

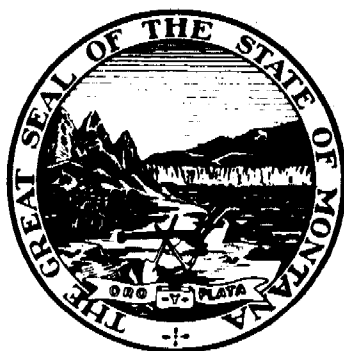
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**MONTANA
ADMINISTRATIVE
REGISTER**

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1995 ISSUE NO. 10
MAY 25, 1995
PAGES 872-976



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED
of Rule 11.14.605 pertaining) AMENDMENT OF RULE 11.14.605
to the sliding fee scale chart) PERTAINING TO THE SLIDING
used to determine eligibility) FEE SCALE CHART USED TO
and copayments for state paid) DETERMINE ELIGIBILITY AND
day care under the block grant) COPAYMENTS FOR STATE PAID
program) DAY CARE UNDER THE BLOCK
) GRANT PROGRAM

NO PUBLIC
HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 26, 1995, the Department of Family Services proposes to amend Rule 11.14.605 pertaining to the sliding fee scale chart used to determine eligibility and copayments for state paid day care under the block grant program.

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

11.14.605 INCOME ELIGIBILITY AND COPAYMENTS (1) remains the same.

(2) The sliding fee scale is based on federal poverty level (FPL) income guidelines and percentages of the state of Montana median income (SMI), for the federal and state fiscal year of 19945.

(3) Parents eligible for benefits under this subchapter are required to make a monthly copayment. The parent(s) will be charged a percentage of their gross monthly income which is rounded up to the next \$100 increment, for the applicable family size according to the chart. ~~(from 1% to 10%). Income is increased by increments of \$100.00. Households with income at or below the lower percentage of SMI appearing in the chart for the applicable family size may receive priority over other households for available benefits. Households with income exceeding the higher percentage of SMI appearing in the chart are ineligible for benefits. 13% of the FPL appearing in the chart are ineligible for benefits.~~ The department may establish other priorities for distributing available benefits.

(4) The department hereby adopts and incorporates by reference the sliding fee scale chart, revised ~~October 1, 1992~~ July 1, 1995, which appears as within the appendix b of the child care and development block grant plan of the state of Montana. The sliding fee scale chart is established pursuant to the requirements of 45 C.F.R. Section 98.16 (1991). The chart sets forth the copayments paid by parents receiving payment for day care services under this subchapter. A copy of the sliding fee scale chart may be obtained from the Department of Family Services, Protective Services Division, Research and Planning Bureau, P.O. Box 8005, Helena, Montana 59604.

AUTH: Sec. 52-2-704 MCA. IMP: Sec. 52-2-713 MCA.

3. Funding mandates of HB 2 require payment pursuant to a new sliding fee scale chart utilizing the federal poverty level for federal fiscal year 1995, and requiring the additional amendments as set out in the proposal. The new chart has been drafted and appended to the block grant plan effective July 1, 1995. The rule must be changed to be consistent with the plan, and to comply with HB 2. Also to comply with HB 2, the amendments will be effective July 1, 1995.

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 June 22, 1995.

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 June 22, 1995.

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. Ten percent of those directly affected has been determined to be more than 25 based on the large number of persons directly affected by the sliding fee scale chart.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, May 15, 1995.

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 16.42.302, 304-310, 312-318,	)	FOR PROPOSED AMENDMENT
and 320-323 concerning evaluation	)	OF RULES
of asbestos hazards and conduct of)	
asbestos abatement; requirements	)	(Asbestos)
for accreditation and permitting)	
of, and training courses for,)	
persons involved in asbestos)	
abatement; and requirements for)	
permits for asbestos abatement)	
projects.)	

To: All Interested Persons

1. On June 15, 1995, at 9:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.42.302 DEFINITIONS For purposes of this subchapter and unless otherwise indicated, the following terms shall have the meanings or interpretations given to them in this section and must be used in conjunction with the definitions contained in section 75-2-502, MCA.

(1)-(5) Remain the same.

(6) "Asbestos-containing building material" or "ACBM" means any asbestos-containing material that is in or on interior structural members or other parts of a school or public and commercial building.

(6)-(12) Remain the same but are renumbered (7)-(13).

~~(13)~~(14) "Competent person" means the same as the definition of competent person as cited in 29 CFR 1926.58, ~~1991~~ 1993 edition.

(14)-(18) Remain the same but are renumbered (15)-(19).

(20) "Friable asbestos-containing building material" or "friable ACBM" means any friable ACM that is in or on interior structural members or other parts of a school or public and commercial building.

(21) "Inspection" means an activity undertaken in a school building, or a public and commercial building, to determine the presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material (ACBM) or suspected ACBM, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed ACBM which has been previously identified. The term does not include

the following:

(a) periodic surveillance of the type described in 40 CFR 763.92(b) solely for the purpose of recording or reporting a change in condition of known or assumed ACM;

(b) inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(c) visual inspections of the type described in 40 CFR 763.90(i) solely for the purpose of determining completion of response actions.

(19) Remains the same but is renumbered (22).

