certification based merely on length of experience rather than on focused training and demonstrated ability.


CURT CHISHOLM, Director
Department of Corrections and
Human Services


JAMES B. OBIE
Rule Reviewer

Certified to the Secretary of State June 26, 1992.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of [RULE I]	)	[RULE I] 46.8.2001, [RULE
46.8.2001, [RULE II]	)	II] 46.8.2002, [RULE III]
46.8.2002, [RULE III]	)	46.8.2005, [RULE IV]
46.8.2005, [RULE IV]	)	46.8.2006, [RULE V]
46.8.2006, [RULE V]	)	46.8.2008 THROUGH [RULE
46.8.2008 through [RULE VII]	)	VII] 46.8.2010, [RULE VIII]
46.8.2010, [RULE VIII]	)	46.8.2012 THROUGH [RULE X]
46.8.2012 through [RULE X]	)	46.8.2014, [RULE XI]
46.8.2014, [RULE XI]	)	46.8.2020 THROUGH [RULE XL]
46.8.2020 through [RULE XL]	)	46.8.2049 PERTAINING TO
46.8.2049 pertaining to	)	MEDICAID HOME AND COMMUNITY
medicaid home and community	)	SERVICES FOR PERSONS WHO
services for persons who are	)	ARE DEVELOPMENTALLY
developmentally disabled	)	DISABLED

TO: All Interested Persons

1. On April 30, 1992, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [RULE I] 46.8.2001, [RULE II] 46.8.2002, [RULE III] 46.8.2005, [RULE IV] 46.8.2006, [RULE V] 46.8.2008 through [RULE VII] 46.8.2010, [RULE VIII] 46.8.2012 through [RULE X] 46.8.2014, [RULE XI] 46.8.2020 through [RULE XL] 46.8.2049 pertaining to medicaid home and community services for persons who are developmentally disabled at page 880 of the 1992 Montana Administrative Register, issue number 8.

2. The Department has adopted [RULE I] 46.8.2001, [RULE II] 46.8.2002, [RULE III] 46.8.2005, [RULE IV] 46.8.2006, [RULE V] 46.8.2008, through [RULE VI] 46.8.2009, [RULE VIII] 46.8.2012 through [RULE X] 46.8.2014, [RULE XI] 46.8.2020, [RULE XIII] 46.8.2022 through [RULE XL] 46.8.2049 as proposed.

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

[RULE VII] 46.8.2010 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: REIMBURSEMENT Subsections (1) through (3) remain as proposed.

~~(a) for the cost of room and board unless provided as part of respite care;~~

Subsections (3)(b) through (3)(d) remain as proposed but will be renumbered (3)(a) through (3)(c).

Subsection (4) remains as proposed.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

[RULE XII] 46.8.2021 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: CASE MANAGEMENT SERVICES, REQUIREMENTS (1) Case management AS A MEDICAID HOME AND COMMUNITY services may only be provided by non-profit corporations under contract with the department.

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

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The Department of Family Services (DFS) noted that the case management system provided in the medicaid home and community service program at proposed [Rule XI] 46.8.2020 and [Rule XII] 46.8.2021 is in addition to the medicaid targeted case management system that DFS currently provides by contract to the medicaid program. DFS provides medicaid targeted case management services for persons with developmental disabilities including those with intensive care needs who are in the home and community services program. DFS is concerned that there will be problems relating to responsibilities and correct billing if both case management systems apply to a person receiving intensive care.

DFS also noted that the case management service under the home and community services program, as provided in proposed [Rule XII] 46.8.2021, could only be provided by non-profit corporations under contract with the Department. DFS does not qualify as a non-profit corporation under contract with the Department.

RESPONSE: A person receiving developmental disability services may only have one case manager even if the person is receiving services funded by the home and community services program. The medicaid program administratively limits the home and community services case management system to persons who are in specialized family care. DFS does not provide targeted case management services to persons who are receiving specialized family care. Persons receiving home and community services other than specialized family care are subject to the targeted case management provided by DFS and therefore will not receive home and community case management services.

Proposed [Rule XII(1)] 46.8.2021(1) has been revised to provide that the limitation of case management services to nonprofit corporations applies only to the home and community case management service. Since DFS does not provide home and community case management services, this requirement does not apply to DFS.

COMMENT: Proposed [Rule III] 46.8.2005 predicates eligibility for home and community services on the person requiring "the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR)." The medicaid criteria for level of care and the state criteria for commitment to the state's institutional ICF/MR's differ. The state criteria for commitment is more stringent. The two sets of criteria should be coordinated.

RESPONSE: In order to be eligible for home and community services a recipient of home and community services must require the level of care provided in an ICF/MR. The level of care criteria is intended to limit utilization of nursing facilities to that which is appropriate given the person's medical and functional needs. The criteria for commitment to the state operated institutions is designed to satisfy constitutional requirements relating to the civil rights of persons who are institutionalized by the state.

