

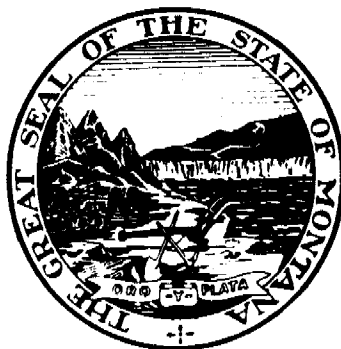
KFM
9035
1973
.A245a

RESERVE
STATE LAW
APR 01 1994
OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**DOES NOT
CIRCULATE**

ISSUE NO. 6
MARCH 31, 1994
PAGES 597-714



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-55-14 (State Compensation Insurance Fund) Notice of Proposed Amendment - Method for Assignment for Classifications of Employments - Premium Ratesetting - Construction Industry Premium Credit Program - Medical Deductible. No Public Hearing Contemplated. 597-599

AGRICULTURE, Department of, Title 4

4-14-66 Notice of Proposed Adoption - Pesticide Disposal Program. No Public Hearing Contemplated. 600-607

STATE AUDITOR, Title 6

6-46 (Classification and Rating Committee) Notice of Proposed Amendment - Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Edition. No Public Hearing Contemplated. 608-610

COMMERCE, Department of, Title 8

8-13-2 (Board of Clinical Laboratory Science Practitioners) Notice of Public Hearing on Proposed Adoption - Continuing Education Requirements. 611-612

8-28-41 (Board of Medical Examiners) Notice of Proposed Amendment and Adoption - Requirements for Licensure - Unprofessional Conduct - Definitions with Regard to the Practice of Acupuncture. No Public Hearing Contemplated. 613-614

COMMERCE, Continued

8-32-35 (Board of Nursing and Board of Medical
Examiners) Notice of Proposed Amendment -
Prescriptive Authority. No Public Hearing
Contemplated. 615-620

FAMILY SERVICES, Department of, Title 11

11-64 Notice of Proposed Amendment and Adoption -
Incorporation of the Regulations of the Association
of Administrators of the Interstate Compact on the
Placement of Children. No Public Hearing
Contemplated. 621-622

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-445 Notice of Public Hearing on Proposed
Amendment and Adoption - (Communicable Disease)
Reportable Diseases. 623-630

16-2-446 Notice of Public Hearing on Proposed
Amendment and Adoption - (Hospice Licensure)
Standards for Licensure of Hospices. 631-638

16-2-447 Notice of Proposed Amendment - (Health
Planning) Certificate of Need Required Findings
and Criteria. No Public Hearing Contemplated. 639-640

STATE LANDS, Department of, Title 26

26-2-70 (Board of Land Commissioners) Notice of
Public Hearing on Proposed Amendment and Adoption -
Recreational Use of State Lands. 641-656

REVENUE, Department of, Title 42

42-2-561 Notice of Proposed Amendment - Adjusted
Gross Income. No Public Hearing Contemplated. 657-658

SECRETARY OF STATE, Title 44

44-76 (Commissioner of Political Practices) Notice
of Proposed Amendment - Limitations on Receipts
from Political Committees to Legislative
Candidates. No Public Hearing Contemplated. 659-660

RULE SECTION

ADMINISTRATION, Department of, Title 2

(State Compensation Insurance Fund)
Corrected Notice of Adoption and Amendment
- Establishing Criteria for Assessing a
Premium Surcharge - Construction Industry
Program - Scheduled Rating Unique Risk
Characteristics Modifier. 661-662

COMMERCE, Department of, Title 3

AMD (Board of Occupational Therapy Practice)
NEW Definitions - Approval of the Use of
Modalities. 663-666

AMD (Board of Realty Regulation) Grounds for
License Discipline - General Provisions -
Unprofessional Conduct. 667

AMD (Board of Respiratory Care Practitioners)
Definitions. 668-669

(Building Codes Bureau) Corrected Notice
of Amendment - Incorporation by Reference
of Building Codes. 670-671

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

(Board of Health and Environmental
Sciences) (Water Quality Bureau)
Corrected Notice of Adoption - Water
Quality Permit and Degradation
Authorization Fees. 672-673

TRANSPORTATION, Department of, Title 18

AMD Motorist Information Signs. 674

LABOR AND INDUSTRY, Department of, Title 24

AMD (Office of the Workers' Compensation Judge)
Rules of the Workers' Compensation Court. 675-678

AMD Applicability of Rules and Statutes in
Workers' Compensation Matters -
Applicability of Date of Injury, Date of
Service. 679

AMD Utilization and Medical Fee Schedules for
Workers' Compensation Matters. 680

LABOR AND INDUSTRY, Continued

NEW	Trade Group Discounts - Groups of Business Entities Joining Together for the Purchase of Workers' Compensation Insurance.	681-684
-----	---	---------

REVENUE, Department of, Title 42

AMD	Personal Property Taxation Dates.	685
-----	-----------------------------------	-----

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

AMD	Medicaid Recipient Requirements for Co-Payments.	686-688
-----	---	---------

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	689
How to Use ARM and MAR.	690
Accumulative Table.	691-702
Boards and Councils Appointees.	703-704
Vacancies on Boards and Councils.	705-714

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

In the matter of the proposed	) NOTICE OF PROPOSED
amendments of rules 2.55.320,	) AMENDMENT
2.55.324, 2.55.327, and 2.55.402)
pertaining to the method for)
assignment of classifications of)
employments, premium ratesetting,)
construction industry premium)
credit program, and medical	) NO PUBLIC HEARING
deductible.	) CONTEMPLATED

TO: All Interested Persons:

1. On May 2, 1994, the State Compensation Insurance Fund proposes to amend ARM 2.55.320, 2.55.324, 2.55.327, and 2.55.402 pertaining to state fund premium rates and premium modifiers.

2. The State Fund hereby incorporates by reference into this notice the text of ARM 2.55.320 pertaining to the method for assignment of classifications of employments; ARM 2.55.324 pertaining to premium ratesetting; ARM 2.55.327 pertaining to the construction industry premium credit program; and ARM 2.55.402 pertaining to medical deductible. These rules are part of the State Fund's administrative rules setting forth the process, procedures, formulas, and factors in adopting premium rates and premium modifiers. To obtain a copy of the rules, contact Nancy Butler at the State Fund Legal Department, P.O. Box 4759, Helena, MT 59604-4759.

The State Fund is not adopting text for new rules, but as six months have passed since the last notice, it is correcting technical deficiencies through this notice of proposed amendment. No change to the text of rules approved by the board of directors is being made; instead the State Fund is taking curative action to correct technical problems and to clarify the statutes under which the rules were authorized and implemented.

3. On May 27, 1993, at page 970 of the 1993 Montana Administrative Register, Issue No. 10, the State Fund published notice of public hearing for proposed amendments of rules 2.55.320 and 2.55.327 pertaining to method for assignment of classifications of employments and the construction industry premium credit program. On July 15, 1993, at page 1485 of the 1993 Montana Administrative Register, Issue No. 13, the State Fund published notice of amendment of rules 2.55.320 and 2.55.327 pertaining to method for assignment of classifications of employments and the construction industry premium credit program.

The adoption notice included a paragraph of the statutory cites for authority and implementation; however, it contained technical deficiencies, which are corrected below.

4. On January 14, 1993, at page 1 of the 1993 Montana Administrative Register, Issue No. 1, the State Fund published notice of public hearing for proposed amendments of rules 2.55.324, 2.55.327, and 2.55.402 pertaining to the establishment of premium rates. On March 11, 1993 at page 340 of the Montana Administrative Register, Issue No. 5, the State Fund published notice of adoption of amendments of rules 2.55.324, 2.55.327, and 2.55.402 pertaining to the establishment of premium rates.

The adoption notice included a paragraph of the statutory cites for authority and implementation; however, it contained technical deficiencies, which are corrected below.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) - (3) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316.

IMP: Sec. 39-71-2311 and 39-71-2316.

2.55.324 PREMIUM RATESETTING (1) - (7) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316.

IMP: 39-71-2211, 39-71-2311 and 39-71-2316.

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) - (6) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316.

IMP: 39-71-2211, 39-71-2311 and 39-71-2316.

2.55.402 MEDICAL DEDUCTIBLE (1) - (3) remain the same.


AUTH: 39-71-2315 and 39-71-2316.


IMP: 39-71-434, 39-71-2311, 39-71-2316.


6. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Nancy Butler, Legal Department, State Compensation Insurance Fund, P.O. Box 4759, Helena, Montana 59604-4759. Any comments must be received no later than 5:00 p.m. April 28, 1994.

7. If a person who is directly affected by the proposed amendments 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 Nancy Butler, Legal Department, State Compensation Insurance Fund, P.O. Box 4759, Helena, Montana 59604-4759. A written request for hearing must be received no later than 5:00 p.m. April 28, 1994.

8. If the State Fund receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,600 persons based on approximately 26,000 policyholders.


Dal Smilie, Chief Legal Counsel
Rule Reviewer


Rick Hill
Chairman of the Board


Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State March 21, 1994.

(4) "Participant" means a person or persons authorized by the department to submit acceptable pesticides to the disposal program.

(5) "Recyclable" means a pesticide container rinsed according to label directions as addressed in the code of Federal Regulations (40CFR 156.10).

(6) "Unacceptable pesticide" means a pesticide that is not permitted to be incinerated according to state or federal regulations or an empty pesticide container that contained an unacceptable pesticide.

(7) "Exchangeable pesticide" means a pesticide in a sealed, unopened container authorized by the disposal program for exchange from one person to another.

AUTH: 80-8-105(2), MCA

IMP: 80-8-111, 112, MCA

RULE III STANDARDS FOR DISPOSAL PROGRAM OPERATION

(1) The disposal program may accept:

- (a) acceptable pesticides;
- (b) recyclable pesticide containers;
- (c) exchangeable pesticides.

(2) The disposal program shall not accept:

- (a) nonpesticide materials;
- (b) unacceptable pesticides.

(3) Contractors conducting the disposal program must meet qualifications that include but are not limited to the following items:

(a) registered as a hazardous waste generator with the Montana department of health and environmental sciences (DHES) and possess a hazardous waste identification number issued by the United States Environmental Protection Agency (EPA). DHES registration and an EPA hazardous waste identification number shall not be required for a contractor involved solely with recyclable pesticide containers and exchangeable pesticides;

(b) possess or subcontract only with transporters that possess all necessary federal and state permits, licenses and registrations required for the transportation of hazardous wastes;

(c) certify that employees conducting the disposal program meet occupational safety and health administration safety and training requirements in the code of Federal Regulations (29 CFR 1910.120).

(4) The department may issue request for bid proposals (RFPs) and enter into written contracts with contractors to conduct the operational aspects of the disposal program. The department may require that entities responding to the RFP provide specific information on methods and procedures that the contractors will use in conducting a disposal program. This information provided by the contractor may include but is not limited to:

(a) a collection site preparation and restoration plan to provide for safe transfer of acceptable pesticides, exchangeable pesticides, and recyclable pesticide containers including provisions for site selection, protection of the environment and public health, and restoration of the site to its original condition;

(b) evidence of an established quality assurance/quality control program used by the contractor;

(c) provisions for development of site specific health and safety plan(s) for the chosen collection site(s);

(d) written documentation provided to the department before collection that the acceptable pesticides collected under the disposal program will be accepted by an EPA permitted disposal facility for incineration;

(e) methods for management of collected acceptable pesticides from the collection site to the disposal facility in compliance with Title 16, chapter 44, Administrative Rules of Montana;

(f) provisions for inspection and monitoring of the disposal program by the department;

(g) attendance at organizational meeting(s) prior to collection day(s);

(h) provisions for written documentation of collection activities provided to the department within established time schedules which may include:

(i) an itemized list of pesticide products by trade/generic name and amounts collected;

(ii) shipping manifests.

(5) The department shall establish criteria for awarding the disposal program contract(s). Selection criteria shall include but not be limited to:

(a) ability to perform service;

(b) related experience or similar waste disposal projects;

(c) references;

(d) federal Resource Conservation and Recovery Act (RCRA) compliance record;

(e) clarity and completeness of bid proposal;

(f) cost.

AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

RULE IV DISPOSAL PROGRAM OPERATION (1) The department or its designated agent may conduct outreach and educational activities to inform the public about the functions of the disposal program and may conduct these activities in cooperation with the Montana state university extension service, local governments, the contractor(s) and others.

(2) The department may target the operational activities of the disposal program to regions or areas within the state during each fiscal year.

(3) Collection site(s) shall be selected by the contractor.

(4) The department will establish minimum criteria for a site to qualify as a collection site.

(5) The department establishes the following procedures for disposal of acceptable pesticides.

(a) Persons intending to participate in the disposal program must make application to the department or the department designee on forms provided by the department. Information provided on the form must include but is not limited to:

- (i) brand name of the pesticide if present on label or known;
- (ii) active ingredient of the pesticide if present on label or known;
- (iii) EPA registration number or the United States department of agriculture (USDA) registration number, if present;
- (iv) quantity of each pesticide;
- (v) container size, composition, condition;
- (vi) applicant's name, address and telephone number.

(b) Persons who submit applications to the program must receive written approval from the department or the department designee to participate in the program.

(c) Prior to the collection day, the department shall provide the participant with a form listing the acceptable pesticides approved for disposal. This form will serve as a bill of lading and must be in the possession of the participant during transport of the acceptable pesticides to the collection site. This form will also serve to transfer ownership of the pesticide(s) from the participant to the contractor by a pesticide product release statement on the form.

(d) Participants in the disposal program must transport acceptable pesticide products to the collection site according to the Montana Pesticides Act and United States department of transportation regulations.

(e) A participant may assign a designee to transport the participant's acceptable pesticides to the collection site only if the designee is approved by the department during preregistration.

(f) Ownership of acceptable pesticides approved for disposal will be transferred from the participant to the contractor at the collection site.

(6) The department establishes the following procedures for recycling of pesticide containers.

(a) Persons intending to participate in the disposal program for the purpose of recycling pesticide containers must make application to the department on forms provided by the department. Information provided on the form must include but may not be limited to:

- (i) brand name of the pesticide if present on label or known;
- (ii) active ingredient of the pesticide if present on label or known;
- (iii) EPA registration number or U.S. department of

agriculture registration number, if present;

- (iv) number and size of each pesticide container;
- (v) container composition;
- (vi) applicant's name, address and telephone number.

(b) Recyclable pesticide containers must be rinsed according to label directions as addressed in the code of Federal Regulations (40CFR 156.10).

(c) The contractor shall inspect each container. The contractor must not accept any container that in the judgement of the contractor has any visible residue.

(d) A form completed by the department following review of the participant's application will list containers approved for recycling under the disposal program. A copy of this form will be returned to the participant and must be in the participant's possession during transport of the containers to the collection site and must be provided to the contractor at the collection site.

(7) The department establishes the following procedures for the exchange of exchangeable pesticides.

(a) A pesticide may be exchanged or transferred from one person to other for the purpose of using the pesticide according to label directions. The pesticide offered for exchange must be:

- (i) registered or meet provisions of 80-8-201(9) (a) or (b), MCA; and
- (ii) in the original, labeled, unopened sealed container.

(b) Owners of exchangeable pesticides must apply to the department or department designee and provide information on a department form according to rule IV(5) (a).

(c) Persons wanting to receive exchangeable pesticides must provide their name, address, telephone number and pesticides wanted to the department. Persons wanting pesticides classified as restricted use must be licensed to use restricted use pesticides by the department.

(d) The department or department designee will match donors to users.

(e) Transfer of ownership of exchangeable pesticides may occur during scheduled pesticide disposal collections or through other arrangements approved by the department.

(f) The department may require the pesticide offered for exchange to be analyzed for label claim.

AUTH: 80-8-105(2), MCA

IMP: 80-8-111, 112, MCA

RULE V DISPOSAL PROGRAM COLLECTION PRIORITIES (1) The department may set priorities for the type and amount of acceptable pesticides collected under the disposal program. Criteria for setting the type and amount of acceptable pesticide collected may include but are not limited to:

- (a) funding available to operate the disposal program;
- (b) registration status of acceptable pesticides (e.g., canceled/suspended pesticides may have priority over presently registered pesticides);

- (c) toxicity;
- (d) hazard to human health or the environment;
- (e) condition of the pesticide container.
- (2) The department may set priorities for which portions of the disposal program under rule IV(5), (6) and (7) will be conducted based on funding and personnel resources that are available to operate the disposal program.

AUTH: 80-8-105(2), MCA

IMP: 80-8-111, 112, MCA

RULE VI FEES (1) Participants in the disposal program must pay a fee of \$2.00 per pound for disposal of acceptable pesticides in which the total quantity is less than or equal to 200 pounds. The minimum charge for participation in the program will be \$5.00.

(2) Participants in the disposal program who dispose of total quantities of acceptable pesticides greater than 200 pounds must pay a fee of \$2.00 per pound for the first 200 pounds and \$1.00 per pound for additional amounts over 200 pounds.

(3) The department may elect to accept pesticides containing dioxins into the disposal program at a higher fee to the participant.

(4) Participants who submit recyclable pesticide containers to the program must pay a fee of \$2.00 per container.

(5) Participants who receive an exchangeable pesticide under rule IV(7) shall pay a fee of \$5.00 for each container with a net content of less than or equal to 1 gallon or 10 pounds and \$10.00 for each container with a net content of greater than 1 gallon or 10 pounds. Fees charged to participants who receive exchangeable pesticides can be lowered at the discretion of the department if the established fee is higher than the retail value of the exchangeable pesticide.

(6) Applicators licensed by the department shall be given a monetary credit if they are a participant in the disposal program. The credit must be used during the certification period for farm applicators or the licensing period for dealers, commercial applicators, commercial operators and government applicators in which the fee is paid.

(a) Farm applicators shall receive a one time credit of \$15.00 during the farm applicator's certification period.

(b) Commercial applicators shall receive an annual credit of \$30.00 for each licensing period that the applicator is licensed. Commercial applicators shall receive an annual credit of \$15.00 for the first two (2) commercial operators operating under their license for each licensing period the operator is licensed. A credit of \$5.00 shall be received for each additional commercial operator operating under the applicator's license for each licensing period the operator is licensed.

(c) Government agencies shall receive an annual credit of \$25.00 for each licensing period that each applicator is licensed for the first four (4) licensed applicators. A credit of \$15.00 shall be received for each additional applicator for each licensing period that the applicator is licensed. The total credit must not exceed \$325.00.

(d) Dealers shall receive an annual credit of \$30.00 for each licensing period that the dealer is licensed.

AUTH: 80-8-105(2), MCA

IMP: 80-8-111, 112, MCA

RULE VII LIABILITY (1) The department in the operation of the disposal program does not assume ownership of any pesticide products or pesticide containers accepted under the disposal program nor does the department accept liability for disposal.

(2) The contractor assumes ownership of all pesticide products and pesticide containers collected under the disposal program.

(3) As provided in section 80-8-111, MCA, participants may not be subject to an administrative or judicial penalty as a result of participation in the disposal program.

AUTH: 80-8-105(2), MCA

IMP: 80-8-111, 112, MCA

RULE VIII TERMINATION OF RULES (1) The authority for the department to administer a disposal program under these rules ends June 30, 1999.

AUTH: 80-8-105(2), MCA

IMP: 80-8-111, 112, MCA

REASON: These rules are being proposed to implement a program that provides pesticide applicators with a safe, economical method of disposing of unwanted waste pesticides, and recycling of used pesticide containers. The program will also facilitate the exchange and use of currently registered, properly packaged and labeled pesticide products among applicators in the state as an alternative to storage or costly disposal of these products. The department believes that these rules are necessary to alleviate the risk of environmental degradation or accidental human exposure from improperly stored or disposed waste pesticides and containers.

These rules are being proposed under authority of 80-8-105 (2)(r), MCA to establish standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program.

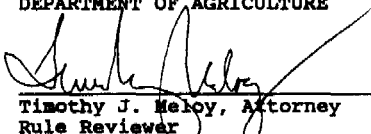
3. Interested persons may submit their written data, views, or arguments concerning these amendments to Gary Gingery, Administrator, Department of Agriculture, Agricultural Science Division, P.O. Box 200201, Helena, MT 59620-0201, no later than April 28, 1994.

4. If a party who is directly affected by the proposed adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 no later than April 28, 1994.

5. If the department receives requests for a public hearing under section 2-4-315, MCA, on the proposed adoption, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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.



W. Ralph Peck, Administrator
DEPARTMENT OF AGRICULTURE



Timothy J. Meloy, Attorney
Rule Reviewer
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State March 21, 1994.

BEFORE THE CLASSIFICATION AND RATING COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED
of ARM 6.6.8301, updating)	AMENDMENT OF ARM
references to the NCCI Basic)	6.6.8301
Manual for Workers')	
Compensation and Employers')	NO PUBLIC HEARING
Liability Insurance, 1980 ed.)	CONTEMPLATED

TO: All Interested Persons.

1. On May 12, 1994, at 1:15 o'clock p.m., MDT, at the Best Western Colonial Inn, 2301 Colonial Drive, Helena, Montana the classification and rating committee of the state of Montana proposes to amend rule 6.6.8301 updating references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 ed.

2. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined)

6.6.8301 ESTABLISHMENT OF CLASSIFICATIONS FOR COMPENSATION
PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, 1980 ed., as supplemented through ~~August 12, 1993~~ March 21, 1994, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 200301, Helena, MT 59620-0301. Copies of the Basic Manual for Workers' Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification and Rating Committee in care of the National Council on Compensation Insurance, Two Tamarac Square, Suite 613, 7535 East Hampden Ave., Denver, CO 80231. Persons obtaining a copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) The committee may amend the definition of a rate classification, establish a new rate classification, or delete an existing rate classification pursuant to the rulemaking procedures as provided in Title 2, chapter 4, part 3, Montana Code Annotated and the applicable attorney general's Model Procedural Rules adopted by the committee.

AUTH: Sec. 33-16-1012, MCA IMP: Sec. 33-16-1012, 2-4-103, MCA

6-3/31/94

MAR Notice No. 6-46

3. The proposed amendment is necessary in order to bring references to the NCCI Classification and Rating Manual current. Changes to the NCCI Classification and Rating Manual, to be effective July 1, 1994, affect certain classifications with respect to Ski Area Operations; Retirement, Care, Nursing and Convalescent Centers; and Telephone or Cable TV Line.

4. Interested persons may submit their data, views, or arguments in writing to:

Robert Carlson, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance
Two Tamarac Square, Suite 613
7535 East Hampden Avenue
Denver, CO 80231
Comments must be received no later than May 5, 1994.

5. If a person who is directly affected by the proposed amendment wishes to present data, views, or arguments orally or in writing at a public hearing, such person must make written request for a hearing and submit the request along with any comments such person has to:

Robert Carlson, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance
Two Tamarac Square, Suite 613
7535 East Hampden Avenue
Denver, CO 80231

6. If the classification and rating committee of the state of Montana 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; from the administrative code committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. For each category of classification affected, ten percent of the persons directly affected has been determined to be as follows: ten (10) for the classification involving Ski Area Operations, based on 95 persons in the state the classifications of which are affected by the proposed amendment; four (4) for the classifications involving Retirement Care, Nursing and Convalescent Centers, based on 42 persons in the state the classifications of which are affected by the proposed amendment; and four (4) for the classifications involving Telephone or Cable TV Line operations, based on 48 persons in the state the classifications of which are affected by the proposed amendments.