The two sets of criteria can not be readily coordinated since they are predicated on different considerations and serve different purposes and are based on different legal authorities.

COMMENT: Proposed [Rule IX] 46.8.2006 provides that a person determined to be in need of the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR) must be given a choice between placement in an ICF/MR or in the medicaid home and community services program. This requirement is not plausible as to the state institutions which are ICF/MRs because admission to those facilities is only through involuntary commitment. The proposed rule should exclude the state institutions.

RESPONSE: Federal regulation requires that recipients of medicaid home and community services be given a choice of services in an ICF/MR or the home and community services program. Montana has limited the growth of small community-based ICF/MRs by developing community services and medicaid home and community services. Almost all the ICF/MR placements available in the state are in the state institutions where admission is by involuntary commitment. Federal regulation does not differentiate between ICF/MRs with voluntary placement and those with involuntary commitment. Although the choice in Montana of a ICF/MR is realistically limited due to the requirement for involuntary commitment to the state institutions, the requirement must be complied with.

COMMENT: Proposed [Rule VII(3)(a)] 46.8.2010(3)(a), prohibiting reimbursement for the cost of room and board, has an exception which allows for the reimbursement of room and board under respite care. The Department has determined that proposed [Rule VII(3)(a)] 46.8.2010(3)(a), would not be in compliance with the relevant federal regulation.

RESPONSE: Reimbursement for room and board as part of respite care in private residences is prohibited by 42 CFR 441.310(a) (3). Proposed [Rule XXII(4)] 46.8.2031(4) provides that respite care may be provided in a recipient's place of residence, in another private residence, or in an appropriate community setting. In those settings room and board is compensated by the person's supplemental security income and state supplemental payments and can not be also compensated through home and community services respite.

The exception allowing for the reimbursement of room and board in respite care has been deleted from proposed [Rule VII(3)(a)] 46.8.2010(3)(a).

Dana Silva
Rule Reviewer

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1992.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rule 46.10.403	)	RULE 46.10.403 PERTAINING
pertaining to AFDC standards	)	TO AFDC STANDARDS OF
of assistance	)	ASSISTANCE

TO: All Interested Persons

1. On May 14, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.403 pertaining to AFDC standards of assistance at page 985 of the 1992 Montana Administrative Register, issue number 9.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsection (1) remains as proposed.

(2) Monthly ~~gross~~ income as defined in ARM 46.10.505, AFTER THE APPLICATION OF THE EXCLUSIONS AND DISREGARDS SPECIFIED IN ARM 46.10.506, 508, 510 AND 512, is tested against the gross monthly income (GMI) standard, and, after specified exclusions and disregards, the net monthly income (NMI) standard, AND THE BENEFIT STANDARD. AT APPLICATION, These tests are applied PROSPECTIVELY using income reasonably expected to be received in the first one or two benefit months. However, if income is reported or discovered after the month of receipt, this income must be accounted for by applying the monthly income tests retroactively in the second month after receipt. After the initial one or two benefit months, subsequent payments are computed retroactively RETROSPECTIVELY based on income actually received in the budget month. IF INCOME IS REPORTED OR DISCOVERED AFTER BENEFITS HAVE BEEN ISSUED, THIS INCOME IS TESTED RETROSPECTIVELY IN THE BUDGET MONTH. Monthly ~~net~~ income is to be compared to the full standard for the size assistance unit even though the grant PAYMENT may only cover part of the month. If this ~~net~~ monthly income exceeds ANY OF the benefit standards (GMI, NMI OR BENEFIT STANDARDS), the assistance unit is not eligible for any part of the benefit month. The assistance unit may ALSO be further ineligible as provided in ARM ~~46.10.403~~ SUBSECTION (3) OF THIS RULE.

Subsections (2)(a) through (3) remain as proposed.

(a) If ~~net monthly income~~ if receipt of a non-recurring lump sum in excess of the net monthly income standard is REPORTED OR discovered after the month of receipt, the ineligibility period may begin as late as the corresponding payment month IS CALCULATED AS STATED IN SUBSECTION (3), ABOVE. AS PROVIDED IN ARM 46.10.108, AN OVERPAYMENT OF BENEFITS MAY EXIST.

Subsections (3)(b) through (4) remain as proposed.