By: Robert Carlson
Robert Carlson, Chairperson
Classification and Rating Committee

By: Geoffrey L. Brazier
Geoffrey L. Brazier, Rule Reviewer
State Auditor's Office

Certified to the Secretary of State March 21, 1994.

BEFORE THE BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OR PUBLIC HEARING
adoption of a new rule pertain-) ON THE PROPOSED ADOPTION OF
ing to continuing education) NEW RULE I CONTINUING
EDUCATION REQUIREMENTS

TO: All Interested Persons:

1. On April 26, 1994, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 N. Jackson, Helena, Montana, to consider the proposed adoption of the above-stated new rule.

2. The proposed new rule will read as follows:

"I. CONTINUING EDUCATION REQUIREMENTS (1) All applicants for renewal of licenses shall have completed continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until the licensee's first full year of licensure. Continuing education courses must be taken after October 1, 1993 to qualify under this rule.

(a) Fourteen hours of continuing education will be required annually for renewal of a license.

(b) Up to 14 hours earned in excess of the 14 hours required in a calendar year may be carried over into the succeeding year.

(c) All continuing education credits must be germane to the profession and must contribute to the professional competence of a clinical laboratory science practitioner.

(2) Continuing education may be obtained in any of the following settings, and subject to any listed conditions:

(a) Any continuing education instruction offered by the American society of clinical pathologists (ASCP), national certifying agency (NCA), American medical technologists (AMT), American society of clinical laboratory science (ASCLS), national laboratory training network (NLTN), laboratory education for North Dakota (LEND), Colorado association for continuing medical laboratory education (CACMLE), American association of blood banks (AABB), American association of clinical chemists (AACC), or the American society for microbiologists (ASM).

(b) College course work, approved by the board, which is germane to the profession and contributes directly to the professional competence of a clinical laboratory science practitioner, provided that the course is clinical laboratory oriented, and subject to the following limitations:

(i) the licensee must pass the course;

(ii) one semester credit shall equal 15 hours of continuing education;

(iii) one quarter credit shall equal 10 hours of

continuing education.

(c) Continuing education not sponsored by organizations listed in subsection (2)(a) shall be submitted to the Montana board of clinical laboratory science practitioners for its consideration for approval.

(d) Video or audio instruction, approved by one of the above agencies, will be accepted for not more than seven hours of such instruction out of the 14 hours required.

(3) Continuing education credits can be earned by teaching courses that are germane to the profession. Credit units may be applied in this category based on a report by the licensee. For a one-hour presentation, the presenter will be awarded two hours of continuing education. The following limitations shall apply to requests for credit under this section:

(a) Documentation must be submitted showing the licensee as the instructor of the course,

(b) The course must be addressed to health professionals in order to qualify for credit,

(c) Instruction of any course may be submitted for continuing education only once, and

(d) Individuals employed by universities and colleges may not claim credit units in this section for conducting courses that are a part of the regular course offering of those institutions, even if those courses are offered in the evening or summer."

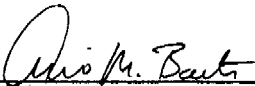
Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-201, MCA

REASON: The rule on continuing education is necessary to effectuate the purpose of section 37-34-201(g), MCA, in which the legislature mandated that the Board adopt rules requiring at least 14 hours of continuing education per year. The rule is necessary to give the licensees guidance on which types of courses will qualify for the continuing education hours required for continued licensure.

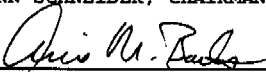
3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Clinical Laboratory Science Practitioners, Lower Level, Arcade Building, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 28, 1994.

4. Lance L. Melton, attorney, has been designated to preside over and conduct the hearing.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
JOANN SCHNEIDER, CHAIRMAN


ANNIE M. BARTOS
RULE REVIEWER

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 21, 1994.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of rules pertaining)	AMENDMENT TO 8.28.502
to licensure and unprofessional)	REQUIREMENTS FOR LICENSURE
conduct)	AND 8.28.508 UNPROFESSIONAL
)	CONDUCT AND THE ADOPTION OF
)	NEW RULES PERTAINING TO
)	DEFINITIONS WITH REGARD TO
)	THE PRACTICE OF ACUPUNCTURE
	NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons:

1. On April 30, 1994, the Board of Medical Examiners proposes to amend and adopt the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.23.502 REQUIREMENTS FOR LICENSURE (1) will remain the same.

(2) Applicants for licensure must pass all three components of the examination in clean needle technique administered by the national commission for the certification of acupuncturists, or its successor."

Auth: Sec. 37-1-134, 37-13-201, MCA; IMP Sec. 37-13-201, MCA

REASON: To prevent spread of infectious diseases, it is in the best interest of the public health, welfare and safety to require evidence that acupuncturists to be licensed in Montana are knowledgeable about national standards for clean needle technique.

"8.28.508 UNPROFESSIONAL CONDUCT (1) through (3) will remain the same.

(4) Failure to utilize clean needle technique, as articulated by the national commission for the certification of acupuncturists, or its successor."

Auth: Sec. 37-1-131, 37-13-201, MCA; IMP Sec. 37-13-201, 37-13-311, 37-13-312, MCA

REASON: It is in the best interest of the public health, welfare and safety to require acupuncturists licensed in Montana to utilize clean needle technique at all times, so as to prevent the spread of infectious diseases. The practice of clean needle technique should be enforceable at the risk of license discipline.

3. The proposed new rule will read as follows:

"I. DEFINITIONS (1) The term "gross malpractice" as used in 37-3-311, MCA, includes, but is not limited to, the following:

(a) failure to utilize clean needle technique, as articulated by the national commission for the certification of acupuncturists, or its successor."

Auth: Sec. 37-1-131, 37-13-201, MCA; IMP, Sec. 37-13-201, 37-3-311, 37-13-312, MCA

REASON: It is in the best interest of the public health, welfare and safety to require acupuncturists licensed in Montana to utilize clean needle technique at all times, so as to prevent the spread of infectious diseases. The practice of clean needle technique should be enforceable at the risk of license discipline.

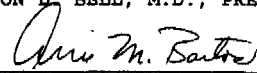
4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption, in writing, to the Board of Medical Examiners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 28, 1994.

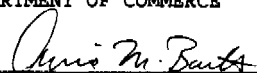
5. If a person who is directly affected by the proposed amendments and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the request along with any comments he or she has to the Board of Medical Examiners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 28, 1994.

6. If the Board receives requests for a public hearing on the proposed amendments and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7, based on the 71 licensees in Montana.

BOARD OF MEDICAL EXAMINERS
GORDON L. BELL, M.D., PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 21, 1994.

BEFORE THE BOARD OF NURSING
AND THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF RULES PERTAINING TO
to prescriptive authority) PRESCRIPTIVE AUTHORITY

NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On April 30, 1994, the Boards of Nursing and Medical Examiners propose to amend rules pertaining to prescriptive authority.

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

"8.32.1501 PRESCRIPTIVE AUTHORITY FOR NURSE SPECIALISTS ADVANCED PRACTICE REGISTERED NURSES (1) This subchapter will be known and may be cited as the nurse-specialist advanced practice registered nurse prescriptive authority rules.

(2) An nurse-specialist advanced practice registered nurse granted prescriptive authority by the board of nursing may prescribe and dispense drugs pursuant to applicable state and federal laws.

(3) Prescriptive authority permits the nurse-specialist advanced practice registered nurse to prescribe, dispense and administer prescription drugs in the prevention of illness, the restoration of health and/or the maintenance of health in accordance with section 37-2-104, MCA.

(4)(a) The board of nursing will provide the boards of pharmacy and medical examiners with an annual list of nurse specialists advanced practice registered nurses with prescribing authority and their titles.

(b) The board of nursing will promptly forward to the boards of pharmacy and medical examiners the names and titles of nurse-specialists advanced practice registered nurses added to or deleted from the annual list.

(c) The boards of pharmacy and medical examiners will be notified in a timely manner when the prescriptive authority of an nurse-specialist advanced practice registered nurse is terminated, suspended or reinstated."

Auth: Sec. 37-8-202, MCA: IMP, Sec. 37-8-202, MCA

"8.32.1502 DEFINITIONS The following definitions apply in and for this subchapter:

(1) will remain the same.

(2) "Advanced practice registered nurse" is a registered nurse recognized by the board to practice as an advanced practice registered nurse pursuant to 37-8-202(5)(a), MCA, and ARM 8.32.305.

~~(2)~~ (3) "Certifying body" is a national certifying organization which examines and validates credentials of nurse specialists advanced practice registered nurses and which has been approved by the board of nursing as a certifying agency for nurse specialist advanced practice registered nurse recognition. A list of certifying agencies approved by the board of nursing is available from the board office.

(3) and (4) will remain the same, but will be renumbered (4) and (5).

~~(5) "Nurse Specialist" is a registered nurse recognized by the board to practice as a nurse specialist pursuant to 37-8-202(5)(a), MCA, and ARM 8.32.305.~~

(6) will remain the same.

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1504 INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY (1) The nurse specialist advanced practice registered nurse will submit a completed application provided by the board of nursing, and a non-refundable fee. The application will include:

(a) evidence of completion of a minimum of 15 contact hours of education in pharmacology and/or the clinical management of drug therapy which has been obtained within a three-year period immediately prior to the date the application is received at the board office. Six of the 15 contact hours must have been obtained within one year immediately prior to the date the application is received at the board office. One third of all contact hours must be face-to-face meetings or interaction.

(b) a copy of the original certification document from the nurse specialist's advanced practice registered nurse's certifying body.

(c) a brief description of the proposed practice, including proposed site.

~~(d) The application will include, in accordance with ARM 8.32.1507, a method of referral and documentation in client records, in accordance with ARM 8.32.1507.~~

~~(e) in accordance with ARM 8.32.1508, a method of quality assurance used to evaluate the nurse specialist advanced practice registered nurse, in accordance with ARM 8.32.1508.~~

(2) will remain the same.

(a) the applicant is not recognized as an nurse specialist advanced practice registered nurse.

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

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

8.32.1505 PRESCRIBING PRACTICES (1) and (2) will remain the same.

(a) name, title, address and phone number of the nurse specialist advanced practice registered nurse who is prescribing,

(b) through (3) will remain the same.

(4) (a) The nurse specialist advanced practice registered nurse with prescriptive authority who wishes to prescribe schedule II-V drugs will comply with federal drug enforcement

administration requirements prior to prescribing controlled substances.

(b) The nurse-specialist advanced practice registered nurse will immediately file any and all of his or her DEA registrations and numbers with the board of nursing.

(c) The board of nursing will maintain current records of all nurse-specialists advanced practice registered nurses with DEA registration and numbers.

(d) will remain the same.

(5) An nurse-specialist advanced practice registered nurse with prescriptive authority will not delegate the prescribing or dispensing of drugs to any other person.

(6) An nurse-specialist advanced practice registered nurse with prescriptive authority may administer local anesthetics.

(7) An nurse-specialist advanced practice registered nurse with prescriptive authority who also possesses inpatient care privileges will practice pursuant to a written agreement between the agency and the nurse-specialist advanced practice registered nurse which is consistent with the rules, regulations and guidelines set forth in 37-8-202(5) and 37-2-104, MCA, and ARM 8.32.301 through 8.32.303, and this subchapter. The nurse-specialist advanced practice registered nurse will file the written agreement and revision thereof with the board of nursing.

(8) An nurse-specialist advanced practice registered nurse with prescribing authority from the board of nursing will comply with the requirements of 37-2-104, MCA."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1506 SPECIAL LIMITATIONS RELATED TO THE PRESCRIBING OF CONTROLLED SUBSTANCES (1) An nurse-specialist advanced practice registered nurse will not prescribe controlled substances for self or for members of the nurse specialist's advanced practice registered nurse's immediate family.

(2) An nurse-specialist advanced practice registered nurse will not provide controlled substances or prescription drugs for other than therapeutic purposes.

(3) will remain the same.

(4) An nurse-specialist advanced practice registered nurse will, within 30 days of the initial prescription, record in the client record his or her evaluation of the effectiveness of controlled substances prescribed. If unable to evaluate effectiveness, the advanced practice registered nurse shall document a reason for such inability.

(5) An nurse-specialist advanced practice registered nurse will not prescribe refills of controlled substances unless the refill prescription is in writing."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1507 METHOD OF REFERRAL (1) An nurse-specialist advanced practice registered nurse with prescriptive authority will have a referral process to licensed physicians and a method for documentation of referral in the client records.

Said referral method must be approved by the board of nursing prior to issuance of prescriptive authority.

(2) An nurse-specialist advanced practice registered nurse will immediately file with the board of nursing any proposed change in the method for referral or client record documentation. Any change will be subject to approval by the board of nursing."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1508 QUALITY ASSURANCE OF NURSE-SPECIALIST ADVANCED PRACTICE REGISTERED NURSE PRACTICE (1) An nurse specialist advanced practice registered nurse with prescriptive authority will submit a method of quality assurance for evaluation of the nurse-specialist's advanced practice registered nurse's practice. The quality assurance method must be approved by the board of nursing prior to issuance of prescriptive authority.

(2) will remain the same.

(a) 10 charts or 10% of all charts handled by the advanced practice nurse, whichever is greater, must be reviewed monthly by a peer or physician.

(b) use of standards which apply to the nurse specialist's advanced practice registered nurse's area of practice,

(b) through (e) will remain the same, but will be renumbered (c) through (f).

(3) An nurse specialist advanced practice registered nurse will immediately file with the board of nursing any proposed change in the quality assurance method. Any change will be subject to prior approval by the board of nursing."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1509 TERMINATION OF PRESCRIPTIVE AUTHORITY

(1) The board of nursing may impose discipline up to and including termination of an nurse-specialist advanced practice registered nurse's prescriptive authority when one or more of the following criteria apply:

(a) the nurse-specialist advanced practice registered nurse has not met the requirements for renewal of prescriptive authority in accordance with this chapter;

(b) the nurse-specialist advanced practice registered nurse has not met requirements necessary to maintain nurse specialist advanced practice registered nurse recognition;

(c) the nurse-specialist advanced practice registered nurse has not complied with the requirements for referral or quality assurance methods;

(d) The nurse-specialist advanced practice registered nurse has prescribed outside the nurse-specialist's advanced practice registered nurse's scope of practice, has prescribed for other than therapeutic purposes, or has otherwise violated the provisions of the prescriptive authority rules contained in this subchapter.

(2) An nurse-specialist advanced practice registered nurse whose prescriptive authority has terminated will not prescribe until the nurse-specialist advanced practice registered nurse has received written notice from the board of

nursing that his or her prescriptive authority has been reinstated by the board.

(3) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1510 RENEWAL OF PRESCRIPTIVE AUTHORITY (1) The nurse-specialist's advanced practice registered nurse's prescriptive authority will expire on December 31st of even numbered years.

(2) To renew prescriptive authority, the nurse specialist advanced practice registered nurse will submit to the board of nursing:

(a) through (b) (ii) will remain the same.

(c) A minimum of six contact hours of continuing education in pharmacology or pharmacology management is required during the two year period immediately preceding the effective date of the prescriptive authority renewal. The continuing education will be by a professional accrediting organization approved by the board of nursing and a minimum of two hours will be face-to-face interaction.

(3) If an nurse-specialist advanced practice registered nurse fails to renew prescriptive authority prior to the expiration date of that authority, the nurse-specialist's the advanced practice registered nurse's prescriptive authority will be automatically suspended until renewal is completed and the nurse-specialist will expire. The advanced practice registered nurse may not prescribe until renewal is completed and the advanced practice registered nurse has received written notice that the prescriptive authority has been reinstated.

~~(a) The nurse-specialist whose prescriptive authority is suspended will not prescribe until the nurse-specialist has received written notice from the board of nursing that his or her prescriptive authority has been reinstated by the board of nursing.~~

~~(b) (a) The board of nursing will promptly notify the board of pharmacy of any suspension expiration or other termination of prescriptive authority."~~

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

REASON: These rule amendments are necessary in order to comply with changes in terminology enacted by Senate Bill 121 of the 1993 general legislative session. The changes in continuing education are necessary to give guidance to licensees as to how many credits can be gained in a setting where there is no face-to-face interaction. The changes regarding expiration of prescriptive authority are necessary to remove expiration of such authority from a formal disciplinary process that was required under the existing rule.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to either the Board of Nursing or Board of Medical Examiners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box


200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 28, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to either the Board of Nursing or Board of Medical Examiners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 28, 1994.

5. If the Boards receive requests for a public hearing on the proposed amendments from either 10 percent 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 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 10 based on the approximately 100 licensees in Montana.

BOARD OF NURSING
BOARD OF MEDICAL EXAMINERS

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 21, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMENDMENT
of Rule 11.7.901 pertaining to)	OF RULE 11.7.901 PERTAINING
adoption and incorporation of)	TO ADOPTION AND
the regulations of the)	INCORPORATION OF THE
association of administrators)	REGULATIONS OF THE
of the interstate compact on)	ASSOCIATION OF
the placement of children.)	ADMINISTRATORS OF THE
)	INTERSTATE COMPACT ON THE
)	PLACEMENT OF CHILDREN

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 30, 1994, the Department of Family Services proposes to amend Rule 11.7.901 pertaining to adoption and incorporation of the regulations of the association of administrators of the interstate compact on the placement of children.

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

11.7.901 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

(1) The department of family services hereby adopts and incorporates by reference the regulations adopted by the association of administrators of the interstate compact on the placement of children as amended through ~~September 1, May 8, 1986~~²¹. These regulations interpret the interstate compact on the placement of children and include clarifications of the applicability of the interstate compact on the placement of children with regard to the following: interstate relocation by foster parents; programs in which children are placed in family homes as an incident to their attendance at schools in other states; interstate placement of a child into the home of his parent, relative or non-agency guardian; interstate placements of children in educational institutions, hospitals and institutions for the mentally ill or mentally defective; and the requirement of a central state office for all compact referrals. A copy of the regulations adopted by the association of administrators of the interstate compact on the placement of children as amended through ~~September 1, May 8, 1986~~²¹, can be obtained from the Department of Family Services, ~~444 Sanders~~ ^{48 North Last Chance Gulch}, P.O. Box 8005, Helena, Montana 59604.

AUTH: Sec. 52-2-111, MCA. IMP: Sec. 41-4-101, Art. VII, MCA.

3. The material adopted and incorporated has been amended most recently as of May 8, 1991. The department intends that the

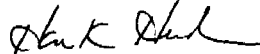
new material added to the regulations be adopted and incorporated, and therefore, as required by § 2-4-307, MCA, the date in the rule must be changed.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than April 28, 1994.

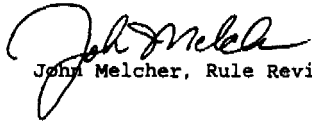
5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than April 28, 1994.

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

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, March 8, 1994.

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING
rules 16.28.202, 203, 305-307,)	FOR PROPOSED AMENDMENT
606B & 606C, 638B, and the adoption))	OF RULES AND ADOPTION
of new rules I & II dealing with)	OF NEW RULES I & II
reportable diseases.)	

(Communicable Disease)

To: All Interested Persons

1. On April 20, 1994, at 9:00 a.m., the department will hold a public hearing in Room C209, side 1, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

2. The rules, as proposed to be amended and adopted, appear as follows (new material in existing rules is underlined; material to be deleted is interlined):

16.28.202. REPORTABLE DISEASES (1) The following communicable diseases are reportable:

(a) Acquired immune deficiency syndrome (AIDS), as defined by the centers for disease control, or potential AIDS, as indicated by the presence of the human immunodeficiency virus antibody

(b) Amebiasis

(c) Anthrax

(d) Botulism (including infant botulism)

(e) Brucellosis

(f) Campylobacter enteritis

(g) Chancroid

(h) Chickenpox

(i) Chlamydial genital infection

(j) Cholera

(k) Colorado tick fever

(l) Conjunctivitis epidemic

(m) Cytomegaloviral illness

(n) Diarrheal disease outbreak

(o) Diphtheria

(p) Encephalitis

(q) Escherichia coli 0157:H7 enteritis

(r) Gastroenteritis epidemic

(s) Giardiasis

(t) Gonococcal infection

(u) Gonococcal ophthalmia neonatorum

(v) Granuloma inguinale

(w) Haemophilus influenzae B invasive disease (meningitis, epiglottitis, pneumonia, and septicemia)

(x) Hansen's disease (leprosy)

- (v) Hantavirus pulmonary syndrome
 - (z) Hepatitis A, B, non-A non-B, or unspecified
 - (aa) Kawasaki disease
 - (ab) Influenza
 - (ac) Legionellosis
 - (ad) Listeriosis
 - (ae) Lyme disease
 - (af) Lymphogranuloma venereum
 - (ag) Malaria
 - (ah) Measles (rubeola)
 - (ai) Meningitis, bacterial or viral
 - (aj) Mumps
 - (ak) Ornithosis (psittacosis)
 - (al) Pertussis (whooping cough)
 - (am) Plague
 - (an) Poliomyelitis, paralytic or non-paralytic
 - (ao) Q-fever
 - (ap) Rabies or rabies exposure (human)
 - (aq) Reye's syndrome
 - (ar) Rocky Mountain spotted fever
 - (as) Rubella (including congenital)
 - (at) Salmonellosis
 - (au) Shigellosis
 - (av) Smallpox (including vaccinia)
 - (aw) Staphylococcal epidemic
 - (ax) Streptococcal epidemic
 - (ay) Swimmer's itch (cutaneous larva migrans)
 - (az) Syphilis
 - (ba) Tetanus
 - (bb) Trichinosis
 - (bc) Tuberculosis
 - (bd) Tularemia
 - (be) Typhoid fever
 - (bf) Typhus
 - (bg) Yellow fever
 - (bh) Yersiniosis
 - (bi) Illness occurring in a traveler from a foreign country
 - (bj) An unusual outbreak of any communicable disease in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14 15th Edition, 198590.
- (2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14 15th edition, 198590, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.
- AUTH: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA
IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

16.28.203 REPORTS AND REPORT DEADLINES (1) A county, city-county, or district health officer or his/her authorized representative must immediately report to the department by telephone the information cited in ARM 16.28.204(1) whenever a case

of one of the following diseases is suspected or confirmed:

- (a) Anthrax
- (b) Botulism (including infant botulism)
- (c) Diphtheria
- (d) Measles (rubeola)
- (e) Plague
- (f) Rabies or rabies exposure (human)
- (g) Smallpox (including vaccinia)
- (h) Typhoid fever

(2) A county, city-county, or district health officer or his/her authorized representative must mail to the department the information required by ARM 16.28.204(1) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) On the same day information about a case of one of the following diseases is received by the county, city-county, or district health officer:

- (i) Chancroid
- (ii) Cholera
- (iii) Diarrheal disease outbreak
- (iv) Escherichia coli O157:H7 enteritis
- (v) Gastroenteritis epidemic
- (vi) Gonococcal infection
- (vii) Gonococcal ophthalmia neonatorum
- (viii) Granuloma inguinale
- (ix) Haemophilus influenzae B invasive disease (meningitis, epiglottitis, pneumonia, and septicemia)
- (x) Hantavirus pulmonary syndrome
- (xi) Listeriosis
- (xii) Lymphogranuloma venereum
- (xiii) Meningitis, bacterial or viral
- (xiv) Pertussis (whooping cough)
- (xv) Poliomyelitis, paralytic or non-paralytic
- (xvi) Rubella (including congenital)
- (xvii) Syphilis
- (xviii) Tetanus
- (xix) Typhus
- (xx) Yellow fever
- (xxi) Illness occurring in a traveler from a foreign country

(xxii) An unusual outbreak of any communicable disease in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14 15th Edition, 198590.