(a) Benefit standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income defined as in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	\$238	\$ 7.73	\$ 83	\$ 2.77
2	311	10.37	134	4.47
3	390	13.00	183	6.10
4	469	15.63	233	7.77
5	548	18.27	279	9.30
6	627	20.90	322	10.73
7	706	23.53	366	12.17
8	785	26.17	405	13.50
9	861	28.67	443	14.77
10	935	31.03	479	15.97
11	996	33.23	512	17.07
12	1057	35.23	544	18.17
13	1117	37.17	573	19.10
14	1176	39.07	601	20.03
15	1235	40.87	627	20.90
16	1294	42.67	650	21.67

Subsection (4)(b) remains as proposed.

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

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

3. No written comments or testimony were received. Corrections to the first notice of ARM 46.10.403, Table of Assistance Standards, were made by the Department to improve the readability of the rule, to correct erroneous figures in the benefit standards table and for grammatical correctness. There was no change in the department's policy regarding application of the standards of assistance.

Dawn Silvia
Rule Reviewer

Julia E. Roberson
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1992.

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

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

TO: All Interested Persons

1. On May 28, 1992, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [Rule I] 46.12.509A 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 at page 1094 of the 1992 Montana Administrative Register, issue number 10.

2. The Department has adopted [Rule I] 46.12.509A, ADMINISTRATIVE REVIEW AND FAIR HEARING PROCESS as proposed.

3. The Department has amended rules 46.2.201, 46.2.202, 46.12.509, 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 repealed rules 46.12.1208, 46.12.1209 and 46.12.1210 as proposed.

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

46.12.593 INPATIENT PSYCHIATRIC SERVICES, COST REPORTING AND AUDITS Subsections (1) through (1)(b) remain as proposed.

(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 (1991) which the department hereby adopts and incorporates herein by reference. 42 CFR 413.24 (1991) 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.

Subsections (1)(d) through (4) remain as proposed.

AUTH: Sec. 53-6-113 MCA

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

4. The Department has thoroughly considered all commentary received:

COMMENT: What is an appeal of an eligibility determination by a real party in interest? How are such appeals different from claims for services or items? Why are such appeals not subject to the fair hearing rule?

RESPONSE: A real party in interest is a medical assistance provider who may enforce a medicaid applicant's eligibility rights. Because the provider will not be entitled to medicaid reimbursement unless the applicant is determined eligible, the provider is allowed to appeal an adverse eligibility determination. Such appeals are subject to the separate hearing rules which apply to eligibility hearings. These rules generally are more liberal in favor of a medicaid applicant. For example, an applicant has 90 days within which to appeal an adverse eligibility determination, whereas a provider has 30 days to appeal a denial of payment for services, e.g., when the services are determined medically unnecessary. Different hearing rules apply to applicants or recipients than to providers because federal regulations accord more procedural protections to applicants and recipients than to providers.

COMMENT: Is a provider of inpatient psychiatric services for individuals under age 21 considered an "institution for mental disease" under the proposed rules?

RESPONSE: No. Federal law prohibits medicaid reimbursement for services provided in institutions for mental disease (IMD) to persons age 21 through 64. The Montana medicaid program reimburses for inpatient psychiatric services for individuals under age 21 under the rules found at ARM 46.12.590, et seq. The program also reimburses for IMD services for individuals age 65 and over under the IMD rules found at ARM 46.12.1107, et seq. The IMD rules do not apply to providers of inpatient psychiatric services for individuals under age 21, such as Shodair Hospital.

COMMENT: What is the difference between proposed [Rule I], ARM 46.12.1210 and ARM 46.12.1268 and why are there separate provisions?

RESPONSE: There is no substantive difference between these rules. ARM 46.12.1210 is being replaced by [Rule I] as a means of locating the provisions of 46.12.1210 more logically in another sub-chapter of the rules. ARM 46.12.1268 applies only to nursing facilities and IMDs.

COMMENT: What hearing rules apply to appeals of medical necessity determinations for providers of inpatient psychiatric services for individuals under age 21, such as Shodair Hospital?

RESPONSE: Appeals of medical necessity determinations for providers of inpatient psychiatric services for individuals under age 21, such as Shodair Hospital will be subject to new [Rule I]. Under current rules, such appeals are subject to ARM 46.12.1210.

COMMENT: It was noted that ARM 46.12.593 incorporates a Code of Federal Regulations, but does not include the year.

RESPONSE: The Department agrees and has included the year in the citation.

Dana Olson
Rule Reviewer

William F. H. H. H.
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1992.

VOLUME NO. 44

OPINION NO. 36

COMMERCE, DEPARTMENT OF - Authorization of denturists to fit partial dentures;
DENTISTRY - Authority of denturists to fit partial dentures;
DENTURITY - Authority of denturists to fit partial dentures;
MONTANA CODE ANNOTATED - Sections 37-29-102, 37-29-403.

HELD: Under section 37-29-403, MCA, a denturist must refer a patient to a dentist prior to making, fitting, or reconstructing a partial denture.