(b) Within 7 calendar days after the date information about a case of one of the following diseases is received by the county, city-county, or district health officer:

- (i) Acquired immune deficiency syndrome (AIDS)
- (ii) Amebiasis
- (iii) Brucellosis
- (iv) Campylobacter enteritis
- (v) Chlamydial genital infection
- (vi) Cytomegaloviral illness
- (vii) Encephalitis
- (viii) Giardiasis

- (ix) Hansen's disease (leprosy)
- (x) Hepatitis, A, B, non-A non-B, or unspecified
- (xi) Kawasaki disease
- (xii) Legionellosis
- (xiii) Lyme disease
- (xiv) Malaria
- (xv) Mumps
- (xvi) Ornithosis (Psittacosis)
- (xvii) Q-fever
- (xviii) Reye's syndrome
- (xix) Rocky Mountain spotted fever
- (xx) Salmonellosis
- (xxi) Shigellosis
- (xxii) Trichinosis
- (xxiii) Tuberculosis
- (xxiv) Tularemia
- (xxv) Versiniosis

(3) By Friday of each week during which a suspected or confirmed case of one of the diseases listed below is reported to the county, city-county, or district health officer, that officer or his/her authorized representative must mail to the department the total number of the cases of each such disease reported that week:

- (a) Chickenpox
- (b) Colorado tick fever
- (c) Conjunctivitis epidemic
- (d) Influenza
- (e) Staphylococcal epidemic
- (f) Streptococcal epidemic
- (g) Swimmer's itch (cutaneous larva migrans)
- (4)-(6) Remains the same.

(7) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14 15th edition, 198590, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

16.28.305 CONFIRMATION OF DISEASE (1)(a) Subject to the limitation in (b) below, if a local health officer receives information about a case of any of the following diseases, s/he or his/her authorized representative must ensure that a specimen from the case is submitted to the department, which specimen will be analyzed to confirm the existence or absence of the disease in question:

- (i) Amebiasis
- (ii) Anthrax
- (iii) Botulism (including infant botulism)
- (iv) Brucellosis
- (v) Chancroid
- (vi) Cholera

- (vii) Diarrheal disease epidemic
 - (viii) Diphtheria
 - (ix) Encephalitis
 - (x) Escherichia coli 0157:H7 enteritis
 - (xi) Gonococcal infection in a person less than 14 years of age
 - (xii) Granuloma inguinale
 - (xiii) Hansen's disease (leprosy)
 - (xiv) Hantavirus pulmonary syndrome
 - (xv) Influenza
 - (xvi) Lymphogranuloma venereum
 - (xvii) Measles (rubeola)
 - (xviii) Ornithosis (Psittacosis)
 - (xix) Pertussis (whooping cough)
 - (xx) Plague
 - (xxi) Polio, paralytic or non-paralytic
 - (xxii) Rabies (human)
 - (xxiii) Rubella (including congenital)
 - (xxiv) Shigellosis
 - (xxv) Smallpox (including vaccinia)
 - (xxvi) Syphilis
 - (xxvii) Tetanus
 - (xxviii) Trichinosis
 - (xxix) Tuberculosis
 - (xxx) Tularemia
 - (xxxi) Typhoid fever
 - (xxxii) Typhus
 - (xxxiii) Illness occurring in a traveler from a foreign country
 - (b) Remains the same.
 - (2)-(4) Remain the same.
- AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

16.28.306 INVESTIGATION OF A CASE (1) Immediately after being notified of a case or an epidemic of a reportable disease, a local health officer must:

- (a) Remains the same.
- (b) if s/he finds that the nature of the disease and the circumstances of the case or epidemic warrant such action:
 - (i)-(ii) Remain the same.
 - (iii) take appropriate steps, as outlined in the APHA publication "Control of Communicable Diseases in Man, an Official Report of the American Public Health Association", 14 15th edition, 198590, to prevent or control the spread of disease; and
 - (iv) Remains the same.
 - (c) Remains the same.
- (2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, an Official Report of the American Public Health Association", 14 15th edition, 198590, which specifies control measures for communicable diseases. A copy of the report may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: 50-1-202, 50-2-118, 50-17-103, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-17-103, 50-17-105, 50-18-102,
50-18-107, 50-18-108, MCA

16.28.307 POTENTIAL EPIDEMICS (1) Whenever a disease listed in ARM 16.28.203(1) is confirmed or whenever any other communicable disease listed in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14 15th Edition, 198590, or other communicable disease which constitutes a threat to the health of the public becomes so prevalent as to endanger an area outside of the jurisdiction where it first occurred, the local health officer of the jurisdictional area in which the disease occurs must notify the department and cooperate with the department's epidemiologist or his/her representative to control the spread of the disease in question.

(2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14 15th edition, 198590, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: 50-1-202, MCA

IMP: 50-1-202, 50-2-118, MCA

16.28.606B CONJUNCTIVITIS EPIDEMIC (1) Drainage and secretion precautions must be imposed until laboratory tests indicate what organism is responsible for the infection, after which those control measures must be taken which are specified for the organism involved in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14 15th Edition, 198590.

(2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14 15th edition, 198590, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

16.28.606C DIARRHEAL DISEASE OUTBREAK (1) Remains the same.

(2) Enteric precautions must be imposed until laboratory tests determine the etiologic agent involved, after which control measures must be imposed which are appropriate for that agent and set out in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14 15th Edition, 198590.

(3) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14 15th edi-

tion, 198590, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

16.28.638B ILLNESS IN TRAVELER FROM FOREIGN COUNTRY

(1) Isolation and quarantine must be imposed until the etiologic agent of the disease is determined, at which point control measures must be imposed which are prescribed for that etiologic agent in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14 15th edition, 198590.

(2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14 15th edition, 198590, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

RULE I ESCHERICHIA COLI 0157:H7 ENTERITIS (1) Enteric precautions must be observed.

(2) The local health officer may not allow an infected person to engage in a sensitive occupation as described in ARM 16.28.301 until stool specimens are culture-negative for escherichia coli 0157:H7 enteritis.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

RULE II HANTAVIRUS PULMONARY SYNDROME (1) The local health officer must conduct studies to determine the source of the infection.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

3. The department is proposing these amendments to the rules and adoption of new rules in order to keep disease control rules in Montana up to national standards by adding newly emergent microbial threats to human health to the designated list of diseases that must be reported and establishing the necessary parallel reporting requirements and control measures for those diseases.

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 Todd Damrow, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received by the department no later than April 29, 1994.

5. Cynthia Brooks has been designated to preside over and

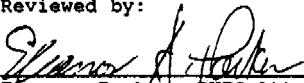
conduct the hearing.



ROBERT J. ROBINSON, Director

Certified to the Secretary of State March 21, 1994.

Reviewed by:



Eleanor Parker, DHES Attorney

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

In the matter of the amendment of	)	NOTICE OF PUBLIC
rule 16.32.373, and the adoption	)	HEARING FOR PROPOSED
of new rules I and II setting	)	AMENDMENT OF RULES AND
standards for licensure of	)	ADOPTION OF NEW RULES
hospices.	)	I AND II

(Hospice Licensure)

To: All Interested Persons

1. On April 20, 1994, at 10:00 a.m., the department will hold a public hearing in Room C209, Side 1, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

2. The rules, as proposed to be amended and adopted, appear as follows (new material is underlined; material to be deleted is interlined):

16.32.373 MINIMUM STANDARDS FOR A HOSPICE PROGRAM--GENER-

AL (1) The following definitions apply in this rule and [Rules I and II]:

(a) "Bereavement" means that period of time during which survivors mourn a death and experience grief.

(b) "Bereavement services" means support services to be offered during the bereavement period.

(c) "Contract services" means persons or organizations who, under written agreement, provide goods and services to the hospice and its patients and their families.

(d) "Core services" means physician services, nursing services, pastoral counseling, services provided by trained volunteers, and counseling services routinely provided by a hospice, either directly by hospice staff or through other arrangements.

(e) "Family" means individuals who are closely linked with the hospice patient, including the immediate family, the primary care giver, and individuals with significant personal ties.

(~~a~~)(f) "Hospice" or "Hospice hospice program" means a public agency or private organization (or a subdivision thereof) as defined in 50-5-101(22), MCA, which is primarily engaged in providing hospice care, ~~provides such hospice care on a 24-hour on-call basis, and also provides bereavement counseling for the immediate family of terminally ill individuals.~~

(~~b~~)(g) "Hospice care" means home-based, residential hospice, and inpatient hospice, and hospital or long term health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and ~~his~~ the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced

during the final stages of illness and dying, and that includes a formal bereavement component.

(h) "Hospice staff" means paid or unpaid persons, including volunteers, who are directly supervised by the hospice program.

(i) "Interdisciplinary team" means a group of qualified individuals, consisting of at least a physician, registered nurse, member of the clergy as appropriate, a counselor as appropriate, volunteer director and/or trained volunteers, and appropriate hospice program staff who are qualified by education, training, licensure or experience to meet the special needs of hospice patients and their families.

(j) "Managed directly by" means that core hospice services are provided or coordinated by a hospice program.

(2) Remains the same.

(3) ~~Licensed~~ A hospice program ~~shall~~ must have the following organizational components:

(a)-(b) Remains the same.

(c) A statement of patient/ family rights ~~and the rights of a patient's family;~~

(d) Remains the same.

~~(e) Formal, ongoing long range planning;~~

~~(f)(e) Development of annual budgets;~~

~~(g)(f) Annual evaluation of each aspect of the hospice program, including the program's quality assurance assessment and improvement measures and a system to implement recommendations for future program planning.~~

(4) ~~Licensed~~ A hospice program ~~shall~~ must have an interdisciplinary care team responsible for the provision of hospice care. The ~~care interdisciplinary team shall~~ must:

~~(a) include persons with skills in the areas of medical care (M.D.), nursing care, psychological care and spiritual care;~~

~~(b) consist of members who are qualified by education, training, licensure or experience to provide optimal care to hospice patients and families;~~

~~(c)(a) Confer or meet regularly;~~

~~(d)(b) Assign overall responsibility~~ Have responsibility for implementation of the ~~each~~ individual plan of care ~~to as directed by~~ an identified coordinator;

~~(e)(c) Allow for inclusion within the care team of the patient/ and the patient's family and other personnel resources within the community, as appropriate.~~

(5) ~~Licensed~~ A hospice program ~~shall~~ must assure that each patient has a physician who is the patient's primary physician. ~~The primary physician shall:~~

~~(a) and assist in the development of the patient's care plan; and~~

~~(b) approve and sign the plan.~~

(6) ~~Licensed~~ A hospice program ~~shall~~ must maintain a medical record for every individual accepted as a hospice patient. The medical record ~~shall~~ must include:

(a)-(b) Remain the same.

(c) patient's family plan of care;

(d) A record of all doctor's hospice orders, ~~verified at~~

~~appropriate intervals;~~

(e)-(f) Remain the same.

(7) ~~Licensed A hospice programs which utilizes volunteers shall must provide volunteer training which shall includes:~~

(a)-(c) Remain the same.

(8) ~~Licensed A hospice programs shall must allow the patient/ and the patient's family to make the decision to participate in a hospice program and shall encourage the patient/ and the patient's family to assume as much responsibility for care as they choose.~~

(9) ~~Licensed A hospice programs shall must assure that all services identified in the hospice plan of care for a patient, including skilled nursing services, are provided to the patient either directly or by contract or are arranged through referral as necessitated by the patient/family needs.~~

(10) ~~Licensed A hospice programs shall must:~~

(a) have a plan for providing bereavement follow-up for families desiring it;

(b) ensure the quality of contract services;

(c) ensure that emergency care is available on a 24-hour basis;

(d) hire, train, and supervise hospice staff and ensure that hospice staff adhere to hospice policies; and

(e) establish, update, and implement infection control policies and procedures that are sufficient to prevent transmission of disease.

AUTH: 50-5-103, 50-5-210, 50-5-221, MCA; IMP: 50-5-103, 50-5-204, 50-5-210, 50-5-211, 50-5-221, MCA

RULE 1 MINIMUM STANDARDS FOR AN INPATIENT HOSPICE

FACILITY (1) In addition to complying with the standards contained in ARM 16.32.373, an inpatient hospice facility must comply with the requirements of the conditions of participation for hospices providing inpatient care directly, as set forth in 42 CFR Part 418, subparts C-E. Those conditions of participation include, but are not limited to, requirements concerning the following:

(a) twenty-four hour nursing service;

(b) disaster preparedness;

(c) health and safety laws;

(d) fire protection;

(e) fire protection waivers;

(f) patient areas;

(g) patient rooms and toilet facilities;

(h) bathroom facilities;

(i) linen;

(j) isolation areas;

(k) meal service, menu planning, and supervision; and

(l) pharmaceutical hospice service.

(2) The department hereby adopts and incorporates by reference 42 CFR Part 418, Subparts C-E, which contain the conditions that a hospice must meet in order to participate in the Medicare program. A copy of the above conditions of participation may be obtained from the Licensure Bureau, Health

Facilities Division, Cogswell Building, Capitol Station,
Helena, MT 59620 [phone: 444-5226].
AUTH: 50-5-221, MCA; IMP: 50-5-221, MCA

RULE II MINIMUM STANDARDS FOR A RESIDENTIAL HOSPICE FACILITY (1) A residential hospice facility must meet all of the requirements contained in ARM 16.32.373, in addition to those contained in this rule.

(2) A residential hospice facility must be managed directly by a licensed hospice program.

(3) A residential hospice facility must be staffed with qualified personnel in numbers sufficient to provide required core services and those indicated in each patient's hospice plan of care, including:

- (a) nursing services;
- (b) therapies;
- (c) monitoring of the on-going medical needs of patients;
- (d) timely response to emergency situations;
- (e) volunteer services; and
- (f) recreational and social activities.

(4) A residential hospice must assure that individuals providing personal care to residential hospice patients have received, prior to delivering such care, documented training that includes the following elements, or the documented equivalent of such training:

- (a) hospice philosophy and orientation;
- (b) basic needs of the frail elderly and/or physically disabled persons;
- (c) first aid and handling emergencies;
- (d) basic techniques in observation of patient's mental and physical health;
- (e) basic personal care procedures, including grooming;
- (f) methods of making patients comfortable;
- (g) bowel and bladder care;
- (h) assisting patient mobility, including transfer (e.g. from bed to wheelchair);
- (i) techniques in lifting;
- (j) food, nutrition, diet planning, etc.;
- (k) basic techniques of identifying and correcting potential safety hazards in the home; and
- (l) health oriented record keeping, including time/employment records.

(5) A residential hospice facility must meet the life-safety requirements set forth in chapters 22 and 23, "Life Safety Code Handbook, National Fire Protection Association, 1991 Edition", for residential board and care occupancies.

- (6) In patient areas, a residential hospice must:
 - (a) provide areas that ensure private patient and patient family visiting;
 - (b) provide or arrange for accommodations for family members to remain with the patient overnight;
 - (c) provide accommodations for family privacy after a patient's death;
 - (d) ensure that hospice visiting hours are flexible and that children or pets are not excluded;

(e) provide a handicapped accessible telephone for patient use;

(f) be equipped with furnishings which are home-like in design and function and contribute to a safe environment;

(g) provide one or more areas for dining, recreation and/or social activities, and refrain from utilizing these areas for corridor traffic.

(7) In patient bedrooms, a residential hospice must:

(a) allow each patient to bring personal items to locate in the patient's bedroom so long as the health and safety of any patient, patient's family members, or hospice staff are not jeopardized;

(b) allow no more than 2 beds per patient room and ensure that each patient bedroom is located at or above ground level, has a window to the outside of the facility, and has a direct entry from the corridor;

(c) provide at least 100 square feet in 1-bed rooms and 80 square feet per bed in 2-bed rooms, exclusive of closets, lockers, wardrobes, alcoves, or vestibules;

(d) provide each bedroom with a comfortable, appropriately sized bed for each occupant, equipped with a mattress protected by waterproof material, mattress pad, and comfortable pillow, as well as a comfortable chair and other furniture as appropriate to the decor and patient needs;

(e) provide separate drawer and wardrobe or closet space for each occupant in a bedroom;

(f) provide clean, flame-resistant shades or the equivalent for every bedroom window;

(g) in each 2-bed room, provide either flame-resistant cubicle curtains for each bed or movable flame-resistant screens to provide privacy upon request of a resident;

(h) if the needs of a patient require a call system or communication device to be in place, make it available; otherwise, the hospice may, but is not required to, provide a patient bedroom with a call system or communication device that is connected to an area in the hospice that is consistently staffed.

(8) A residential hospice must provide the following bathroom and toilet facilities:

(a) a toilet and lavatory in each toilet room and at least one toilet for every 4 patients;

(b) at least one bathing facility for every 12 patients;

(c) grab bars at each toilet, shower, and tub, with a minimum of 1-1/2" clearance between the bar and the wall and strength and anchorage sufficient to sustain a concentrated 250-pound load;

(d) at least 1 bathroom and 1 toilet accessible to individuals with mobility impairments;

(e) if the needs of a patient require a call system or communication device to be in place in the patient's bathroom, make it available; otherwise, the hospice may, but is not required to, provide a patient bathroom with a call system or communication device that is connected to an area in the hospice that is consistently staffed.

(9) A residential hospice must do the following for

infection control:

(a) either be equipped to provide an isolation area for patients who have diseases with a high risk of transmission or have in place a method to ensure that such patients are transferred to a health care facility which is adequately equipped to admit such a patient;

(b) develop a procedure to monitor the infection control program on a regular basis;

(c) ensure that residents maintain an acceptable level of personal hygiene at all times.

(10) A residential hospice must meet the following meal service, menu planning, and supervision standards:

(a) Foods must be served in amounts and variety to meet the nutritional needs of each hospice patient.

(b) The hospice must provide a practical freedom-of-choice diet to patients and assure that patients' favorite foods are included in their diets whenever possible.

(c) The food service must establish and maintain standards relative to food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving and handling that are sufficient to prevent food spoilage and transmission of infectious disease.

(d) A staff member trained or experienced in food management must be appointed to:

(i) provide therapeutic diets as indicated on the plan of care for each patient; and

(ii) supervise meal preparation and service.

(e) If a hospice patient or patient's family wishes to provide meal services for an individual independent of the required food service of the hospice, either on a periodic or continuous basis, the hospice and patient, and patient's family when appropriate, must work out reasonable arrangements so that the hospice staff may plan accordingly.

(11) In order to provide pharmaceutical services to patients, a residential hospice must:

(a) Develop and maintain a system for the administration and provision of pharmaceutical services that are consistent with the drug therapy needs of the patient as determined by the hospice medical director and patient's primary physician.

(b) Ensure that medications ordered are consistent with the hospice philosophy which focuses on palliation, i.e., controlling pain and other symptoms which are manifested during the dying process and are consistent with professional practice and regulations of the Montana board of pharmacy.

(c) Ensure that all prescription medications are ordered in writing by someone licensed to write prescriptions under Montana state law, dispensed by a licensed pharmacy, received by the patient or the patient's family, and maintained in the hospice.

(d) Unless the pharmacy provides a unit dose system, ensure that all prescription drugs are labeled with a label that includes:

(i) name of pharmacy;

(ii) name of patient;

(iii) name of prescribing physician;

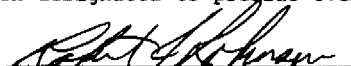
- (iv) date prescription filled;
 - (v) prescription number;
 - (vi) name of medication;
 - (vii) directions and dosage;
 - (viii) expiration date; and
 - (ix) quantity dispensed.
- (e) Document all medication administration in the patient's record.
- (f) Ensure that medications are administered only by one of the following individuals:
- (i) a licensed nurse, physician, or physician assistant;
 - (ii) the patient or patient's family if the physician allows them to do so and an order acknowledging that fact is noted in the hospice care plan;
 - (iii) anyone authorized to administer medications by 37-8-103, MCA.
- (g) Allow medications to be left at the bedside of a hospice patient when to do so is authorized by a physician, and, whenever such authorization exists, provide for the storage of such medications in a safe and sanitary manner.
- (h) Ensure that medications not stored at the bedside are maintained in locked storage in a central location in the hospice that is near or adjacent to an area for medication preparation and has appropriate refrigeration, a sink for handwashing, and locking cabinets.
- (i) Destroy medications when the label is mutilated or indistinct, the medication is beyond the expiration or shelf life date, or unused portions remain due to discontinuance of use or death or discharge of the patient.
- (j) Develop and follow a written procedure for destruction of legend drugs that requires, at a minimum, the following:
- (i) destruction of the drugs in the presence of a pharmacist and at least one other licensed health care professional; and
 - (ii) documentation of the destruction that includes the type of drug(s) destroyed and the amount destroyed.
- (12) The department hereby adopts and incorporates by reference chapters 22 and 23 of the "Life Safety Code Handbook, National Fire Protection Association, 1991 Edition", which establishes building construction requirements for residential board and care occupancies. Copies of the above standards may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Maryland, 02269.
- AUTH: 50-5-221, MCA; IMP: 50-5-221, MCA

3. The department is proposing these amendments of the existing hospice rule and adoption of two new rules in order to implement the mandate of House Bill 211, passed by the 1993 Legislature, to adopt rules setting licensure standards for residential and inpatient hospice facilities.

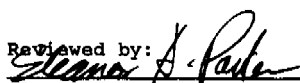
4. Interested persons may submit their data, views, or

arguments concerning the proposed amendment and adoption, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Roy Kemp, Chief, Licensure Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received by the department no later than April 28, 1994.

5. Ellie Parker has been designated to preside over and conduct the hearing.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State March 21, 1994.

Reviewed by: 
Eleanor Parker, DHES Attorney

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
rule 16.32.110 concerning	)	AMENDMENT OF
certificate of need required	)	ARM 16.32.110
findings and criteria.)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED
		(Health Planning)

To: All Interested Persons

1. On April 30, 1994, the department proposes to amend the above-captioned rule.

2. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

16.32.110 CRITERIA AND FINDINGS (1)-(2) Remain the same.

(3) The department hereby adopts and incorporates herein by reference the 198823 Montana State Health Plan, adopted by ~~the department in consultation with the Statewide Health Coordinating Council and the governor.~~ The Montana State Health Plan sets forth the state's policies, standards and criteria for review of certificate of need applications. A copy of the 198823 Montana State Health Plan may be obtained from the Health Planning Bureau Program, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTH: 50-5-304, MCA; IMP: 50-5-304, MCA

3. The rule amendments are necessary to incorporate the most recent version of the Montana State Health Plan, which became effective March 21, 1994, because 50-5-304, MCA, requires the department to make findings on each proposal applying for a certificate of need that include the degree to which the proposal being reviewed is consistent with the current state health plan.

4. Interested persons may submit their written data, views, or arguments concerning this amendment to Charles Aagenes, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and they must be received by the department no later than 5:00 p.m., April 28, 1994.

5. If a party who is directly affected by the proposed amendment wishes to submit their 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 has to Charles Aagenes, Depart-

ment of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than April 28, 1994.

6. If the department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendment, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 in excess of 25, based on the number of Montana citizens receiving medical care and affected by the cost and quality of health care which the certificate of need program attempts to control.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State March 21, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF STATE LANDS
AND BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment of)
A.R.M. 26.3.180, 26.3.182,)
26.3.186, 26.3.187, 26.3.189,)
26.3.192, and 26.3.193 and adop-)
tion of new Rules I and II pertain-)
ing to recreational use of state)
lands.)

NOTICE OF PUBLIC
HEARING

TO: All Interested Persons

1. On April 21, 25, 26, and 27, 1994, the Department of State Lands and Board of Land Commissioners will hold hearings to consider amendments of A.R.M. 26.3.180, 26.3.182, 26.3.186, 26.3.187, 26.3.189, 26.3.192, and 26.3.193 and adoption of new Rules I and II pertaining to recreational use of state lands. The hearings will be held at the following locations on the following dates and at the following times:

- Missoula at the Sentinal High School Auditorium, 901 South Ave. West, on April 21, 1994, at 7:00 p.m.
 - Great Falls at the Great Falls High School Auditorium, 1900 Second Ave. South, on April 25, 1994, at 7:00 p.m.
 - Jordan at the VFW Hall, Main Street on April 26, 1994, at 7:00 p.m.
 - Billings at the Lincoln School Auditorium, corner of 4th Avenue North and 29th Street, on April 27, 1994, at 7:00 p.m.
2. The rules as proposed to be amended read as follows:

26.3.180 OVERVIEW OF RECREATIONAL USE RULES (1) ARM 26.3.183 through ARM 26.3.198 regulate the recreational use of state lands administered by the department of state lands. These lands are commonly referred to as "trust lands" and appear in light blue on most land status maps.

(2) Recreational use is divided into three categories as follows:

(a) General recreational use - This use is generally defined as ~~licensed hunting, hunting related activities, fishing, hiking, and bird watching, any type of non-concentrated, non-commercial outdoor recreational activity except disturbance of archeological, historical, or paleontological sites (which is prohibited by the Montana Antiquities Act and subjects the violator to criminal penalties), wood gathering, tree cutting, and commercial rock or mineral collecting.~~ This is more specifically defined in ARM 26.3.182(11). It requires purchase of a recreational use license. Detailed procedures and restrictions are contained in ARM 26.3.183 through ARM 26.3.197.

(b) Special recreational use - This use is defined in ARM 26.3.182(21) and requires a special recreational use license. These kinds of uses include commercial or concentrated use as defined in 77-1-101(5), MCA. Detailed provisions are contained

in ARM 26.3.198.

~~(c)(3) Other recreational use. Types of recreational use not within the definitions of general recreational use or special recreational use, such as non-commercial berry picking, do not require a recreational use or special recreational use license from the department. On leased state land, however, permission must be secured in accordance with ARM 26.3.157. The purpose of [ARM 26.3.181 through 26.3.198 and Rules I and II] is to provide reasonable recreational use of legally accessible state lands within the bona fide management constraints of state land leases. These rules should be interpreted to accomplish this purpose.~~

AUTH: 77-1-804; IMP: 77-1-801 through 77-1-810

26.3.182. DEFINITIONS Wherever used in ARM 26.3.180 through ARM 26.3.198, unless a different meaning clearly appears from the context:

(1) "Affidavit" means a signed statement, the truth of which has been sworn to or affirmed before a notary public, as evidenced by the signature and seal of the notary public.

(2) "Board" means the board of land commissioners provided for in Article X, section 4 of the Montana Constitution.

(3) "Closure" means prohibition of all general recreational use.

(4) "Commissioner" means the commissioner of state lands, provided for in 2-15-3202, MCA. The commissioner is the chief administrative officer of the department of state lands.

(5) "Customary access point" means, with regard to state land, each outer gate and each normal point of access to the land, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(6) "Dedicated county road" means a county road that has been created by means of donation of a landowner and acceptance by a county under statutory or common law dedication procedures.

(7) "Dedicated public road" means a road useable by the public under state or federal law. The term includes dedicated county roads.

(8) "Department" means the department of state lands provided for in Title 2, Chapter 15, part 32, MCA.

(9) "Drop box" means a receptacle in which a person making general recreational use of state lands may leave notice required pursuant to ARM 26.3.192(3) and (4).

(10) "Emergency" means, for the purposes of ARM 26.3.188 and ARM 26.3.189, a situation that:

(a) creates an imminent threat to personal safety or of significant property damage or significant environmental harm;

(b) would be substantially lessened or alleviated by closure to general recreational access of a state tract; and

(c) requires closure more expeditiously than could be implemented through the normal closure procedure.

(11) "General recreational use" means ~~fishing, hunting for game for which a hunting license is required by the department of fish, wildlife and parks, hiking, and bird watching. It also includes accompanying a person who is hunting or fishing for the~~

purpose of assisting that person. Day horseback use in conjunction with hunting and fishing is included as general recreational use. General recreational use includes scouting for big game on leased land if conducted during the weekend and the day before the beginning of any hunting season during which the recreationist intends to hunt non-concentrated, non-commercial recreational activity, except:

(a) collection, disturbance, alteration, or removal of archeological, historical, or paleontological sites or specimens (e.g., fossils, dinosaur bones, arrowheads, old buildings, including siding) (which requires an antiquities permit pursuant to 22-3-432, MCA);

(b) mineral exploration, development or mining (which requires a lease or license pursuant to Title 77, Chapter 6, MCA);

(c) collection of valuable rocks or minerals (which requires a lease or license pursuant to Title 77, Chapter 6, MCA); and

(d) cutting or gathering of standing or downed trees (for which the department conducts sales pursuant to Title 77, Chapter 5, MCA, and issues licenses pursuant to ARM 26.3.160).

(12) "Growing crop" means a crop, as defined below, between the time of planting and harvest. "Crop" means such products of the soil as are planted and intended for harvest, including but not limited to cereals and vegetables and including grass and alfalfa that are intended for harvest for hay or seed production. The term does not include grass used for pasture or trees.

(13) "Lease" means a lease or land use license, other than a recreational use or special recreational use license, issued by the department for use of the surface of the land. The term does not include a mineral lease unless it is preceded by the word "mineral."

(14) "Lessee" means a person who holds a lease as that term is defined in (13).

(15) "Legally accessible state lands" means state lands that can be accessed by dedicated public road, public right-of-way, or public easement; by public waters such as lakes, rivers and streams that are recreationally navigable under 23-2-302, MCA; by adjacent federal, state, county or municipal land if the land is open to public use; or by adjacent private land if permission to cross the land has been secured from the landowner. Accessibility by aircraft does not render lands legally accessible under this definition. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

(16) "Livestock" means cattle, sheep, swine, goats, privately owned bison and elk, horses, llamas, mules, donkeys and other animals used for the protection of these animals.

(17) "Motorized vehicle" means a vehicle propelled by motor power, including, but not limited to, an automobile, truck, motorcycle, moped, and an all terrain vehicle but excluding a

snowmobile.

(18) "Recreational use account" means the account established by 77-1-808, MCA, in which revenues generated from general recreational use of state lands are deposited and from which expenses of the general recreational use program are paid.

(19) "Recreational use license" means the license issued pursuant to ARM 26.3.183 that authorizes a person to engage in general recreational use as defined in (11) above.

(20) "Recreational use advisory council" means the advisory council created pursuant to [Rule II].

(21) "Restriction" means a limitation on the manner in which recreational use may be conducted.

~~(21)~~ (22) "Special recreational use" means:

(a) commercial recreational activities, such as outfitting, in which a private person, corporation, group or other entity charges a fee or obtains other consideration;

(b) non-commercial recreational activities conducted by an organization, such as a lodge, business, church, union, or club; and

(c) campingovernight recreational use on leased or licensed lands by one or more persons at other than outside a designated campgrounds campground and more than 200 feet from a customary and legal access point or water body.

AUTH: 77-1-804

IMP: 77-1-101, 77-1-804

26.3.186 GENERAL RECREATIONAL USE OF STATE LANDS: RESTRICTIONS (1) The following restrictions apply to persons engaging in general recreational use of state lands:

(a)(i) Except as provided in (ii) and (iii), motorized vehicle use on state lands by recreationists is restricted to federal roads, state roads, dedicated county roads, other county roads that are regularly maintained by the county and those roads on state lands that are designated by the department as open for motor vehicle use.

(ii) A person who has in his or her possession a "permit to hunt from vehicle" issued by the department of fish, wildlife and parks is authorized to drive on any road except a road that is closed by the department by sign or barrier.

(iii) A recreationist may park on state land within 50 feet of a customary access point; on federal roads and highways, state highways, and county roads in accordance with applicable traffic laws and regulations; and within 50 feet of any other road designated by the department for public access across the state land. The recreationist may not park so as to block vehicle access to the tract. Parking of vehicles must be accomplished in a manner that does not produce injury to the land or the lessee's improvements.

(b) Snowmobile use on the roads referenced in (1)(a)(i) is allowed only if permitted by applicable traffic laws and regulations. Snowmobile use on leased land is restricted to those department roads that have been designated as open to motorized vehicle use. Snowmobile use on unleased land is allowed except in areas where it is prohibited by the department.

(c) A recreationist shall use firearms in a careful and prudent manner. A recreationist may not negligently, as defined in 45-2-101(37), MCA, discharge a firearm on state lands or discharge a firearm within one-quarter mile of an inhabited dwelling or of an outbuilding in close proximity to an inhabited dwelling without permission of an inhabitant. Temporary absences of inhabitants do not render a dwelling uninhabited. Pursuant to ARM 26.3.192(1), a recreationist must make a reasonable attempt to notify the lessee of leased or licensed land prior to shooting for any purpose other than licensed hunting.

(d) ~~Camping and open~~ Open fires on leased or licensed land are restricted to campgrounds designated by the department for public camping. ~~Camping on all state land is limited to 14 consecutive days. No fireworks may be discharged on state land.~~

(e) Overnight recreational use on leased or licensed land must take place within 200 feet of a legal and customary access point or water body that is navigable for recreational purposes under 23-2-302, MCA, and only after a reasonable attempt to notify the lessee of leased or licensed land prior to the use in compliance with ARM 26.3.192(1). The person may not drive or park a vehicle more than 50 feet from the access point. A recreationist may not make overnight recreational use on leased or licensed land more than two consecutive nights or in designated campgrounds or on unleased, unlicensed land more than 14 consecutive days.

(f) A recreationist may not keep horses on state land overnight. Under ARM 26.3.192(1), for horse use that is not conducted in conjunction with licensed hunting, the recreationist must make a reasonable attempt to notify the lessee of leased or licensed land prior to the use.

(g) A recreationist must keep dogs on a leash or otherwise in control. A recreationist may not allow the dog to harass livestock.

(h) Recreationists A recreationist may not interfere with legitimate activities of the lessees or their agents conducted pursuant to the lease. For example, the discharge of firearms that would interfere with the authorized use of a tract for livestock operations is prohibited.

(4)(i) For state lands included within a wildlife management or block management area administered by the department of fish, wildlife and parks, recreational ~~ecceuse~~ use and activities must be conducted in accordance with rules, regulations, and procedures specific to that management area.

(4)(j) Littering on state lands is prohibited. Recreationists shall pack out their litter.

(2) The department may, after notice to the lessee, impose additional site specific restrictions on general recreational use to protect public safety, property or the environment.

AUTH: 77-1-804

IMP: 77-1-804

26.3.187 GENERAL RECREATIONAL USE OF STATE LANDS: CATEGORICAL CLOSURES (1) Except as provided in (2), the fol-

lowing state lands are closed to general recreational use by the public:

- (a) all lands leased for cabinsites or homesites;
- (b) all lands on which growing crops, as defined in ARM 26.3.182(12), are located;
- (c) military leases while military activities are taking place;
- (d) active commercial leases; and
- (e) lands on which the department has ~~declared~~proclaimed the threat of wildfire to be extreme pursuant to ARM 26.2.219 or for which the governor has made such a proclamation pursuant to ARM 26.2.220.

(2)(a) Any person, corporation, organization or agency of local, state, or federal government may petition to exclude a specific tract from a categorical closure imposed pursuant to (1) above.

(b) The petition must be submitted in writing to the area or unit office, must be signed by the petitioner, and must contain the following information:

(i) name, mailing address, and telephone number of petitioner;

(ii) description of lands to which the petition applies by legal description, lease number, or description of the location;

(iii) the reason that the categorical closure should be terminated for that tract and supporting documentation; and

(iv) duration of period for which termination is sought.

(c) The department may summarily dismiss a petition with a brief statement of the reasons for dismissal whenever:

(i) the petition is unsupported by specific substantial factual allegations, data, or documentation; or

(ii) a petition requesting substantially the same exclusion has been denied within the preceding 365 days.

(d) To be considered during a particular calendar year, the petition must be submitted by April 1 of that year. Upon receipt of a valid petition, the department shall notify the lessee that a petition has been filed and he or she may submit an objection or have an informal hearing, or both, on the petition at the area or unit office on or before May 1. The petitioner may also request an informal hearing.

(e) If an informal hearing is requested, the department shall notify the petitioner and the lessee of the informal hearing and they may attend and participate. The informal hearing must be conducted by the area manager or his designee.

(f) The area manager or designee may conduct further investigation and shall, on or before July 1, make a written decision whether to grant the petition. The written decision must contain the reason for granting or denying the petition. Copies of the decision must be mailed to the petitioner and the lessee.

(g) The lessee or petitioner may appeal the decision to the commissioner or his designee by filing a written notice of appeal with the area office within 15 days of receipt of the decision. The area office shall immediately forward the appeal to the department's main office in Helena. The appeal shall, in

the discretion of the commissioner, proceed by written argument, oral argument, or both at the main office of the department in Helena or other location designated by the commissioner. The opposing party is entitled to notice of the appeal and the opportunity to respond, including the right to appear at any appellate hearing. Neither party may submit evidence or information that was not submitted at the informal hearing. The commissioner or his designee shall issue a written decision affirming, reversing or modifying the decision on or before September 1.

(3) Except for closure for fire danger pursuant to (1) (e), the lessee shall post categorically closed lands at all customary access points with signs ~~purchased from~~ provided by the department ~~at cost or meeting design and content specifications prescribed duplicated from signs provided~~ by the department.

AUTH: 77-1-804

IMP: 77-1-804

26.3.189 GENERAL RECREATIONAL USE OF STATE LANDS;
PROCEDURE FOR SITE SPECIFIC CLOSURES AFTER SEPTEMBER 1, 1992

(1) The department may close specific tracts of state land pursuant to this rule after September 1, 1992, for any of the following reasons:

(a) damage attributable to recreational use diminishes the income generating potential of the state lands;

(b) damage to surface improvements of lessee or mineral lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control;

(g) the presence of buildings, structures, or facilities;

(h) protection of public safety;

(i) prevention of significant environmental impact;

(j) disruption of calving, lambing, or shipping activities or substantial disruption of livestock use;

(k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land; or

(l) comparable public general recreational use has been made available pursuant to (13).

(2) Closures made pursuant to (1) may be of a seasonal, temporary or permanent nature.

(3)(a) Any person, corporation, organization or agency of local, state, or federal government may petition to close a specific tract of land for any reason listed in (1).

(b) The petition must be submitted to the area or unit office in which the state land is located and must be in writing. To be considered during a calendar year, the petition must be submitted by April 1 of that year, be signed by the petitioner, and must contain the following information:

(i) name, mailing address, and telephone number of peti-

tioner;

(ii) description of lands to which the petition applies by legal description, lease number, or other description of the location;

(iii) the reason that the land should be closed and supporting documentation; and

(iv) period for which closure is sought.

(c) The department may summarily dismiss a petition with a brief statement of the reason for the dismissal if:

(i) the petition is not based on a reason for closure listed in (1);

(ii) the petition is not supported by specific factual allegations, data, or documentation; or

(iii) a petition requesting essentially the same closure has been rejected in the past 365 days unless changed conditions are alleged and documented.

(d) The department may also initiate a closure proceeding by preparing on or before April 1, a written statement containing the information described in (b)(ii), (iii), and (iv). The department shall follow the procedures contained in (4) through (9) below.

(4) The department shall by May 1 post public notice of the petition or statement at the county courthouse and the area and unit offices and by making a list of all petitions and statements filed statewide available at the department's main office in Helena.

(5) The public notice must give the public an opportunity to object to the petition or statement and the objector and the petitioner an opportunity to request, on or before May 20, a public hearing on the closure. The objection must be submitted to the office in the area or unit in which the land is located. The objection must contain the reasons why the petition should not be granted and supporting documentation. The objection may not be considered if it does not. If a hearing is requested, the department shall hold the hearing in the area of the proposed closure.

(6) Notice of hearing must be sent to the petitioner and the lessee. In addition, public notice must be given on or before June 5 in the same manner as provided in (4). The notice must contain the name of the petitioner, location of the land, reason for proposed closure and reasons that the hearing has been requested.

(7) The hearing must be held in the area of the proposed closure and be an open public hearing at which any interested party may give comments and submit information. The hearing must be held before June 20.

(8) The department may conduct further investigation and shall prepare a written decision to grant, grant with modifications, or deny the petition, stating its reasons for the decision. On or before July 1, it shall send a copy of the decision to the petitioner and any person who filed objections pursuant to (5) above.

(9) The objector or petitioner may appeal the decision to the commissioner or his designee by filing a written appeal with

the area office within 15 days of receipt of the decision. The department shall give the opposing party notice of the appeal and the opportunity to respond, including the right to appeal at any appellate hearing. The appeal shall, in the discretion of the commissioner, proceed by written argument, oral argument, or both, at the main office of the department in Helena or other location designated by the commissioner. No party may submit evidence or information that was not submitted at the hearing. The commissioner shall convene the recreational use advisory council and request it to recommend a decision on the appeal. The commissioner or his designee shall, after receiving the recommendation of the council, issue a written decision affirming, reversing, or modifying the decision. The commissioner's decision must be made on or before September 1. If the advisory council does not make a recommendation on or before August 25, the commissioner need not consider its recommendation in making his decision.

(10) If the petition is granted, the lessee shall post the closed lands at all customary access points with signs ~~provided by the department at cost or meeting design and content specifications prescribed duplicated from signs provided~~ by the department. For temporary closures, the lessee shall remove closure signs at the end of the closure period.

(11) In an emergency, as defined in ARM 26.3.182(10), any person or entity that is qualified to file a petition pursuant to (3)(a) may request an emergency closure by filing a written request with the area office or by making a telephone call and filing a written request within 24 hours. When possible, the area manager or his designee shall notify and consult with the lessee. The area manager or his designee shall grant or deny the petition as soon as possible, but in no case in more than five days. If the petition is granted, the closure must be for a specific period of time and may be extended for additional periods. The area manager or his designee shall terminate the closure as soon as the emergency ceases. Upon request of any person, the commissioner or his designee shall review any emergency closure in effect for more than 5 days and shall approve, modify, or terminate the closure in writing.

(12) The department may also, on its own initiative, after consulting or attempting to consult with the lessee, close a tract of state land in an emergency.

(13) (a) The department may, after notice pursuant to (5) and opportunity for hearing and appeal pursuant to (5), (7), or (9), enter into an agreement with a landowner whereby a tract of state land is closed under the procedures in (3) through (9) in exchange for the landowner's agreement to open private land to general recreational use if the private land:

- (i) is in the same general area;
- (ii) is of equal or greater recreational value to the state tract;
- (iii) has equal or greater public access as the state tract; and
- (iv) is not generally available for general recreational use upon request by the public.

(b) Before a state tract is closed pursuant to this section, the private landowner shall enter into an agreement with the department whereby the landowner agrees to:

(i) allow general recreational use on the tract under restrictions no more stringent than those contained in ARM 26.3.186 and ARM 26.3.192;

(ii) post signs meeting design and content specifications of the department at customary access points on the state tract. These signs must notify the public of the closure and give directions to the private tract;

(iii) post signs on the private tract at customary access points advising the public that the tract is open for general recreational use by the public subject to the recreational use license requirement;

(iv) mark or otherwise inform the recreationist of the boundaries of the area;

(v) allow employees of the department and department of fish, wildlife and parks access to the private property ~~at all times during hunting and fishing seasons;~~

(vi) not claim funds pursuant to ARM 26.3.194 or ARM 26.3.195;

(vii) hold and save the department and the state of Montana harmless from all claims for property damage or personal injury resulting from the acts of omissions of the landowner; and

(viii) other requirements deemed necessary by the department.

(c) An agreement made pursuant to (b) must be cancelable by either party upon 60-day written notice.

(14) The department shall periodically review each closure made pursuant to ARM 26.3.188 or this rule to determine whether the closure is still necessary. This review must occur at least at expiration or renewal of the lease for leased tracts and at least every ten years for unleased tracts. After public notice, notice to the lessee, and an opportunity for public comment and hearing, the department may terminate a closure it determines to no longer be necessary.

AUTH: 77-1-804

IMP: 77-1-804

26.3.192 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES (1) Before discharging a firearm or using a horse for any purpose other than licensed hunting or engaging in overnight recreational use on leased or licensed land, a recreationist shall make a reasonable attempt to notify the lessee or lessee's agent in person or by telephone of the planned activity and the date it will occur. Upon request, the recreationist shall provide his or her name, address, recreational use license number, and the names and recreational use license numbers of all recreationists in the party. Whenever the Department has received notice from a lessee or lessee's agent that a recreationist may have violated this requirement, it shall immediately commence an investigation and shall within two working days advise the lessee or lessee's agent whether a civil penalty action will or will not be

commenced or whether further investigation is necessary.

(2)(a) If a lessee, in addition to the notice required in (1), wishes to be notified prior to anyone entering upon the leasehold for any other type of general recreational purposes use, the lessee shall post, at all customary access points, signs purchased from that are provided by the department at cost or constructed, in accordance with design and content specifications developed that are duplicated from signs provided by the department. The lessee must include on the sign the following information:

(a)(i) name of the lessee or lessee's agent who must be notified;

(a)(ii) telephone number of the lessee or lessee's agent;

(a)(iii) clear directions to the location at which the lessee or the lessee's agent may be contacted; and

(a)(iv) clear directions to the location of the closest drop box. If the lessee does not wish to be notified in person or by telephone, the sign must so indicate and need not contain the information required in (a)(ii) and (a)(iii). The information must be legible and legibility must be maintained.

(b) A lessee who posts land pursuant to (2)(a) shall provide a clearly identified drop box for each single tract at a customary access point to the tract, except that a lessee of 2 or more contiguous tracts may provide one drop box for those tracts to which the access point provides convenient access. In cases in which a customary access point cannot be easily identified or a question of the convenience of an access point is raised by the public, the area manager shall make a determination and the lessee shall install drop boxes in accordance with that determination.