June 18, 1992

Charles Brooke, Director
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0501

Dear Mr. Brooke:

You have requested my opinion on a number of questions, but because I must decline to answer questions that require factual determinations or determinations of the constitutionality of a legislative act, I have rephrased your request as follows:

Is a denturist required to refer a partial-denture patient to a dentist before the denturist may construct, fit, or reconstruct a partial denture?

The Board of Dentistry is vested with the authority to regulate the licensure and practice of denturity. § 37-29-201, MCA. The practice of denturity is defined in section 37-29-102(6), MCA, as:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

A "denture" is defined as "any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth." § 37-29-102(2), MCA.

Section 37-29-403, MCA, describes in particular the procedure for making and fitting partial dentures:

(1) Prior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311.

Your question concerns whether section 37-29-403(1)(b), MCA, imposes a mandatory duty upon a denturist to refer a patient to a dentist every time a partial denture is made, fitted, or reconstructed. You state that the Board of Dentistry interprets the section as mandatory, leaving no discretion with a denturist, while the denturists contend that the "as needed" language at the end of subsection (1)(b) grants them discretion to determine if a referral to a dentist is necessary.

In construing a statute, the primary goal is to discern legislative intent whenever possible. § 1-2-102, MCA. Often, legislative intent may be gleaned from the plain language of the statute. Here, however, the language of section 37-29-403(1)(b), MCA, standing alone, is ambiguous. It is unclear whether the phrase "as needed" modifies the general duty of a denturist to refer a patient to a dentist; or vests discretion in the denturist to refer a patient for tooth cleaning, mouth preparation, and x-rays; or requires a referral to a dentist in every case prior to making or fitting a partial denture for necessary tooth cleaning, mouth preparation, and x-rays as determined by the dentist to whom the patient is referred.

Where there is doubt as to the meaning of a phrase in a statute, the statute must be construed in its entirety and the phrase given a reasonable construction which is harmonious with the entire statute. McClanathan v. Smith, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980). Thus, statutes must be read and considered in their entirety and legislative intent may not be found in the wording of any one particular section or sentence,

but in the consideration of the whole statute. State v. Meader, 184 Mont. 32, 36-37, 601 P.2d 386, 389 (1979); Vita-Rich Dairy v. Department of Business Regulation, 170 Mont. 341, 348, 553 P.2d 980, 984 (1976). See also Burritt v. City of Butte, 161 Mont. 530, 535, 508 P.2d 563, 566 (1973) (context in which words are used is more important than precise grammatical rules).

When section 37-29-403, MCA, is construed in its entirety, it becomes clear that a denturist has no discretion with respect to referral of a patient to a dentist before the making and fitting of partial dentures. Section 37-29-402(1)(c), MCA, expressly provides that a denturist shall "make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations." (Emphasis added.) This subsection allows the fitting of a partial denture only after a dentist has been given the opportunity to check the patient and review the model sent to him or her under subsection (1)(b). Further, a partial denture must be fitted in accordance "with the dentist's recommendations." § 37-29-403(1)(c), MCA.

This conclusion is consistent with the administrative rules promulgated by the Board of Dentistry which regulate the practice of dentistry. Section 8.17.808, ARM, provides:

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

Although the history portion of this rule indicates that the rule is advisory only, the Board of Dentistry has proposed to strike that qualification. Notice of Proposed Amendment of 8.17.808, Montana Administrative Register, Issue No. 7, April 16, 1992, at 723. The construction of a statute by the agency responsible for its execution is given great deference. Norfolk Holdings v. Department of Revenue, 48 St. Rptr. 569, 813 P.2d 460, 462 (1991); D'Ewart v. Neibauer, 228 Mont. 335, 340, 742 P.2d 1015, 1018 (1987); Montana Power Company v. Cremer, 182 Mont. 277, 280, 596 P.2d 483, 485 (1979); Department of Revenue v. Puget Sound Power and Light Company, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978). Giving deference to the agency's interpretation reinforces my opinion that a denturist must refer all partial denture patients to a dentist prior to making or fitting a partial denture.

You have also asked whether there must be referral each time a patient goes to a denturist to have the partial denture reconstructed. According to the rules of statutory construction, I am obliged to ascertain and declare what is in terms or in substance contained in the statute, not insert what has been omitted or omit what has been inserted. § 1-2-101, MCA. Here, there is no limitation in the statutory language

exempting reconstruction of a partial denture from the general duty to refer all partial-denture patients to a dentist prior to fitting a partial denture. While an exception could be created legislatively, I may not insert such an exception into the statutes.

THEREFORE, IT IS MY OPINION:

Under section 37-29-403, MCA, a denturist must refer a patient to a dentist prior to making, fitting, or reconstructing a partial denture.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Racicot", written in a cursive style.

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
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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