(c) If the lessee or agent wishes to be notified in person or by telephone, the lessee or his or her agent shall be available to receive notice from recreational users by telephone or in person from the hours of 7:00 A.M. until 9:00 P.M. A person wishing to make general recreational use of state lands posted pursuant to (2)(a) shall attempt to contact the lessee or lessee's agent in person or by telephone during those hours if the recreationist's access point to the state land is five miles or less by the shortest road from the nearest public telephone or the location at which the lessee or lessee's agent is available. The recreationist may determine which method of contact to employ. If the recreationist contacts the lessee or agent in person or by telephone, the recreationist shall, upon request, provide his or her name, address, and recreational use license number, the name and recreational use license numbers of all recreationists in his or her party and the dates of use. Notice is considered to have occurred if the recreationist is answered by a telephone answering machine and the recreationist leaves his or her name, address, and recreation use number and the same information for each member of his or her party. Notice authorizes the recreationist to engage in general recreational use for three consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in

continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. If the recreationist attempts to contact the lessee by telephone or in person but the lessee or agent is not available, or if the shortest road distance from the recreationist's access point to the nearest public telephone or the location at which the lessee or lessee's agent is available is greater than five miles, the recreationist shall leave a notice in the drop box provided pursuant to (2). Notice by drop box is effective for three consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical.

~~(4)~~(d) If the lessee wishes to be notified by drop box only, the recreationist shall leave notice in the drop box provided pursuant to (2)(b). The notice must provide the recreationist's name, address, and recreational use license number and the names, addresses, and recreational use license numbers of each person in his or her party, and the dates of use. The recreationist is responsible for providing paper and pencil or pen to prepare the notice. Notice by drop box is effective for three consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical, such as a back country hunting or fishing trip.

~~(5)~~(e) The department shall, after notice and opportunity for informal hearing at the main office of the department in Helena, revoke the general recreational use license of any person who violates ~~(3) or (4)~~ (2)(c) or (d) above. In addition, the department may prohibit the person from obtaining a recreational use license for a period not exceeding 2 years from the effective date of the revoked license.

AUTH: 77-1-804

77-1-806

IMP: 77-1-804

77-1-806

26.3.193 GENERAL RECREATIONAL USE OF STATE LANDS: CIVIL PENALTIES (1) Pursuant to 77-1-804(8), MCA, the department may assess against a recreationist, lessee or other person a civil penalty of up to \$1,000 for each day of violation of ARM 26.3.183(3), (4), (5), (6), or (7), ARM 26.3.186, ARM 26.3.187, ARM 26.3.188, ~~or ARM 26.3.189, Rule 1(3) or ARM 26.3.192(1).~~ The decision to pursue assessment of a penalty for violation of ARM 26.3.192(1) must be made by the commissioner, who may make the decision only after consulting with the recreational use advisory council. The department may waive the civil penalty for minor or technical violations and shall waive the civil penalty if a criminal penalty has been assessed for the violation.

(2) In determining the amount of civil penalty, the department shall consider the following factors:

- (a) number of previous violations;
- (b) severity of the infraction; and

(c) whether the violation was intentional or unintentional.

(3) A person against whom the department proposes to assess a civil penalty is entitled to a contested case hearing in accordance with the Montana Administrative Procedure Act, Title 2, Chapter 4, part 6, MCA, on the questions of whether a violation was committed and the amount of the penalty. The hearing must be conducted by a hearing officer appointed by the commissioner. The department shall notify the individual of the violation, setting forth in the notice the specific facts which the department alleges to constitute the violation. The notice shall be served by certified mail or in person by a department employee, sheriff or deputy, fish and game warden, or registered process server. The notice must give the person at least 15 days to respond to the violation notice. Upon receipt of the response or expiration of the period allotted for response, the department shall either withdraw the notice of violation or provide its rationale for pursuing the violation and a proposed penalty. Service of the response and proposed penalty must be made in the same manner as the notice of violation. The person is entitled to a hearing on the existence of the violation, the amount of proposed penalty, or both, if he or she requests a hearing within 30 days of receipt of the department's response and proposed penalty. The request for hearing must set forth a statement of the reasons that the person is contesting assessment of the penalty.

(4) Upon conclusion of the hearing, the department shall, within 60 days, issue its findings of fact and conclusions of law and order dismissing the violation or assessing a penalty. If a civil penalty is assessed, the person shall pay the penalty within 30 days of receipt of the order or such additional time as is granted by the department.

(5) The assessment of the civil penalty is appealable to district court pursuant to Title 2, Chapter 4, part 7, MCA.

AUTH: 77-1-804

IMP: 77-1-804

The proposed new rules provide as follows:

RULE I. MANAGEMENT CLOSURES AND RESTRICTIONS

(1) Except as provided in (4), affected leased or licensed state land is closed to recreational use or subject to recreational use restrictions if the lessee complies with (2) and one of the following situations exists:

(a) Livestock is present or concentrated for purposes of calving, lambing, specialized or intensive breeding practices, or supplemental winter feeding.

(b) Livestock is concentrated for the purpose of weaning or shipping. If fewer than 200 animal units per section are concentrated, the closure or restriction may be imposed for no more than five days.

(c) Livestock is being gathered or moved.

(d) The department, the board of county commissioners, or the governing body of a consolidated city-county government have

declared fire danger to exist.

(e) Weed control treatment is occurring or has recently occurred.

(f) The lessee is actively irrigating; provided, however, that the land may not be closed to foot traffic during a hunting season under this provision.

(g) The use would occur in close proximity to dwellings, structures, or facilities in use by the lessee; provided however, that ingress and egress to state land may not be prohibited under this provision.

(2) Closures and restrictions do not become effective until the lessee:

(a) notifies the appropriate area office that one of the situations described in (1) exists, and the area upon which it exists, the terms of the closure or restriction, and the duration of the closure or restriction. The closure or restriction is not effective until 24 hours after notice is given. Notice may be given in person, by mail, or by telephone;

(b) posts the state land near all customary and legal access points with signs that are provided by the department or duplicated from signs provided by the department. The sign must provide the lessee's name, address, telephone number, the closure or restriction imposed, the reason for the closure or restriction, the area to which it applies, and dates and the duration.

(3) Any person may object to a notice of management closure made pursuant to (1) on grounds that no basis for closure or restriction exists, that the area of closure or restriction in the notice is larger than necessary, or that the closure or restriction notice specifies a period that is longer than necessary. The objector shall notify the appropriate area office of the objection and the reason for it. The area manager or designee shall investigate the objection and within two working days of receipt of the objection shall determine whether the closure or restriction complies with this rule. If he determines that the closure or restriction should be modified or terminated, he shall notify the lessee or his agent in writing. The lessee or agent shall immediately modify or terminate the closure or restriction to comply with the area office decision. Failure to comply with the area office directive subjects the violator to a civil penalty pursuant to ARM 26.3.193. The area office shall also give written notice to the objector. The objector or the lessee may appeal the area office decision to the commissioner by filing a written appeal with the area office within five working days of receipt of the notice. The area office shall forward the appeal to the commissioner. The commissioner shall convene the recreational use advisory council and, upon receipt of a recommendation of the council issue a written determination of the issue. The commissioner's decision is binding on the parties. If the commissioner's decision is to terminate or modify the closure or restriction, the lessee shall immediately remove or modify the closure or restriction signs. Failure to comply with the commissioner's decision subjects the violator to civil penalty pursuant to 26.3.193.

(4) The department shall maintain, by county, a master list of management closures and restrictions. The list must include the tract description, name, address, and phone number of the lessee, and the reason and period of closure or restriction. The list shall be available to the public by inspection or telephone inquiry at the department's main office in Helena, or by mail upon payment of \$1.00 plus 15¢ for each page over five pages.

AUTH: 77-1-804, MCA

IMP: 77-1-804, MCA

RULE II RECREATIONAL USE ADVISORY COUNCIL

(1) The board shall, pursuant to 2-15-122, MCA, appoint from a list of persons nominated by recreationist and lessee groups a recreational use advisory council consisting of three recreationists and three lessees. The members shall serve without compensation, but they are entitled to reimbursement for travel expenses pursuant to 2-15-122, MCA.

(2) The advisory council shall gather information and advise the commissioner on the validity of management closure or restriction appeals made pursuant to Rule I, on appeals of area manager decisions regarding site-specific closure petitions pursuant to ARM 26.3.189, and on the issue of whether a recreationist has made a reasonable attempt to notify pursuant to ARM 26.3.192(1). In advising the commissioner, the council shall attempt to provide reasonable recreational use of state lands within the bona fide management constraints of lessees.

(3) The following are general guidelines for the council's use in determining whether the term of a management closure or restriction is reasonable: for calving or lambing, 60 days; for breeding, 30 days; for gathering or moving, one day; for weed treatment, 5 days; and for concentration of 200 or more animal units per section for weaning and shipping, 30 days. The council may deviate from these guidelines as management circumstances dictate.

AUTH: 77-1-804

IMP: 77-1-804

2-15-122

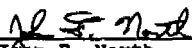
3. Section 77-1-202(1), MCA, provides that the Board of Land Commissioners shall administer state trust land to receive the largest measure of legitimate and reasonable advantage for the state schools and institutions that are the beneficiaries of the trusts that the Board administers. A major method of obtaining this advantage is to lease or license state lands for grazing and agricultural purposes and for cabin sites. Section 77-1-203 provides that the Board shall administer trust lands under the multiple use concept, and 77-1-202(2) states that general recreational use of state land is consistent with the obligation to obtain the largest reasonable advantage from the land as long as the trusts are compensated for the value of the recreation. The proposed new rules and rule amendments are reasonably necessary to balance these uses of state trust land by providing expanded recreational use within the bona fide

management constraints of lessees.


4. Interested persons may present their data, views, or arguments either orally or in writing at the hearings. Written data, views, or comments may also be submitted to Bud Clinch, Commissioner, Department of State Lands, P.O. Box 201601, Helena, Montana 59620-1601 no later than April 30, 1994. To guarantee consideration, written data, views, or arguments must be postmarked by April 30, 1994.

5. Bud Clinch, Commissioner of State Lands, and M. Jeff Hagener, Administrator, Lands Division, have been designated to serve as hearing officers for these hearings.

Reviewed by:



John F. North
Chief Legal Counsel



Arthur R. Clinch
Commissioner

Certified to the Secretary of State March 21, 1994.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED
of ARM 42.15.308 relating to) AMENDMENT of ARM 42.15.308
Adjusted Gross Income) relating to Adjusted Gross
) Income

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 13, 1994, the Department of Revenue proposes to amend ARM 42.15.308 relating to adjusted gross income.
2. The rule as proposed to be amended provides as follows:

42.15.308 MONTANA ADJUSTED GROSS INCOME (1) Montana adjusted gross income is the adjusted gross income as defined by 15-30-111, MCA.

(2) Montana adjusted gross income of a parent does not include the unearned income of a dependent child that is included in the parent's federal adjusted gross income under internal revenue code, section 1(g) if:

(a) the child was not required to file a Montana individual income tax return; or

(b) the child filed a Montana individual income tax return showing the income.

(3) The income cannot be excluded from the parent's Montana adjusted gross income if the child was required to file a Montana individual income tax return and the child did not file the required return.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-111 MCA.

3. The amendments to ARM 42.15.308 are proposed to specify the criteria the department will use when determining if a child's unearned income, which is included in the parent's federal adjusted gross income, can be excluded from Montana adjusted gross income.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than April 29, 1994.

5. If a person who is directly affected by the proposed amendments 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 April 29, 1994.

6. If the agency receives requests for a public hearing on the proposed amendments 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



MICK ROBINSON
Director of Revenue

Certified to Secretary of State March 21, 1994

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES
OF THE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMENDMENT
of Rule 44.10.331 pertaining)	OF RULE 44.10.331 PERTAINING
to limitations on receipts)	TO LIMITATIONS ON RECEIPTS
from political committees to)	FROM POLITICAL COMMITTEES
legislative candidates)	TO LEGISLATIVE CANDIDATES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 30, 1994, the Commissioner of Political Practices proposes to amend Rule 44.10.331 which pertains to limitations on receipts from political committees by legislative candidates.

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

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Pursuant to the operation specified in sections 13-37-218 and 15-30-101(8), MCA, limits on total combined monetary contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the house of representatives may receive no more than ~~\$1000~~ \$1050;

(b) a candidate for the state senate may receive no more than ~~\$1650~~ \$1750.

(2) These limits apply to total combined monetary receipts for the entire election cycle of 1992 1994.

AUTH: Section 13-37-114, MCA

IMP: Sections 13-37-218 and 15-30-101(8), MCA

3. Rationale: The proposed amendment is needed to conform the rule to the mandate of section 13-37-218, MCA, requiring that the limitations set out in that statute be adjusted for each election year by the inflation factor as defined in section 15-30-101(8), MCA.


4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Commissioner of Political Practices, P. O. Box 202401, Helena, MT 59620, no later than April 28, 1994.

5. If any person who is directly affected by this proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, then the person must make written request for a public hearing and submit this

request, along with any written comments, to the Commissioner of Political Practices, P. O. Box 202401, Helena, MT 59620, no later than April 28, 1994.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is fewer, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled 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 persons based on at least 250 candidates filing for legislative office in 1994.


Rule Reviewer
GARTH JACOBSON


Commissioner of Political Practices
ED ARGENBRIGHT, Ed.D.

Certified to the Secretary of State March 21, 1994.

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

In the matter of the adoption)	CORRECTED NOTICE
of new rule I relating to)	OF ADOPTION
establishing criteria for)	
assessing a premium surcharge,)	
)	
and)	
)	
In the matter of the amendment)	
of ARM 2.55.327 pertaining)	
to the construction industry)	
program, and the adoption of)	
new rule II pertaining to)	
scheduled rating unique risk)	
characteristics modifier.)	

TO: All Interested Persons.

1. On September 16, 1993, the State Fund published notice of public hearing at page 2060 of the 1993 Montana Administrative Register, Issue No. 17, relating to the proposed adoption of new rule I (2.55.404) to establish criteria for assessing a premium surcharge. On October 28, 1993, the State Fund published notice of adoption of new rule I (2.55.404) at page 2527 of the 1993 Montana Administrative Register, Issue No. 20. This rule is part of the State Fund's administrative rules setting forth the process, procedures, formulas, and factors in adopting premium rates and premium modifiers.

The adoption notice included a paragraph of the statutory cites for authority and implementation; however, it contained technical deficiencies, which are corrected below.

The corrected notice of adoption for new rule I (2.55.404) reads as follows:

RULE I. (2.55.404) SCHEDULED RATING - HIGH LOSS MODIFIER
(1) - (3) Same as originally adopted.
AUTH: 39-71-2315, 39-71-2316, MCA.
IMP: 39-71-2316 and 39-71-2341, MCA.

2. On December 9, 1993, the State Fund published notice of public hearing at page 2870 in the 1993 Montana Administrative Register, Issue No. 23, in the matter of the proposed amendment of ARM 2.55.327 pertaining to the construction industry program, and the proposed adoption of new rules pertaining to scheduled rating for loss control noncompliance modifier (new rule I, 2.55.405), and unique risk characteristics modifier (new rule II, 2.55.406). On February 10, 1994, the State Fund published notice of amendment of rule 2.55.327 and adoption of new rules I (2.55.405) and II (2.55.406), at page 292 of the 1994 Montana Administrative Register, Issue No. 3. These rules are part of the State Fund's

administrative rules setting forth the process, procedures, formulas, and factors in adopting premium rates and premium modifiers.

The adoption notice included a paragraph of the statutory cites for authority and implementation; however, it contained technical deficiencies, which are corrected below.

The corrected notice of public hearing and amendment of 2.55.327, and adoption of new rule II (2.55.406) reads as follows:

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) - (6) Same as originally adopted.

AUTH: 39-71-2315 and 39-71-2316, MCA.

IMP: 39-71-2211, 39-71-2311, and 39-71-2316, MCA.

RULE II. (2.55.406) SCHEDULED RATING - UNIQUE RISK CHARACTERISTICS MODIFIER (1) - (6) Same as originally adopted.

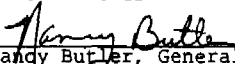
AUTH: 39-71-2315, 39-71-2316 and 39-71-2330, MCA.


IMP: 39-71-2316 and 39-71-2330, MCA.

3. The reason for the corrections is that the notice in the above-stated adoption of new rule I (2.55.404), and the notice of public hearing and notice of amendment of 2.55.327 and adoption of new rules I (2.55.405) and II (2.55.406) omitted the full cites to implementation and authority. This correction is intended as curative and to clarify the statutes under which the rules were authorized and implemented.

4. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on March 31, 1994.


Dal Smilie, Chief Legal Counsel
Rule Reviewer


Nancy Butler, General Counsel
Rule Reviewer


Rick Hill
Chairman of the Board

Certified to the Secretary of State March 21, 1994.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of a rule pertaining to defini-)	8.35.402 DEFINITIONS AND
tions and adoption of new rules)	ADOPTION OF NEW RULES
pertaining to the use of)	PERTAINING TO THE APPROVAL
modalities)	OF THE USE OF MODALITIES

TO: All Interested Persons:

1. On January 27, 1994, the Board of Occupational Therapy Practice published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 116, 1994 Montana Administrative Register, issue number 2. The public hearing was held on February 17, 1994, at 10:00 a.m., in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana.

2. The Board has adopted new rule IV (8.35.504) exactly as proposed. The Board has amended ARM 8.35.402 and adopted new rules I (8.35.501), II (8.35.502) and III (8.35.503) as proposed but with the following changes:

"8.35.402 DEFINITIONS As used in these rules, unless the context requires otherwise, the following definitions apply:

(1) will remain the same as proposed.

(2) "Instruction" means, in reference to 37-24-105, MCA, and ARM 8.35.501 and 8.35.502, 16 CONTACT hours worth of continuing education unit course work ~~which is~~ approved and or recognized by the American occupational therapy association, ~~American physical therapy association~~ or the American society of hand therapists, APPROVED BY THE BOARD, or graduate level education course work post occupational therapy degree needed to update and expand knowledge in skills required for competent performance beyond entry level in superficial physical agents.

(3) "Training" means, in reference to 37-24-105, MCA, and ARM 8.35.501 and 8.35.502, at least 16 CONTACT hours of training instructed by an occupational therapist, registered or certified hand therapist who has been given board approval to use superficial modalities before the therapist instructs others in their use of superficial modalities or by a ~~licensed physical-therapist~~ LICENSED PROFESSIONAL ALLOWED TO USE THE SUPERFICIAL MODALITIES WHO HAS MORE THAN ONE YEAR OF CLINICAL EXPERIENCE IN THE USE OF THE SUPERFICIAL MODALITY. Training also includes in-service training conferences of up to 16 CONTACT hours, workshops up to 16 CONTACT hours, or seminars up to 16 CONTACT hours.

(4) through (c) will remain the same as proposed."

Auth: Sec. 37-24-202, MCA; ~~IMP~~, Sec. 37-24-105, 37-24-106, MCA

"8.35.501 APPROVAL TO USE MODALITIES (1) The licensee who is requesting to use modalities must receive unanimous approval of the board's committee reviewing the requests. In

considering such requests, the committee shall consider whether the licensee has documented completion of 16 CONTACT hours of instruction or training within the nine criteria established in section 37-24-105, MCA. The training required within these nine criteria may be obtained through educational programs, workshops or seminars offered at a college or university or approved OR RECOGNIZED for training of occupational therapists by the American occupational therapy association, ~~the American physical therapy association, the American society of hand therapists, a physical therapist~~ OR BY A LICENSED PROFESSIONAL ALLOWED TO USE THE SUPERFICIAL MODALITY WHO HAS MORE THAN ONE YEAR OF CLINICAL EXPERIENCE IN THE USE OF THE SUPERFICIAL MODALITY, or offered by clinical facilities affiliated with such a college or university."

Auth: Sec. 37-24-202, MCA; IMP, Sec. 37-24-105, 37-24-106, MCA

"8.35.502. PERMISSION TO USE ELECTRICAL OR SOUND PHYSICAL AGENTS (1) and (1)(a) will remain the same as proposed.

(i) 15 CONTACT hours of continued education unit course work approved OR RECOGNIZED by the American occupational therapy association, ~~American physical therapy association or American society of hand therapists~~ OR BY A LICENSED PROFESSIONAL ALLOWED TO USE DEEP MODALITIES WHO HAS MORE THAN ONE YEAR OF CLINICAL EXPERIENCE IN THE USE OF DEEP MODALITIES and 100 treatments or 25 hours of instructor proctoring of sound and electrical physical agent modalities performed with patients. In such instances, the instructor must be pre-approved by the board and show certification in providing sound and electrical modalities; or

(ii) will remain the same as proposed.

~~(b) an individual lacking the hand certification must complete 100 hours of instruction or training in sound and electrical physical agent modalities. The board deems this requirement to mean that the licensee must document either:~~

~~(i) 75 hours of continuing education unit course work approved by the American occupational therapy association, American physical therapy association, or American society of hand therapists and 100 treatments under instructor proctoring of sound and electrical physical agent modalities done on patients directly supervised by the instructor/proctor. The instructor must be pre approved by the board and show certificate of proof of being a licensed physical therapist or an occupational therapist, registered and certified in providing sound and electrical modalities; or~~

~~(ii) 100 hours of proctoring under the direct supervision of a pre approved instructor, which shall include at least 400 documented treatments. The licensee receiving the instruction shall present the board with written documentation of such proctoring. The proctor must be present when the trainee is providing such treatments.~~

(b) AN INDIVIDUAL LACKING THE HAND CERTIFICATION MUST COMPLETE 100 HOURS OF INSTRUCTION OR TRAINING IN SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES. THE BOARD DEEMS THIS REQUIREMENT TO MEAN THAT THE LICENSEE MUST DOCUMENT 75 CONTACT HOURS OF CONTINUING EDUCATION COURSE WORK APPROVED OR

RECOGNIZED BY THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, OR AMERICAN SOCIETY OF HAND THERAPISTS AND 100 TREATMENTS UNDER INSTRUCTOR PROCTORING OF SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES DONE ON PATIENTS DIRECTLY SUPERVISED BY THE INSTRUCTOR/PROCTOR. THE INSTRUCTOR MUST BE PRE-APPROVED BY THE BOARD AND SHOW CERTIFICATE OF PROOF OF BEING A LICENSED PROFESSIONAL ALLOWED TO USE DEEP MODALITIES WHO HAS MORE THAN ONE YEAR CLINICAL EXPERIENCE IN THE USE OF DEEP MODALITIES. AN OCCUPATIONAL THERAPIST, REGISTERED AND CERTIFIED IN PROVIDING SOUND AND ELECTRICAL MODALITIES.

(2) will remain the same as proposed."

Auth: Sec. 37-24-202, MCA; IMP, Sec. 37-24-106, MCA

"8.35.503 QUALIFIED CONTINUING EDUCATION PROGRAMS

(1) Educational programs that would satisfy continuing education requirements must be approved OR RECOGNIZED either by the American occupational therapy association or the ~~American physical therapy association~~ AMERICAN SOCIETY OF HAND THERAPISTS or be approved by the board."

Auth: Sec. 37-24-202, MCA; IMP, Sec. 37-24-105, 37-24-106, MCA

3. Staff of the Department of Commerce noted that no statement of reasonable necessity was included with new rule IV. In that regard, this rule is necessary because it adopts by reference the American Occupational Therapy Association's Standards of Practice which provides guidance on ethical issues.

4. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto are as follows:

COMMENT: Janet Bauer, a licensed occupational therapist who headed an occupational therapy/physical therapy task force, suggested that references to qualifying for modalities by attending continuing education be amended to clarify that the number of continuing education hours reflect patient contact hours. She stated 16 hours of continuing education would be burdensome and unduly high.

RESPONSE: The board inserted the word "contact" into discussion qualifying through continuing education and training in proposed 8.35.402(2) and (3) and placed the word "contact" into discussions of training or instruction in new rule I and the discussion of continuing education in new rule II.

COMMENT: Gail Wheatley, a licensed physical therapist and president of the Montana chapter of the American Physical Therapy Association, suggested that references to physical therapists being allowed to provide training on modalities should be deleted as should references to the American Physical Therapy Association. Richard Smith, also a physical therapist, concurred stating that just because one is licensed as a physical therapist does not qualify him or her to offer instruction on modalities. These commenters also noted that

the Physical Therapy Association does not recognize or sponsor continuing education courses.

RESPONSE: The board deleted the references to physical therapists providing such training and removed references to the association. To identify those who would be appropriate to instruct on the use of modalities, the board inserted the language regarding professionals allowed to use superficial modalities with more than a year's clinical experience in the use of the modality. In addition, the board in removing references to the physical therapy association, inserted language that would allow it to approve programs of instruction, and also approved the Society of Hand Therapists in 8.35.503.

COMMENT: Richard Smith suggested that instruction or training should need to be pre-approved by the board.

RESPONSE: The board reasoned that the requirement that in-service training be done on a contact hour basis should alleviate the concern about need for pre-approval.

COMMENT: Janet Bauer suggested that the language between various portions of the rule proposal should be standardized by stating that the training or continuing education need not be approved but rather that it be approved and or recognized.

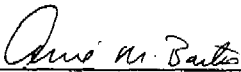
RESPONSE: The board concurred with the comment and changed the wording accordingly.

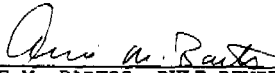
COMMENT: Gail Wheatley urged the deletion of subsections (1)(a)(ii) and (1)(b)(ii) in new rule II. She stated that the requirements for the number of hours was unreasonable. She also questioned whether individuals should be allowed to obtain their training in modalities completely through proctoring.

RESPONSE: The board opted to retain subsection (1)(a)(ii) since that pertains to individuals who have received hand certification. It struck subsection (1)(b)(ii). Deletion of (1)(b)(ii) also eliminates the potential that one would be allowed to perform modalities based on proctoring alone.

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
LYNN DAVIS, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 21, 1994.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of a rule pertaining to license	)	8.58.419 GROUNDS FOR
discipline	)	LICENSE DISCIPLINE -
	)	GENERAL PROVISIONS -
	)	UNPROFESSIONAL CONDUCT

TO: All Interested Persons:

1. On February 10, 1994, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 232, 1994 Montana Administrative Register, issue number 3.

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

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3) (ag) will remain the same as proposed.

(ah) A licensee shall repay the recovery account for any amounts due and owing the account ~~based on~~ caused by any actions, negligence, or misrepresentation of the licensee.

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

Auth: Sec. 37-1-131, 37-1-136, 37-51-203, MCA; IMP, Sec. 37-51-201, 37-51-202, 37-51-321, 37-51-512, MCA

3. The Board is making the above change for clarification purposes only and adding the language that subsections (4) and (5) will remain the same. Subsections (4) and (5) were inadvertently omitted from the original notice.

4. No comments or testimony were received.

BOARD OF REALTY REGULATION
JACK MOORE, 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, March 21, 1994.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to defini-) 8.59.402 DEFINITIONS
tions)

TO: All Interested Persons:

1. On January 27, 1994, the Board of Respiratory Care Practitioners published a notice of public hearing at page 123, 1994 Montana Administrative Register, issue number 2. The hearing was held on March 3, 1994, at 10:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

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

"8.59.402 DEFINITIONS (1) through (3) will remain the same as proposed.

(4) The board defines "pulse oximetry" as a diagnostic procedure that may be performed only by OR UNDER CLINICAL SUPERVISION OF a licensed respiratory care practitioner, pursuant to the orders of a physician, or other licensed health care professional."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-101, 37-28-102, MCA

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

COMMENT: The Private Ambulance Operators Association stated concerns that the rule defined pulse oximetry as the practice of respiratory care or other licensed health care. The Association inquired as to whether ambulance attendants are considered licensed health care providers.

RESPONSE: The Board determined that ambulance operators are not precluded by the regulation from using the pulse oximeter since ambulance operators are licensed by the Department of Health and Environmental Sciences and certified by the Board of Medical Examiners.

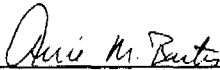
COMMENT: Jay Lyndes, American Medical Oxygen, stated the rule was nothing more than an attempt at turf protection by the Board of Respiratory Care. He said that his company has allowed unlicensed personnel to administer the pulse oximeter since 1986. He said his employees have performed thousands of such readings with no report of problems. He further stated the oximeter was not a diagnostic tool since its instructions indicated the readings could deviate four to six percent and that to preclude unlicensed persons from using the oximeter could be a disservice to Montanans, especially those in rural areas. He urged a compromise.

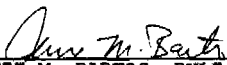
RESPONSE: The Board noted that a number of respiratory therapists had written favoring the rule. The Board voted to

amend the rule by including language that would permit unlicensed individuals to perform pulse oximetry under the supervision of a licensed respiratory therapist or other health care provider. This compromise permits the use of oximetry in rural settings, does not deprive Montanans of immediate monitoring and insures quality care since a licensed individual still will be ultimately responsible.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICH LUNDY, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 21, 1994.

BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) CORRECTED NOTICE OF 8.70.
amendment of rules pertaining) 101, 8.70.104, 8.70.407
to building codes) AND 8.70.601

TO: All Interested Persons:

1. On September 30, 1993, at page 2173, 1993 Montana Administrative Register, issue number 18, the Building Codes Bureau published a notice of public hearing on the amendment of rules pertaining to building codes (Title 8, chapter 70.) The hearing was held on October 29, 1993 at 9:00 a.m., in the downstairs conference room of the Department of Commerce, Helena, Montana.

2. The Building Codes Bureau published a notice of amendment and adoption of the rules on February 10, 1994, at page 299, 1994 Montana Administrative Register, issue number 3.

3. The rules were amended and adopted exactly as proposed except for ARM 8.70.101, 8.70.104 and 8.70.304, which were amended in the adoption notice.

3. Staff inadvertently omitted language that currently appears in the rules from the original proposal and also omitted underlining on new language as shown below. The language omitted and language which should have been underlined is shown below. The authority and implementing sections which appeared in the original proposal remain the same and are not being changed.

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (14) will remain the same as proposed in the original notice.

(a) ~~"Transient guest" means a person who pays a fee to stay at a place for 100 days or less at which sleeping accommodations are furnished guest for only a brief stay, such as the traveling public.~~

(15) through (27) will remain the same as proposed in the original notice."

4. The language "guest for ... public" should have been underlined in the notice of adoption.

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) through (c) will remain the same as proposed in the original notice.

(d) ~~Where self-certification the energy labeling sticker is required by section 5, chapter 303, laws of 1993, section 50-60-803, MCA, new residential buildings must be certified as meeting the requirements of ARM 8.70.104 by having the labeling stickers affixed that shall describe the energy efficiency components of the home. The builder or representative shall certify compliance by signing, dating, date, and completing complete the label and permanently attaching it to the interior electrical panel. The energy efficiency component labeling sticker must be a permanent self~~

adhesive label four by six inches in size that includes the following information:

(i) through (3) will remain the same as proposed in the original notice."

5. The language "as meeting ... ARM 8.70.104" was proposed in the original notice but should have been shown as being deleted in the adoption notice. The word "the" following the language "~~by having~~" should have been underlined in the adoption notice. The word "affixed" should have been shown as being deleted in the adoption notice.

"8.70.407 ELECTRICAL INSPECTIONS FEES (1) through (j)(ii) will remain the same as proposed in the original notice.

(k) mobile home courts and/or recreational vehicle parks (new, rewire, or addition)

(i) first 3 spaces (1-3 spaces) \$45

(ii) additional spaces over 3 spaces installed at the same time (per space) \$ 5

(1) through (3) will remain the same as proposed in the original notice."

6. The language "first 3 spaces" should have been numbered (i). The language "additional spaces ... installed" was inadvertently omitted from the original notice and should have been numbered (ii).

"8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ASME A17.1 - 1990, AND ASME A17.1a-1991 ADDENDA (1) through (4) will remain the same as proposed in the original notice.

(a) Passenger elevator, escalator, moving walk:

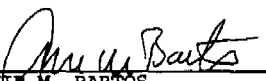
(i) up to and including \$40,000 of valuation - \$55.00;


(ii) over \$40,000 of valuation - \$55 plus \$1 for each \$1,000 or fraction thereof over \$40,000.

(5) will remain the same as proposed in the original notice."

7. The language "Passenger elevator ... walk:" was inadvertently omitted from the original notice and should have been numbered (a). The following two lines should have been numbered (i) and (ii) as shown above.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF


ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, March 21, 1994.

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

In the matter of proposed new	)	CORRECTED NOTICE
Rule I relating to water quality	)	OF ADOPTION
permit and degradation authoriza-)	
tion fees)	

(Water Quality Bureau)

To: All Interested Persons

1. On February 24, 1994, the board published a notice at page 393 of the 1994 Montana Administrative Register, issue number 4 of the adoption of the above-captioned rules relating to water quality permit and degradation authorization fees.

2. One of the changes to a fee in Schedule IV that was adopted by the board of health and environmental sciences was inadvertently overlooked when the final notice of adoption was filed. The corrected rule amendment reads as follows:

RULE I (16.20.1604) PERMIT APPLICATION, DEGRADATION
AUTHORIZATION, AND ANNUAL PERMIT FEES (1)-(2) Same as pro-
posed.

(3)(a)-(d)(i) Same as proposed.

(ii) The minimum annual permit fee to be charged per discharge point or point source at a facility regardless of the wastewater flow is set forth in Schedule IV, as follows:

Schedule IV
Minimum Annual Fee per Discharge
Point or Point Source

POTW or other Domestic Sewage or Potable Water Treatment Plant Without significant industry	\$ 250
With significant industry	\$1000
Industrials	
Individual storm water/ground water/pit water	\$1000
Noncontact cooling water	\$ 250
Wastewater:	
With any carcinogenic or toxic or radioactive substance At a level >50% long-term chronic standard	\$2500
Wastewater without any carcinogenic or toxic or radioactive substance at a level >50% long-term chronic standard or with "No Discharge" permit requirements	\$1000
General Permits	
Feed lots, fish farms, suction dredges, construction dewatering, construction stormwater	\$ 250


Produced water, cleanups, gravel
washing, industrial stormwater

\$ ~~500~~ 400

(iii) Same as proposed.

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on March 31, 1994.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by 
ROBERT J. ROBINSON, Director

Certified to the Secretary of State March 22, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
of rules relating to motorist	)	OF RULES 18.7.302,
information signs	)	18.7.303, 18.7.306,
	)	18.7.309, 18.7.320,
	)	AND 18.7.331
)	
)	
)	
)	

TO: All Interested Persons.

1. On January 27, 1994, the Department of Transportation published notice of the proposed amendment of rules 18.7.302, 18.7.303, 18.7.306, 18.7.309, 18.7.320, and 18.7.331 relating to motorist information signs at page 137 of the 1994 Montana Administrative Register, issue number 2.

2. No comments or requests for hearing were received by the agency. The rules are amended as set forth in the published notice.

MONTANA DEPARTMENT OF TRANSPORTATION

By:


MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State March 17, 1994.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the amendment)	
of Rules 24.5.322, 24.5.323,)	NOTICE OF AMENDMENT OF
24.5.324, 24.5.325, 24.5.331,)	RULES OF THE WORKERS'
24.5.340, 24.5.346, 24.5.350)	COMPENSATION COURT
and 24.5.351.)	

TO: All Interested Persons

1. On February 10, 1994, the Workers' Compensation Court published a Notice of Proposed Amendment of Rules ARM 24.5.322, 24.5.323, 24.5.324, 24.5.325, 24.5.331, 24.5.340, 24.5.346, 24.5.350, and 24.5.351 at page 248, Montana Administrative Register, Issue No. 3 of 1994.

2. No public hearing was held but interested parties were asked to submit their data, views or arguments to the Court in writing by March 10, 1994. The Court has considered all written commentary received subsequent to the original notice date and responds to those comments as follows:

COMMENT: The Department of Labor and Industry (DLI) suggests rewording 24.5.322 DEPOSITIONS, subsections (4) and (7) and 24.5.324 REQUESTS FOR PRODUCTION, subsections (1)(a) and (7) by substituting other pronouns for her/his, which accomplishes a gender neutral status, but reads better.

RESPONSE: The Court finds the suggested changes to be an improvement and will adopt them.

COMMENT: The DLI suggests 24.5.322 DEPOSITIONS, subsection (5) be amended by striking the language, "Unless otherwise agreed," for the reason that the elimination of this language would avoid problems and be consistent with the Court's preference for raising and listing objections at the earliest time in the litigation process.

RESPONSE: The Court disagrees with the need to strike the language as it gives attorneys the option of following the accepted procedure set forth in the Rules of Civil Procedure. However to clarify the rule the Court will amend subsection (5), sentences 3 and 4 as follows: Deposition Any objections to evidence made at the time of the deposition must be briefed in the parties' proposed findings of fact and conclusions of law. Failure to do so will be deemed a withdrawal of the objections.

COMMENT: The DLI recommends clarification of language in 24.5.324 REQUESTS FOR PRODUCTION. The present language is unclear

as to whether the procedure described applies only to objections made on the grounds of attorney-client privilege or work product or to any objection.

RESPONSE: The Court agrees and will adopt the language proposed by the DLI.

COMMENT: The DLI asks for clarification of 24.5.331 SUBPOENA regarding whether the Court will continue as a matter of course to issue a subpoena duces tecum upon request or if a party will have to file a motion to obtain a subpoena duces tecum.

RESPONSE: A subpoena duces tecum must be issued in connection with the taking of a deposition or for trial. Subsection (2) expressly allows for subpoena duces tecum. The Court will continue to follow the present procedure. No change will be made in the rule.

COMMENT: The DLI requests additional information regarding 24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTER 71 AND 72. The changes in the rule eliminated the requirement of transmittal of the written record; the rule does not set a time limit for requesting a transcript; the rule does not address whether the department should always bill the appellant, even if the respondent has requested the transcript, absent a Court order.

RESPONSE: The Court in its NOTICE ON APPEAL; ORDER TO TRANSMIT RECORD; AND ORDER SETTING BRIEFING SCHEDULE has routinely required the transmittal of the written record and will continue to do so. The Court will include in its order a time limit in which a party may request the transcript. The Court rule complies with the administrative procedures act in terms of requiring the appellant to bear the cost of the transcript unless the Court orders otherwise.

COMMENT: Court personnel commented regarding 24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTERS 71 AND 72. Staff commented that it would be helpful if this rule advised the parties of the number of copies of the NOTICE OF APPEAL which the Court required for service.

RESPONSE: This rule does not require the clerk of court to serve the Notice of Appeal on opposing parties. That service is the responsibility of the appellant. However, because it has been the practice of the Court to request copies and to serve the Notice the rule will be amended to clarify.

COMMENT: The Legislative Council recommended that the adoption notice contain information regarding the reasonable necessity for the amendments to the court's rules.

RESPONSE: The Court pursuant to ARM 24.5.360 conducts an annual review of its rules. To assist in this review the Court has requested and received volunteer service from a number of attorneys throughout Montana. These individuals at their own expense travel to Helena for meetings during which all of the rules of the Court are reviewed. This committee discusses each rule with the goal of streamlining, simplifying and when necessary amending the rules to comport with legislative changes. With the appointment of a new Judge the Court and its committee completed the review which emphasized reliance on the MONTANA RULES OF EVIDENCE and the MONTANA RULES OF CIVIL PROCEDURE and proposed the amendments which appear in this publication.

3. The Office of the Workers' Compensation Judge has amended the rules as proposed with the following changes:

24.5.322 DEPOSITIONS (1) through (3) remain the same.

(4) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under ~~her/his~~ the officer's direction and in ~~her/his~~ that person's presence, record the testimony of the witness. The testimony shall be stenographically recorded unless otherwise ordered by the court. If requested by one of the parties, the testimony shall be transcribed.

(5) Unless otherwise agreed, all objections must be made at the time of taking the deposition and be included within the transcript of the deposition. Evidence objected to shall be taken subject to the objections. ~~Any Deposition objections to evidence made at the time of the deposition~~ must be briefed in the parties' proposed findings of fact and conclusions of law. Failure to do so will be deemed a withdrawal of the objections.

(6) remains the same.

(7) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition, which shall then be signed by the witness under oath, unless the parties and the witness waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 10 days of its submission to ~~her/him~~ the witness, the officer shall sign it and state on the record the reason, if any, that the deposition has not been signed and it may then be used as fully as though signed.

(8) through (11) remain the same.

AUTH: Sec. 2-4-201, MCA **IMP:** 2-4-201, MCA, 39-71-2901, MCA

24.5.324 REQUESTS FOR PRODUCTION (1) A party may serve upon an adverse party with the petition or at any time after the service of a petition a request:

(a) to produce and permit the party making the request, or ~~her/his the party's~~ agent, to inspect and copy any designated documents or records, or to copy, test, or sample any tangible things, which may be relevant and which are in the possession, custody or control of the party upon whom the request is served; or

(1)(b) through (5) remain the same.

(6) ~~The An objection will be ruled based on a claim of attorney-client privilege or work product will be ruled on only upon the filing of a motion to compel, at which time the following procedure shall apply:~~

(a) through (c) remain the same.

(7) If the request is intended to obtain production of documents which are not in the adverse party's possession but are within ~~her/his the adverse party's~~ custody or control, unless otherwise ordered by the court, the adverse party may in lieu of providing the documents, provide an authorization or a release as necessary to obtain such documents from all persons or entities physically possessing the documents.

AUTH: Sec. 2-4-201, MCA IMP: 2-4-201, MCA, 39-71-2901, MCA


24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39. CHAPTERS 71 and 72 (1) An appeal from a final decision of the department of labor and industry under Title 39, chapters 71 and 72, MCA, shall be by filing a notice of appeal with the court or with the department ~~by filing a notice of appeal~~. The notice of appeal shall be served by mail on all other parties and the legal services division of the department of labor and industry and which should include:

(2) through (6) remain the same.

AUTH: Sec. 2-4-201, MCA IMP: 2-4-201, MCA, 39-71-2901, MCA

4. These rules become effective April 1, 1994.


MIKE McCARTER, JUDGE


CLARICE V. BECK, HEARING EXAMINER
Rule Reviewer

March 21, 1994
CERTIFIED TO THE SECRETARY OF STATE

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

In the matter of the	)	NOTICE OF AMENDMENT OF ARM
amendment of the rule related	)	24.29.1416, APPLICABILITY OF
to the applicability of rules	)	DATE OF INJURY, DATE OF
and statutes in workers'	)	SERVICE
compensation matters)	

TO ALL INTERESTED PERSONS:

1. On January 27, 1994, the Department published notice at pages 143 to 145 of the Montana Administrative Register, Issue No. 2, to consider the amendment of the above-captioned rule.

2. On February 18, 1994, a public hearing was held in Helena concerning the proposed amendments. No oral and written comments were offered at that time by the public. One written comment was received prior to the closing date of February 25, 1994.

3. After consideration of the comment received on the proposed rules, the Department has amended the rule as proposed, but with the following additional paragraph:

24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE (1) through (3) Same as proposed.

(4) PURSUANT TO STATUTE, A PHARMACIST MAY NOT DISPENSE MORE THAN A 30 DAYS SUPPLY AT ANY ONE TIME.

AUTH: Sec. 39-71-203, MCA IMP: Secs. 39-71-704, 39-71-727, and 39-71-1102, MCA

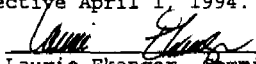
4. The Department has thoroughly considered the comment received on the proposed amendment. The following is a summary of the comment received, along with the Department's response to that comment:

Comment: The State Compensation Insurance Fund commented that the rule should include a provision limiting the dispensing to a 30 day supply, to track with the provisions of § 39-71-727, and to make it clear that the provision is applicable to all currently dispensed prescriptions.

Response: The Department agrees with the comment and has amended the rule accordingly.

5. These rules are effective April 1, 1994.


David A. Scott
Rule Reviewer


Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 21, 1994.

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

In the matter of the	) NOTICE OF AMENDMENT OF ARM
amendment of rules related to	) 24.29.1513, 24.29.1536,
utilization and medical fee	) 24.29.1541, 24.29.1551,
schedules for workers'	) 24.29.1561, 24.29.1566,
compensation matters	) 24.29.1571 and 24.29.1581

TO ALL INTERESTED PERSONS:

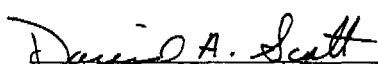
1. On January 27, 1994, the Department published notice at pages 146 to 150 of the Montana Administrative Register, Issue No. 2, to consider the amendment of the above-captioned rules.


2. On February 18, 1994, a public hearing was held in Helena concerning the proposed amendments. No oral and written comments were offered at that time from any members of the public.

3. The only comment received by the Department on the proposed amendments was from the staff of the Administrative Code Committee, which suggested that the Department include a statement as to why the these amendments were originally proposed. The Department offered the amendment to ARM 24.29.1513 in response to several requests from hospitals, in conjunction with the State Compensation Insurance Fund, asking that they be allowed to submit first report information on a computer-generated form, as a way of improving speed of reporting and lower costs. The Department proposed the amendments concerning annual adjustments to the fee schedule in response to inquiries and apparent confusion from providers. Finally, the Department proposed the other amendments to ARM 24.29.1551 to correct an oversight in the service descriptions that had been pointed out by both insurers and providers since the April 1, 1993, adoption of the current rule.

4. The Department has amended the rules exactly as proposed.

5. These rules are effective April 1, 1994.


David A. Scott
Rule Reviewer


Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 21, 1994.

6-3/31/94

Montana Administrative Register

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

In the matter of the) NOTICE OF ADOPTION OF
adoption of new rules related) NEW RULES I THROUGH IX
to groups of business entities) (TRADE GROUP DISCOUNTS)
joining together for the)
purchase of workers')
compensation insurance)

TO ALL INTERESTED PERSONS:

1. On January 13, 1994, the Department published notice at pages 9 to 13 of the Montana Administrative Register, Issue No. 1, to consider the adoption of new rule(s) I through IX.

2. On February 18, 1994, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional written comments were received prior to the closing date of February 25, 1994.

3. After consideration of the comments received on the proposed rules, the Department has adopted the rules as proposed with the following changes: (new material underlined, deleted material stricken)

RULE I [24.29.3701] PURPOSE Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE II [24.29.3703] DEFINITIONS For the purpose of these rules, the following definitions apply:

(1) through (4) Same as proposed.

(5) "Individual applicant" means a business entity, endorsed by the group that desires to be certified by seeking approval of the department as being eligible to join a that group.

(6) and (7) Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE III [24.29.3711] CERTIFICATION OF A GROUP Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE IV [24.29.3704] PLAN OF OPERATION (1) through (3) Same as proposed.

(4) Once certified, changes in the operating plan must be approved by the department and no change is effective without such prior approval. A group that wishes to change its plan of operations must file those changes with the department at least 30 days prior to the date the changes are to become effective. A copy of the proposed changes must also be mailed to the group's members by not later than the filing date.

(5) Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE V [24.29.3707] ORGANIZATIONAL STRUCTURE Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE VI [24.29.3721] ANNUAL REPORT (1)(a) through (e) Same as proposed.

(f) a statement of the group's+

~~(i) total annual number of lost time claims, and~~

~~(ii) total annual hours worked.~~

(2) and (3) Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE VII [24.29.3726] DECERTIFICATION OF A GROUP Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE VIII [24.29.3731] INDIVIDUAL APPLICANTS (1) Only a new or existing group may can, on behalf of an individual applicant, apply to have the individual certified as being eligible to join the group.

(2) Same as proposed.

(3) Certification of an individual applicant by the department is valid until revoked or terminated. A group or an individual applicant or member that is aggrieved by a decision ~~of concerning the certification of the individual applicant by~~ the department may request administrative review of the decision or request a contested case hearing. The following list provides examples of reasons why certification may be revoked or terminated:

(a) through (c) Same as proposed.

(4) Notwithstanding the fact that a business entity is certified by the department, a group may take action against a member of the group pursuant to the group's plan of operation and internal rules. The department does not have jurisdiction to inject itself into disputes between a group and its members.

(4) Same as proposed, but renumbered as (5).

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

RULE IX [24.29.3741] DISPUTES Same as proposed.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-433, MCA

4. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment No. 1: The Coalition For Work Comp System Improvement (Coalition) commented that the Rule II (5) definition of individual applicant should be clarified to state that approval to join the group must come from the group itself.

Response No. 1: The Department agrees with the comment and has amended the definition accordingly, and has also amended Rule VIII to clarify the group's role as a gatekeeper.

Comment No. 2: The Montana Motor Carriers Association (MMCA) commented that the last clause in Rule II (7)(c) should be deleted. The Coalition commented that it is unclear who determines what is "significant" or "ancillary" for the purpose of the rule.

Response No. 2: The Department believes that it is necessary to require evidence from both the group and the insurer that the subsection (c) grouping is appropriate before the Department certifies that the group is meeting the statutory criteria of being "same as" or "similar to". Because both the group and its insurer must concur that a group's parameters are appropriate, it is the group and the insurer that determine what is "significant" and "ancillary".

Comment No. 3: Both the MMCA and the Coalition commented that the Department lacks the authority to approve a plan of operation and to require prior approval for changes to the plan.

Response No. 3: The Department believes that it was granted authority to approve the plan of operations because it was granted express rulemaking authority for the certification process. However, in response to the proposed language changes suggested, the Department has amended the rule to allow groups to merely file changes 30 days in advance, rather than requiring prior approval.

Comment No. 4: The Coalition commented that the requirement in Rule VI (f) to submit information concerning hours worked and number of injuries would add additional costs to the programs and suggested that the Department delete the requirement.

Response No. 4: The Department has deleted the requirement of reporting the number of hours worked. The Department, however, believes that in order to accurately track any improvements in loss reduction, the losses should be reported. The Department will work with insurers, employers, and adjusters to determine if there is a cost effective way of tracking the aggregate number of hours worked, so that loss information can be more meaningfully interpreted.

Comment No. 5: The MMCA commented that the grounds in Rule VIII (3)(c) should be deleted.

Response No. 5: The Department believes that providing false or misleading information to the Department should remain as grounds for revoking certification.

Comment No. 6: The MMCA commented that individual applicants (business entities) should not be granted standing to challenge revocation proceedings in Rule VIII (3), and suggested that only the group should be able to raise the challenge.

Response No. 6: The Department believes that due process considerations require that the affected business entity be given standing to challenge a revocation proceeding. However, the Department has amended Rule VIII (3) to clarify when that standing attaches.

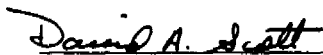
Comment No. 7: The MMCA and the Coalition commented that the Department should clarify the difference between eligibility to join a group and the right to be a member of a group. The MMCA expressed concern that a member might claim a right to a contested case hearing if the group attempted to take action (pursuant to the group's plan of operations or internal rules) against the member.

Response No. 7: The Department has amended Rule VIII to add clarification on this issue. The Department believes that Rule VIII (as amended) and Rule IX clearly show that the Department will not intervene in disputes that arise between a group and its members.

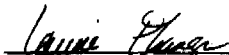
Comment No. 8: The Coalition also commented that the Department lacks the authority to hold contested cases or administrative review for individual applicants.

Response No. 8: The Department believes that it was granted authority to revoke individual certifications because it was granted express rulemaking authority for the certification process. The Department believes that inherent in the certification authority is the power to revoke certification for good cause.

5. These rules are effective April 1, 1994.



David A. Scott
Rule Reviewer



Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 21, 1994.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.21.162 relating to)	ARM 42.21.162 relating to
Personal Property Taxation)	Personal Property Taxation
Dates)	Dates

TO: All Interested Persons:

1. On December 9, 1993, the Department published notice of the proposed amendment of ARM 42.21.162 relating to personal property taxation dates at page 2907 of the 1993 Montana Administrative Register, issue no. 23.

2. No public comments were received regarding the rule.

3. The Department has discovered a typographical error in subsection (6)(c) of the rule which refers incorrectly to section 15-16-601, MCA, which was repealed by the 1993 legislature. Therefore, the Department amends the rule as follows:

42.21.162. PERSONAL PROPERTY TAXATION DATES (1) through (5) remains as originally proposed.

(6) Personal property acquired during the year by a governmental entity as defined in 15-6-201, MCA, is exempt on proof of ownership. This property remains exempt for the remainder of the year from the date of acquisition by the governmental entity.

(a) If the taxes are paid for the year, the owner, as of January 1, may apply for a refund of taxes for the portion of the year the property is in government ownership.


(b) If the taxes are not paid, the assessment will be adjusted to prorate the taxes.

(c) Applications for refund must be submitted to the county commissioners office of the county in which the tax is paid. The application must comply with the requirements of ~~15-16-601~~ 15-16-603, MCA.

(7) remains as originally proposed.

4. The Department adopts the rule with the amendments shown above and with the amendments as published in the MAR on December 9, 1993.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State March 21, 1994.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rule 46.12.204	)	RULE 46.12.204 PERTAINING
pertaining to medicaid	)	TO MEDICAID RECIPIENT
recipient requirements for	)	REQUIREMENTS FOR CO-
co-payments	)	PAYMENTS

TO: All Interested Persons

1. On February 10, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.204 pertaining to medicaid recipient requirements for co-payments at page 286 of the 1994 Montana Administrative Register, issue number 3.

2. The Department has amended rule 46.12.204 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: Co-payments are unnecessary since there are excess funds in the medicaid budget, particularly the inpatient services portion. Those excess funds should be used for health care reform instead of being transferred to the Department of Family Services. This measure is misplaced since it does not address the service areas with high cost growth.

RESPONSE: The co-payments are being increased and new co-payments added in areas other than just inpatient services. The changes in co-payments are part of an approach to the Medicaid program as a whole that structures the program in ways that make the consumer more responsible and financially accountable for health care received. This futuristic approach is in alignment with the national trend in health care.

While the medicaid inpatient budget may have a surplus, other areas of the medicaid budget do not have surpluses. Fiscal responsibility should be exercised as to all areas of the medicaid program. A surplus does not necessarily mean that fiscal responsibility in the management of the medicaid inpatient services should be foregone.

The increase in co-payment represents only a small component of our strategy to control costs. Examples of other components include a mental health managed care system, health maintenance organization, and the Passport to Health program.

The Medicaid budget contains financial line items specific to all of the Medicaid programs, not only inpatient hospitals.

There is adequate authority for the Department to transfer funds within the Medicaid budget and to other programs.

The Department must manage the Medicaid budget with a global perspective. The available monies should be managed and distributed so as to maximize the benefits that are available to recipients. Transfers from a program with surplus to a program in need of further monies may occur for those reasons.

The Department has in the past and will continue to undertake studies and measures that will further the Department's knowledge of and control over utilization of services.

COMMENT: Medicaid recipients will be adversely affected by the co-payments. The co-payment amounts are more than nominal. An analysis of current inpatient use should have been undertaken to determine whether there is unnecessary use. The \$100 co-payment of inpatient services is 18 percent of the current AFDC monthly income standard. Preventive services may be foregone as a result of co-payment increases.

RESPONSE: The increase in co-payments is within the federal definition of "nominal".

The comparison of the \$100 co-payment to the current AFDC monthly income is of little relevance since the yearly maximum co-payment cap is \$200 and the co-payment for inpatient services could only be applied within the annual cap.

Because of the total cap of \$200 per year on expenditures on co-payments by each household is nominal, access by recipients should not be a problem.

COMMENT: Higher co-payments are not needed to control program costs and to increase cost sharing on the part of Medicaid recipients.

RESPONSE: Co-payments are an appropriate and effective measure for making consumers more responsible in health care utilization. Recently obtained information from the Montana Medical Association indicates that there is interest among physicians for using and increasing co-payments to foster consumer responsibility.

On December 8, 1993, Dr. J.W. McMahon, Montana Medical Association, sent a letter to Montana physicians requesting input on ways Medicaid could contain costs. A total of 46 responses were received. Specifically, 9 responses recommended that Medicaid should encourage more personal responsibility for health care decisions from consumers. Part of this response included increasing co-payments.

COMMENT: Hospitals will be adversely affected by the co-payments. The co-payments will be difficult for hospitals to collect. SRS should be responsible for the collection of co-payments. The proposed \$100 co-payment is tantamount to 5.5 percent cut in the DRG rate for hospitals. The hospitals will be forced to cost shift the foregone co-payments to private pay and third party payors. The hospitals would be willing to assist the Medicaid program in identifying appropriate utilization control measures.

RESPONSE: It is the responsibility of providers to collect co-payments from recipients. SRS will not assume this administrative role for providers.

Providers currently collect co-payments from non-Medicaid eligible consumers who are covered by either private insurance, Medicare, or other third party payors. The fact that some providers elect not to collect co-payments from Medicaid recipients is a matter of choice.


The Department does not recommend cost-shifting the financial burden to private pay and third party payors without first attempting to collect co-payments from Medicaid recipients. Providers may establish monthly repayment agreements with Medicaid recipients.

It is erroneous to assume that each hospital discharge will result in a \$100 loss to the providers. First, approximately 75% of hospitalizations are not subject to co-payment due to services being provided to persons who are exempt from co-payment such as pregnant women, children under the age of 21, or nursing home residents. Secondly, the accumulative amounts of co-payments paid to other providers are also used to meet the maximum cap for the Medicaid household of \$200 per state fiscal year. Therefore, an inpatient will either owe all of the \$100 co-payment, a portion of the co-payment, or none of the co-payment depending upon the status of his co-payment cap.

SRS is more than willing to work with the Montana hospitals in identifying unnecessary hospital admissions as another approach to controlling costs.

4. The increase in the co-payment amounts provided in ARM 46.12.204 is effective April 1, 1994 and the new cap amount as provided in subsection (4) of ARM 46.12.204 is effective July 1, 1994.


Rule Reviewer


Director, Social and Rehabilitation Services

Certified to the Secretary of State March 21, 1994.

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 December 31, 1993. This table includes those rules adopted during the period January 1, 1994 through March 31, 1994 and any proposed rule action that was 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 December 31, 1993, 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 1994 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

- 2.5.202 and other rules - State Purchasing, p. 1, 383
- 2.21.137 and other rules - Sick Leave, p. 480
- 2.21.224 and other rules - Annual Vacation Leave, p. 2861, 151
- 2.21.704 Leave of Absence Without Pay, p. 483
- 2.21.903 and other rules - Leave of Absence Due to Disability and Maternity, p. 473
- 2.21.908 and other rules - Disability and Maternity Leave - Sick Leave - Parental Leave for State Employees, p. 827, 2372
- 2.21.1604 and other rule - Alternate Work Schedules, p. 476
- 2.21.1812 Exempt Compensatory Time, p. 2462, 22
- 2.21.3607 and other rules - Veterans' Employment Preference p. 2464, 23
- 2.21.3702 and other rules - Recruitment and Selection, p. 487
- 2.21.5006 and other rules - Reduction in Work Force, p. 498
- 2.21.8011 Grievances, p. 485
- 2.21.8109 Equal Employment Opportunity/Affirmative Action, p. 478
- (Public Employees' Retirement Board)
- I-II Establishment and Implementation of Family Law Orders Splitting and Paying Montana Public Retirement Benefits, p. 1580, 2400
- I-III Mailing Membership Information about Non-Profit Organizations, p. 508
- I-V Retirement Incentive Program Provided by HB 517, p. 742, 2008

- 2.43.302 and other rules - Definitions - Request for Release of Information by Members - Effect of Voluntary Elections - Lump Sum Payments of Vacation or Sick Leave - Purchase of Previous Military Service -- Modifications Affecting Actuarial Cost - Disability Retirement - Conversion of Optional Retirement Benefit Upon Death or Divorce from the Contingent Annuitant, p. 2864, 291
- 2.43.302 and other rules - Retirement Incentive Program Provided by HB 517, p. 2057, 2762
- (Teachers' Retirement Board)
- I-II Implementing the Provisions of SB 173 Pertaining to the Establishment and Implementation of Family Law Orders, p. 1584, 2404
- 2.44.405 and other rules - Adjusting Disability Allowances - Interest on Non-Payment for Additional Credits - Creditable Service for Teaching in Private Educational Institutions, p. 2858, 561
- (State Compensation Insurance Fund)
- I Establishing Criteria for Assessing a Premium Surcharge, p. 2060, 2527
- 2.55.327 and other rules - Construction Industry Program - Scheduled Rating for Loss Control Non-compliance Modifier and Unique Risk Characteristics Modifier, p. 2870, 292

AGRICULTURE, Department of, Title 4

- I-II and other rules - Civil Penalties - Enforcement and Matrix - Sale, Distribution and Inspection of Nursery Stock in Montana, p. 2580, 24
- I-III and other rules - Civil Penalties Relating to Beekeeping in Montana - Designating Regulated Bee Diseases - Clarifying the Apiary Registration Forfeiture Procedure - Restrictions on Apiary Registration, p. 1588, 2120
- 4.5.202 and other rule - Category 1 Noxious Weeds, p. 93, 563
- 4.10.206 Licensing for Pesticide Operators, p. 2063, 2669

STATE AUDITOR, Title 6

- I-II Emergency Adoption - Allowing Credit to Domestic Ceding Insurers - Reduction of Liability for Reinsurance Ceded by Domestic Insurers to Assuming Insurers, p. 564
- I-II and other rules - Establishing Accreditation Fees for Annual Continuation of Authority - Defining "Money Market Funds" as they Relate to Investments by Farm Mutual Insurers - Remove Limitations on the Issuance of Credit Life and Credit Disability Insurance to Joint Debtors - Prohibiting Discrimination in Determining Eligibility for Personal Automobile

- Insurance - Wage Assignments - Voluntary Payroll Deduction, p. 2163, 2764
- I-XI Continuing Education Program for Insurance Producers and Consultants, p. 2466, 3004
- I-XXIV Small Employer Health Benefit Plans, p. 571
- I-LV Administration and Enforcement of Laws Regulating Standards for Companies Considered to be in Hazardous Financial Condition - Annual Audited Reports - Life and Health Reinsurance Agreements - Reports by Holding Company Systems - Establishing Accounting Practices and Procedures to be Used in Annual Statements - Credit for Reinsurance, Including Letters of Credit - Standards for Valuation of Insurer Securities and Other Invested Assets, p. 1726, 2408
- 6.10.102 and other rules - Exempting Certain Foreign Securities from Registration - Requiring that Exempt Foreign Savings and Loan Associations be Members of the Federal Deposit Insurance Corporation and that their Certificates of Deposit be Fully Insured by the Federal Deposit Insurance Corporation, p. 95, 569
(Classification and Rating Committee)
- I-X Matters Subject to Notice and Hearing Before the Classification and Rating Committee, p. 1781, 2225

COMMERCE, Department of, Title 8

- (Board of Alternative Health Care)
- 8.4.404 and other rules - Certification for Specialty Practice - Conditions Which Require Physician Consultation - Continuing Education, p. 2713, 386
- (Board of Barbers)
- 8.10.405 Fee Schedule, p. 2168, 295
- (Board of Chiropractors)
- 8.12.601 and other rules - Applications, Educational Requirements - Renewals - Continuing Education Requirements - Unprofessional Conduct, p. 222
- (Board of Clinical Laboratory Science Practitioners)
- I-IX Clinical Laboratory Science Practitioners, p. 2065, 2766
- (Board of Cosmetologists)
- 8.14.401 and other rules - Practice of Cosmetology, Manicuring and Electrolysis, p. 331
- (State Electrical Board)
- 8.18.402 and other rules - Applications - General Responsibilities - Temporary Permit - Fees - Examinations - Continuing Education - Pioneer Electrician Certificates, p. 225
- (Board of Horse Racing)
- 8.22.501 and other rules - Definitions - Licenses - Fees - Clerk of Scales - General Provisions - Grooms - Jockeys - Owners - Declarations and Scratches -

- Claiming - Paddock to Post - Permissible Medication, p. 547
- 8.22.502 and other rules - Licenses Issued for Conducting Parimutuel Wagering - Daily Double Feature - Requirements of Licensee - Pool Calculations, p. 1595, 2412
- (Board of Landscape Architects)
- 8.24.409 Fee Schedule, p. 2986, 388
- (Board of Funeral Service)
- 8.30.407 and other rules - Fees - Unprofessional Conduct - Crematory Facility Regulation - Casket/Containers - Shipping Cremated Human Remains - Identifying Metal Disc - Processing of Cremated Remains - Crematory Prohibitions, p. 1787, 2670
- (Board of Nursing)
- 8.32.304 and other rules - Advanced Practice Registered Nurses - Executive Director - Examinations - Inactive Status - Schools - Prescriptive Authority - Clinical Nurse Specialists - Delegation of Nursing Tasks, p. 100
- (Board of Occupational Therapy Practice)
- 8.35.402 and other rules - Definitions - Use of Modalities, p. 116
- 8.35.408 Unprofessional Conduct, p. 2483, 25
- 8.35.414 Therapeutic Devices, p. 1598, 2231
- (Board of Optometry)
- 8.36.401 and other rules - Board Meetings - Applications for Examination - Examinations - Reciprocity - General Practice Requirements - Fees - Applicants for Licensure, p. 1447, 2121
- 8.36.601 and other rules - Continuing Education - Approved Courses and Examinations - New Licenses - Therapeutic Pharmaceutical Agents, p. 120
- 8.36.602 Continuing Education - Approved Programs or Courses, p. 2294, 152
- 8.36.801 and other rule - Therapeutic Pharmaceutical Agents - Approved Drugs, p. 2485, 153
- (Board of Outfitters)
- 8.39.504 and other rules - Outfitter Operations Plans - Conduct of Outfitters and Guides - Unprofessional Conduct, p. 2070, 155
- (Board of Pharmacy)
- 8.40.404 and other rules - Fees - Out-of-State Mail Service Pharmacies, p. 2073, 2586, 571
- (Board of Physical Therapy Examiners)
- 8.42.402 Examinations - Fees - Temporary Licenses - Licensure by Endorsement, p. 2587, 159
- (Board of Private Security Patrol Officers & Investigators)
- 8.50.428 and other rules - Experience Requirements - Insurance Requirements - Fees, p. 1450, 2413
- (Board of Psychologists)
- 8.52.604 and other rules - Application Procedures - Examination - Fee Schedule, p. 1792, 2232

- 8.52.606 and other rule - Required Supervised Experience - Licensees from Other States, p. 2590, 389
(Board of Public Accountants)
- 8.54.407 Qualifications for a License as a Licensed Public Accountant, p. 1453, 2122
(Board of Radiologic Technologists)
- 8.56.409 and other rules - Examinations - Renewals - Fees - Permits - Permit Fees, p. 1455, 2912
(Board of Real Estate Appraisers)
- 8.57.403 and other rules - Examinations - Experience Requirements - Education Requirements - Fees - Agricultural Certification, p. 2170, 2775
(Board of Realty Regulation)
- 8.58.406A and other rules - Applications - Trust Accounts - Continuing Education - Unprofessional Conduct - Property Management, p. 1063, 1909, 2123, 2233
- 8.58.419 Grounds for License Discipline - General Provisions - Unprofessional Conduct, p. 232
- 8.58.419 Grounds for License Discipline - General Provisions - Unprofessional Conduct, p. 2719, 297
(Board of Respiratory Care Practitioners)
- 8.59.402 Definitions, p. 123
- 8.59.402 and other rule - Definitions - Use of Pulse Oximetry, p. 2487, 160
- 8.59.501 and other rules - Applications - Temporary Permits - Renewals - Continuing Education, p. 1458, 2125
(Board of Sanitarians)
- 8.60.408 Standards of Registration Certificate, p. 349
(Board of Social Work Examiners and Professional Counselors)
- 8.61.401 and other rules - Definitions - Licensure Requirements for Social Workers, Application Procedures for Social Workers - Licensure Requirements for Professional Counselors, p. 2296, 3015, 26
- 8.61.404 and other rules - Fees - Ethical Standards for Social Work Examiners and Professional Counselors - Inactive Status Licenses, p. 2988, 298
(Board of Speech-Language Pathologists and Audiologists)
- 8.62.502 and other rules - Aide Supervision - Nonallowable Functions of Aides, p. 1795, 2913
(Board of Passenger Tramway Safety)
- 8.63.501 Adoption of the ANSI Standard, p. 351
(Building Codes Bureau)
- 8.70.101 and other rules - Building Codes, p. 2173, 299
(Milk Control Bureau)
- 8.79.101 and other rules - Definitions - Transactions Involving the Purchase and Resale of Milk within the State, p. 2301, 3016
(Banking and Financial Institutions Division)
- I-II and other rules - Retention of Bank Records - Investment Securities, p. 355
- 8.80.101 and other rules - Banks - Reserve Requirements - Investment in Corporate Stock - Investments of

- Financial Institutions - Limitations on Loans - Loans to a Managing Officer, Officer, Director or Principal Shareholder - Corporate Credit Unions, p. 1599, 2198, 2776, 161
- 8.80.104 and other rules - Semi-Annual Assessments Upon Banks, Investment Companies and Trust Companies - Fees for Approval of Automated Teller Machines and Point-of-Sale Terminals, p. 353
- 8.80.307 Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 359
- (Board of Milk Control)
- 8.86.301 and other rules - Transportation of Milk from Farm-to-Plant and as it Relates to Minimum Pricing - Readjustment of Quotas - Settlement Fund Payments, p. 2315, 3018
- 8.86.301 Monthly Calculation of the Class I Milk Paid to Producers, p. 1797, 2234
- (Banking and Financial Institutions Division)
- 8.87.202 and other rules - Investigation Responsibility - Application Procedures and Requirements for a Certificate of Authorization for a State Chartered Bank - Assuming Deposit Liability of Any Closed Bank - Merger of Affiliated Banks - Establishment of New Branch Banks - Discovery and Hearing Procedures - Application Requirement, p. 361
- (Local Government Assistance Division)
- I Administration of the 1994 Treasure State Endowment (TSEP) Program, p. 125
- I Administration of the 1994 Federal Community Development Block Grant (CDBG) Program, p. 127
- (Board of Investments)
- 8.97.1301 and other rules - Definitions - Seller/Services Approval Procedures - Loan Loss Reserve Account, p. 1247, 2235
- (Business Development Division)
- 8.99.401 and other rules - Microbusiness Finance Program, p. 1800, 2236
- (Board of Housing)
- 8.111.405 Income Limits and Loan Amounts, p. 5, 577
- (Montana State Lottery)
- 8.127.407 Retailer Commission, p. 2078, 391

EDUCATION, Title 10

(Superintendent of Public Instruction)

- 10.16.901 and other rules - Special Education, p. 757, 1913, 2415

(Board of Public Education)

- I Teacher Certification - Area of Specialized Competency, p. 237
- I Certification - Early Childhood, p. 2323
- 10.57.211 Test for Teacher Certification, p. 1463, 2781

- 10.57.501 Teacher Certification - School Psychologists, School Social Workers, Nurses and Speech and Hearing Therapists, p. 234
- 10.60.101 and other rules - Board of Public Education Policy Statement - Due Process in Services - Identification of Children with Disabilities - Opportunity and Educational Equity - Special Education - Student Records - Special Education Records, p. 2326, 166
- 10.66.101 and other rules - General Educational Development - Requirements Which Must be Met in Order to Receive High School Equivalency Certificates - Waiver of Age Requirements - Method of Applying - Fees - Waiting Period for Retesting - Issuance of Equivalency Certificates, p. 2593, 167
- (State Library Commission)
- 10.101.101 Organization of the State Library Agency, p. 1461, 2783

FAMILY SERVICES. Department of. Title 11

- I and other rules - Day Care Facilities - Legally Unregistered Providers Participating in Day Care Benefits' Programs, p. 129
- I Qualifications of Respite Care Providers, p. 1251, 3019
- 11.5.602 and other rule - Case Records of Abuse or Neglect, p. 238
- 11.7.601 and other rules - Foster Care Support Services, p. 2080, 2528

FISH, WILDLIFE, AND PARKS. Department of. Title 12

- I Nonresident Hunting License Preference System, p. 242
- 12.3.112 Setting of Nonresident Antelope Doe/Fawn Licenses, p. 2201, 2914
- 12.3.116 and other rule - Application and Drawing of Moose, Sheep, and Goat Licenses, p. 6, 392
- 12.3.123 Nonresident Combination License Alternate List, p. 2199, 2915
- 12.6.901 Water Safety Regulations - Allowing Electric Motors on Lake Elmo, p. 1963, 2916

HEALTH AND ENVIRONMENTAL SCIENCES. Department of. Title 16

- I Administrative Penalties for Violations of Hazardous Waste Laws and Rules, p. 2992, 419
- I Water Quality Permit and Degradation Authorization Fees, p. 2489, 393
- I-III Health Care Authority - Process for Selection of Regional Health Care Planning Boards, p. 1972, 2416
- I-III Health Care Facility Licensing - Licensure Standards for Residential Treatment Facilities, p. 1809, 304

- I-IX and other rules - Implementation of the Water Quality Act's Nondegradation Policy, p. 2723
- I-XXV Air Quality Bureau - Operating Permits for Certain Stationary Sources of Air Pollution, p. 1817, 2933
- I-XXXIV and other rules - Air Quality - Air Quality Permitting - Prevention of Significant Deterioration - Permitting in Nonattainment Areas - Source Testing - Protocol and Procedure - Wood Waste Burners, p. 1264, 2530, 2919
- 16.6.901 and other rules - Records and Statistics - Filing Death Certificates - Burial Transit Permits - Dead Body Removal Authorization - Notification of Failure to File Certificate or Body Removal Authorization, p. 2599, 3023
- 16.8.1107 and other rules - Air Quality Preconstruction Permits, p. 1965, 2930
- 16.8.1903 and other rule - Air Quality - Air Quality Operation and Permit Fees, p. 1807, 2531
- 16.14.501 and other rules - Solid Waste - Municipal Solid Waste Management, p. 2083, 2672
- 16.14.502 and other rules - Solid Waste - Municipal Solid Waste Management, p. 2203, 2784
- 16.20.603 and other rules - Water Quality - Surface Water Quality Standards, p. 2737
- 16.20.1003 and other rules - Water Quality - Ground Water Quality Standards - Mixing Zones - Water Quality Nondegradation, p. 244
- 16.28.1005 Tuberculosis Control Requirements for Schools and Day Care Facilities, p. 2721
- 16.30.801 and other rules - Emergency Amendment - Reporting of Exposure to Infectious Diseases, p. 415
- 16.38.301 and other rules - Public Health Lab and Chemistry Lab Addressing Laboratory Fees for Food, Consumer Safety and Occupational Health Analysis, p. 1812, 2239
- 16.44.102 and other rules - Hazardous Wastes - Hazardous Waste Management, p. 2330, 2952
- 16.44.125 and other rules - Hazardous Waste - Facility Permit Fees - Hazardous Waste Management - Attorney's Fees in Court Action Concerning Release of Records, p. 1254, 2009
- 16.44.202 and other rule - Hazardous Waste - Underground Injection Wells, p. 1608, 2126
- 16.44.303 and other rules - Solid and Hazardous Waste - Hazardous Waste Management - Use of Used Oil as a Dust Suppressant, p. 556
- (Petroleum Tank Release Compensation Board)
- 16.47.311 and other rules - Consultant Labor Classifications, p. 2206, 2678

TRANSPORTATION, Department of, Title 18

- 18.7.302 and other rules - Motorist Information Signs, p. 137

- 18.8.101 and other rules - Motor Carrier Services (Formerly "Gross Vehicle Weight"), p. 2875

CORRECTIONS AND HUMAN SERVICES, Department of, Title 20

(Board of Pardons)

- 20.25.101 and other rules - Revision of Rules of the Board of Pardons - ARM Title 20, Subchapters 3 through 11, p. 2495, 168

JUSTICE, Department of, Title 23

- I Issuance of Seasonal Commercial Driver's License, p. 1610, 169
I Affidavit Form for an Indigence Financial Statement, p. 1465, 2532
I-VI and other rules - Rules of the Fire Prevention and Investigation Bureau Describing the Revision of Licensure Requirements for Persons Selling, Installing or Servicing Fire Protection Equipment - Other Provisions Dealing with Fire Safety, p. 1855, 2953, 3025
I-VII Regional Youth Detention Services, p. 2886, 579
23.5.101 State Adoption of Federal Hazardous Materials Regulations, p. 1469, 141, 578
23.16.101 and other rules - Regulating Public Gambling, p. 1974, 2786, 3025

LABOR AND INDUSTRY, Department of, Title 24

- I-IV Implementation of Education-based Safety Programs for Workers' Compensation Purposes, p. 257
I-IX Groups of Business Entities Joining Together for the Purchase of Workers' Compensation Insurance, p. 9
I-XIX and other rules - Claims for Unpaid and Underpaid Wages - Calculation of Penalties, p. 367
I-XX Certification of Managed Care Organizations for Workers' Compensation, p. 2890, 420
(Workers' Compensation Judge)
24.5.301 and other rules - Procedural Rules of the Court, p. 2747, 27
24.5.322 and other rules - Procedural Rules of the Court, p. 248
24.26.202 and other rules - Rules of Procedure before the Board of Personnel Appeals - Labor-Management Relations and Grievances, p. 2339, 3026
24.29.702G and other rule - Groups of Employers that Self-Insure for Workers' Compensation Purposes, p. 1613, 2240
24.29.1402 Liability for Workers for Medical Expenses for Workers' Compensation Purposes - Payment of Medical Claims, p. 1870, 2801
24.29.1409 Travel Expense Reimbursements for Workers' Compensation Purposes, p. 1872, 2804

- 24.29.1416 Applicability of Rules and Statutes in Workers' Compensation Matters - Applicability of Date of Injury, Date of Service, p. 143
- 24.29.1504 and other rules - Selection of Treating Physician for Workers' Compensation Purposes, p. 1878, 2809
- 24.29.1513 and other rules - Utilization and Medical Fee Schedules for Workers' Compensation Matters, p. 146

STATE LANDS, Department of, Title 26

- I Rental Rates for Grazing Leases and Licenses - Rental Rates for Cabinsite Leases - Fees for General Recreational Use License, p. 2496, 34
- I Assessment of Fire Protection Fees for Private Lands Under Direct State Fire Protection, p. 1881, 35
- 26.3.180 and other rules - Recreational Use of State Lands - Posting of State Lands to Prevent Trespass, p. 1471, 2536, 33

LIVESTOCK, Department of, Title 32

- 32.2.401 Fees for Slaughterhouse, Meat Packing House or Meat Depot License, p. 1180, 2417

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36.12.202 and other rules - Water Right Contested Case Hearings, p. 2086, 307
- 36.16.102 and other rules - Water Reservations, p. 262
- 36.17.101 and other rules - Renewable Resource Grant and Loan Program, p. 2498, 3040

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Adoption by Reference of the 1993 Edition of the National Electrical Safety Code, p. 2606, 3042
- I-V Exclusion from Motor Carrier Regulation for Transportation Incidental to a Principal Business, p. 18
- 38.3.201 and other rules - Registration of Intrastate, Interstate and Foreign Motor Carriers to Implement New Federal Requirements on Single State Registration, p. 275
- 38.3.702 Class E Motor Carriers - Motor Carriers Authorized to Transport Logs, p. 2370, 2966
- 38.3.2504 and other rules - Tariff Fee - Tariff Symbols, All Relating to Motor Carriers, p. 14
- 38.4.801 and other rules - Rear-End Telemetry Systems for Trains, p. 2602, 3041
- 38.5.2202 and other rule - Federal Pipeline Safety Regulations, p. 2604, 3043
- 38.5.3345 Unauthorized Changes of Telephone Customers' Primary Interexchange Carrier (PIC), p. 2368, 3044

REVENUE, Department of, Title 42

- I Tax Information Provided to the Department of Revenue, p. 1192, 2811
- I-II Exemptions Involving Ownership and Use Tests for Property, p. 2212, 2968
- I-VIII Regulation of Cigarette Marketing, p. 375
- 42.11.301 Opening a New Liquor Store, p. 1475, 2418
- 42.12.103 and other rules - Liquor Licenses and Permits, p. 2003, 2423
- 42.17.105 and other rules - Old Fund Liability Tax, p. 2612, 3045
- 42.17.111 Withholding Taxes Which Apply to Indians, p. 1995, 2426
- 42.18.105 and other rules - Property Reappraisal for Taxable Property in Montana, p. 1182, 2127
- 42.19.401 Low Income Property Tax Reduction, p. 2398, 2967
- 42.20.137 and other rules - Valuation of Real Property, p. 2633, 3048
- 42.20.161 and other rules - Forest Land Classification, p. 2392, 2970
- 42.20.303 and other rules - Mining Claims and Real Property Values, p. 2625, 3060
- 42.21.106 and other rules - Personal Property, p. 2373, 2972
- 42.21.162 Personal Property Taxation Dates, p. 2907
- 42.22.101 and other rules - Centrally Assessed Property, p. 2608, 3061
- 42.22.1311 and other rule - Industrial Trend Tables, p. 2658, 3062
- 42.31.102 and other rules - Cigarettes, p. 1997, 2427
- 42.31.402 Telephones, p. 2107, 2685
- 42.35.211 and other rules - Inheritance Tax, p. 2109, 2817

SECRETARY OF STATE, Title 44

- I and other rule - Fees for Limited Liability Companies - Fees Charged for Priority Handling of Documents, p. 1885, 2248
- I-III Voter Information Pamphlet Format, p. 2665, 3064
- I-IV Commissioning of Notary Publics, p. 1883, 2250
- 1.2.419 Schedule Dates for Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 2667, 3063
- (Commissioner of Political Practices)
- 44.10.521 Mass Collections at Fund-Raising Events - Itemized Account of Proceeds, Reporting, p. 2216

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- 46.10.304A and other rules - AFDC Unemployed Parent, p. 2505, 3065
- 46.10.318 and other rule - Emergency Assistance to Needy Families with Dependent Children, p. 1479, 2432

- 46.10.403 Revision of AFDC Standards Concerning Shared Living Arrangements, p. 278
- 46.10.404 Title IV-A Day Care for Children, p. 2910, 312
- 46.10.410 At-Risk Child Care Services, p. 2114, 2686
- 46.12.204 Medicaid Requirements for Co-Payments, p. 286
- 46.12.501 and other rules - Mid-Level Practitioners, p. 2994, 313
- 46.12.507 and other rules - Medicaid Coverage and Reimbursement of Ambulance Services, p. 2218, 2819
- 46.12.510 and other rules - Swing-bed Hospital Services, p. 2508, 3069
- 46.12.602 and other rule - Medicaid Dental Services, p. 1888, 2433
- 46.12.1930 and other rules - Targeted Case Management for Adults with Severe and Disabling Mental Illness and Youth with Severe Emotional Disturbance, p. 1901, 2251, 2435
- 46.12.3002 Determination of Eligibility for Medicaid Disability Aid, p. 2758, 36
- 46.13.203 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1618, 2437

BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in February, 1994, are published. Vacancies scheduled to appear from April 1, 1994, through June 30, 1994, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of March 3, 1994.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1994

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeded</u>	<u>Appointment/End Date</u>
Board of Hearing Aid Dispensers (Commerce)			
Mr. James Lopez	Governor	Randall	2/15/1994
Kallispell			7/1/1994
Qualifications (if required): hearing aid dispenser			
Board of Public Education (Education)			
Ms. Joyce Silverthorne	Governor	Thompson	2/1/1994
Dixon			2/1/2001
Qualifications (if required): represents northwest quadrant of the state			
Indian Burial Preservation Board (Commerce)			
Mr. Francis Auld	Governor	Atkinson	2/15/1994
Elmo			8/22/1995
Qualifications (if required): represents Salish Kootenai Tribe			
Dr. Randall Skelton	Governor	Smith	2/15/1994
Missoula			8/22/1995
Qualifications (if required): physical anthropologist			

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

Board/current position holder	Appointed by	Term end
Board of Nursing Home Administrators (Commerce) Ms. Molly L. Munro, Great Falls Qualifications (if required): public member of 55 years old	Governor	5/28/1994
Board of Outfitters (Commerce) Mr. Irving "Max" Chase, Emigrant Qualifications (if required): licensed outfitter from District 2	Governor	4/9/1994
Mr. Dan J. Ekstrom, Clinton Qualifications (if required): licensed outfitter from District 1	Governor	4/9/1994
Board of Plumbers (Commerce) Mr. Richard Grover, Missoula Qualifications (if required): master plumber	Governor	5/4/1994
Mr. Michael Waldenberg, Great Falls Qualifications (if required): journeyman plumber	Governor	5/4/1994
Board of Real Estate Appraisers (Commerce) Ms. Linda Cunningham, Fairfield Qualifications (if required): public member	Governor	5/1/1994
Mr. A. Farrell Rose, Helena Qualifications (if required): licensed appraiser	Governor	5/1/1994
Board of Realty Regulation (Commerce) Mr. Jack K. Moore, Great Falls Qualifications (if required): public member	Governor	5/9/1994
Board of Regents of Higher Education (Education) Mr. Shane Coleman, Bozeman Qualifications (if required): full-time student at unit of higher education	Governor	6/1/1994

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

Board/current position holder	Appointed by	Term end
Board of Veterans Affairs (Military Affairs)		
Mr. Neil Shepherd, Chester	Governor	5/18/1994
Qualifications (if required): none specified		
Capital Finance Advisory Council (Administration)		
Rep. Francis Bardonouve, Harlem	Governor	4/6/1994
Qualifications (if required): represents Montana Legislature		
Mr. Marvin Dye, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Sen. Delwyn Gage, Cut Bank	Governor	4/6/1994
Qualifications (if required): represents Montana Legislature		
Mr. Leo Giacometto, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Mr. James M. Kaze, Havre	Director	4/5/1994
Qualifications (if required): none specified		
Mr. David Lewis, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Dr. Amos R. Little, Jr., Helena	Governor	4/6/1994
Qualifications (if required): represents Health Facilities Authority		
Mr. William Mathers, Miles City	Governor	4/6/1994
Qualifications (if required): none specified		
Ms. Lois A. Menzies, Helena	Director	4/5/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

Board/current position holder	Appointed by	Term end
Capital Finance Advisory Council (Administration) cont.		
Mr. Jon D. Noel, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Robert J. Robinson, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Mark Simonich, Woodbridge	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Bob Thomas, Stevensville	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Warren Vaughan, Billings	Governor	4/6/1994
Qualifications (if required): represents Board of Investments		
Council on Physical Fitness and Sports (Governor)		
Ms. Mary Kay Bennett, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Don Byers, Great Falls	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Pat Dodson, Missoula	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Jeri Lou Dome, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Dr. Jack Halseth, Great Falls	Governor	4/17/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

Board/current position holder	Appointed by	Term end
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Dick Harte, Bozeman	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. John Kinna, Bozeman	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Joe Kusek, Billings	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Heather Lewis, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Tim Love, Townsend	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Judy Martz, Butte	Governor	4/17/1994
Qualifications (if required): none specified		
Dr. Alex McNeill, Bozeman	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Marilyn Miller, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Bob Moon, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Arnie Olsen, Butte	Governor	4/17/1994
Qualifications (if required): none specified		
Dr. Arnold Olsen, Helena	Governor	4/17/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

Board/current position holder	Appointed by	Term end
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Tom Osborne, Billings	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Hal Rawson, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Spencer Sartorius, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Ms. Kari Swenson, Winter Park	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Jim Turner, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Manuel White, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Joe Wren, Butte	Governor	4/17/1994
Qualifications (if required): none specified		
Executive Board of Mt. College of Mineral Science & Technology (University System)		
Mr. Creighton Barry, Butte	Governor	4/18/1994
Qualifications (if required): none specified		
Executive Board of Eastern Montana College (University System)		
Ms. Carol J. Willis, Billings	Governor	4/18/1994
Qualifications (if required): none specified		
Executive Board of Montana State University (University System)		
Mr. Richard J. Morgan, Belgrade	Governor	4/18/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Executive Board of Northern Montana College (University System) Ms. Debbie Leeds, Havre Qualifications (if required): none specified	Governor	4/18/1994
Executive Board of University of Montana (University System) Mr. Leonard Landa, Missoula Qualifications (if required): none specified	Governor	4/18/1994
Executive Board of Western Montana College (University System) Mr. Joe Womack, Dillon Qualifications (if required): none specified	Governor	4/18/1994
Family Services Advisory Council (Family Services) Ms. Judy Garrity, Helena Qualifications (if required): none specified	Governor	4/15/1994
Sen. Thomas F. Keating, Billings Qualifications (if required): legislator on Human Services & Aging Joint Subcommittee	Governor	4/15/1994
Ms. Jani McCall, Billings Qualifications (if required): represents interests of youth & family treatment providers	Governor	4/15/1994
Ms. Melissa Parker Stilger, Havre Qualifications (if required): Native American	Governor	4/15/1994
Ms. Barbara Sample, Billings Qualifications (if required): none specified	Governor	4/15/1994

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

Board/current position holder	Appointed by	Term end
Library Services Advisory Council (Education)		
Ms. Brenda Gramsick, Helena	Director	6/1/1994
Qualifications (if required): represents state agency libraries		
Ms. Andrine Haas, Glendive	Director	6/1/1994
Qualifications (if required): represents academic libraries		
Mr. Joseph Hathaway, Glendive	Director	6/1/1994
Qualifications (if required): represents public library service users in Golden Plains Federation		
Ms. Jane Howell, Billings	Education	6/1/1994
Qualifications (if required): represents Montana Library Association		
Ms. Margaret Kernan, Helena	Director	6/1/1994
Qualifications (if required): represents school libraries		
Rep. Ray Peck, Havre	Director	6/1/1994
Qualifications (if required): represents Montana legislature		
Ms. Carolyn Salansky, Dupuyer	Governor	6/1/1994
Qualifications (if required): represents public library service users in Pathfinder Federation		
Ms. Deborah Schlesinger, Helena	Director	6/1/1994
Qualifications (if required): represents federation coordinators		
Ms. Phyllis Sundberg, Bridger	Director	6/1/1994
Qualifications (if required): represents public library service users in S. Central Federation		
Ms. Margaret Webster, Billings	Director	6/1/1994
Qualifications (if required): represents special libraries		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Compensation Mutual Insurance Fund (Administration) Mr. James A. Brouelette, Stevensville Qualifications (if required): private for profit representative	Governor	4/28/1994
Ms. Sandra D. Reiter, Billings Qualifications (if required): private for profit representative	Governor	4/28/1994
State Library Commission (Education) Ms. Peggy Guthrie, Choteau Qualifications (if required): public member	Governor	5/22/1994
Ms. Vada Taylor, Glendive Qualifications (if required): public member	Governor	5/22/1994
Western Interstate Commission on Higher Education (Education) Ms. Emily Swanson, Bozeman Qualifications (if required): public member	Governor	6/19/1994
Youth Justice Council (Justice) Ms. Gail Cleveland, Great Falls Qualifications (if required): none specified	Governor	4/15/1994
Mr. Al Davis, Helena Qualifications (if required): none specified	Governor	4/15/1994
Mr. Gordon Eldridge, Billings Qualifications (if required): none specified	Governor	4/15/1994
Mr. Kelly Ferriter, Helena Qualifications (if required): none specified	Governor	4/15/1994
Ms. Susan Good, Great Falls Qualifications (if required): none specified	Governor	4/15/1994

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

Board/current position holder	Appointed by	Term end
Youth Justice Council (Justice) cont.		
Mr. Tony Harbaugh, Miles City Qualifications (if required): none specified	Governor	4/15/1994
Ms. Randi Hood, Helena Qualifications (if required): none specified	Governor	4/15/1994
Ms. Nicole K. Johnson, Helena Qualifications (if required): none specified	Governor	4/15/1994
Rep. Royal Johnson, Billings Qualifications (if required): none specified	Governor	4/15/1994
Mr. Ted O. Lympus, Kalispell Qualifications (if required): none specified	Governor	4/15/1994
Ms. Joan-Nell Macfadden, Great Falls Qualifications (if required): none specified	Governor	4/15/1994
Ms. Chris Negus, Helena Qualifications (if required): none specified	Governor	4/15/1994
Mr. Steve P. Nelsen, Bozeman Qualifications (if required): none specified	Governor	4/15/1994
Mr. Garry Rafter, Hobson Qualifications (if required): none specified	Governor	4/15/1994
Ms. Sally Stansberry, Missoula Qualifications (if required): none specified	Governor	4/15/1994
Ms. Margaret Stuart, Helena Qualifications (if required): none specified	Governor	4/15/1994

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1994 through June 30, 1994

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term and</u>
Youth Justice Council (Justice) cont. Mr. Don Wetzel, Harlem Qualifications (if required): none specified	Governor	4/15/1994