(23) "Major fiber release episode" means any uncontrolled or unintentional disturbance of ACM, resulting in visible emission, which involves the falling or dislodging of more than 1 square or linear feet of friable ACM.

(24) "Minor fiber release episode" means any uncontrolled or unintentional disturbance of ACM, resulting in a visible emission, which involves the falling or dislodging of 3 square or linear feet or less of friable ACM.

(25) "Non-friable asbestos-containing building material" or "non-friable ACM" means any asbestos-containing material that is not friable and that is in or on interior structural members or other parts of a school or public and commercial building.

(20)-(21) Remain the same but are renumbered (26)-(27).

(28) "Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units or detached single-family homes. The term includes, but is not limited to, industrial and office buildings, residential apartment buildings and condominiums of ten or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses, and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

(22)-(24) Remain the same but are renumbered (29)-(31).

(32) "Small-scale, short-duration activities" or "SSSD" are tasks such as, but not limited to:

(a) removal of asbestos-containing insulation on pipes;

(b) removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(c) replacement of an asbestos-containing gasket on a valve;

(d) installation or removal of a small section of drywall;

(e) installation of electrical conduits through or proximate to asbestos-containing materials;

(f) removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement;

(g) removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag;

(h) minor repairs to damaged thermal system insulation that do not require removal;

(i) repairs to a piece of asbestos-containing wallboard;

(j) repairs, involving encapsulation, enclosure, or removal, to small amounts of friable ACM only if required in performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than 3 square feet or 3 linear feet that can be contained in a single prefabricated mini-enclosure. Such an enclosure must conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

(25)-(29) Remain the same but are renumbered (33)-(37).

~~(30)-(38)~~ The department hereby adopts and incorporates herein by reference the definition of "competent person" contained in 29 CFR 1926.58, ~~1991~~1993 edition, which specifies requirements for persons working with asbestos. A copy of the definition can be obtained from the Occupational and Radiological Health Bureau at the Department of Health and Environmental Sciences ~~Quality~~, ~~Gegewell Building~~, Capitol Station, Helena, MT 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

16.42.304 EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (1) In a structure other than a LEA school building, if the owner or other similarly placed person in charge of the structure chooses to evaluate the asbestos hazard in the structure through the use of a Montana accredited asbestos inspector, the asbestos hazard must be evaluated by a Montana accredited asbestos inspector according to the methods contained in 40 CFR 763.85, ~~1991~~1993 edition, (inspections and reinspection); 40 CFR 763.86, ~~1991~~1993 edition, (sampling); 40 CFR 763.87, ~~1991~~1993 edition, (analysis); and 40 CFR 763.88, ~~1991~~1993 edition (assessment). The asbestos inspector is solely responsible for failure to follow these inspection methods. The owner may be responsible under ARM 16.42.308 for hiring an asbestos inspector who is not accredited.

(2)(a)-(b) Remain the same.

(c) The recommended maximum level for airborne fibers indoors in a non-occupational setting should not exceed 0.01 fibers per cubic centimeter of air (f/cc) or 70 structures per millimeter of filter (s/mm²) for an average of five samples collected in a structure during normal conditions of building operation.

(d)-(e) Remain the same.

(f) Analysis for air samples required by this rule is to be done by a laboratory accredited by the American Industrial Hygiene Association (AIHA) or a laboratory which participates in the AIHA Proficiency Analytical Testing (PAT) program and has received a "proficient" rating for asbestos phase contrast microscopy (PCM) samples. For the sampling and sampling analysis, a quality assurance program must be implemented as described in the NIOSH 7400 method or in accordance with 29 CFR

1926.58, Appendix A - Quality Control Procedure, ~~1991~~1993 edition. Quality assurance records and PAT results must be submitted, upon request, to the Montana department of health and environmental ~~sciences~~ quality, occupational and radiological health bureau. Analysis for air samples is to be done by PCM utilizing the National Institute of Occupational Safety and Health (NIOSH) 7400 method published in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(g) Analysis for transmission electron microscopy (TEM) air samples must be done by a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology (NIST). Analysis for air samples analyzed by TEM must utilize the method in 40 CFR 763.90 (i) (3) and (4), 1993 edition.

(g) Remains the same but is renumbered (h).

(3) Remains the same.

(4) The department hereby adopts and incorporates herein by reference 40 CFR 763.85 through 40 CFR 763.88, 40 CFR 763.90(i), 1993 edition, and 29 CFR ~~1296-58~~26.58, Appendix A - Quality Control Procedure, ~~1991~~1993 edition, which pertain to, respectively, methods of inspections and reinspection, sampling, analysis, and assessment of asbestos standards and quality control procedures; and, the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, 3rd edition, second supplement, August 1987, which contains a description of the 7400 analytical method. A copy of each can be obtained from the Occupational and Radiological Health Bureau at the Department of Health and Environmental ~~Sciences~~ Quality, ~~Gegawell Building~~, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

16.42.305 CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (1)(a) At the conclusion of any asbestos abatement project performed in a structure other than a LEA school building, the asbestos abatement contractor or the person in charge of the asbestos abatement project, such as the owner of a structure, shall ensure that the maximum allowable indoor concentration for airborne fibers in a non-occupational setting is not more than 0.01 fibers per cubic centimeter of air (f/cc) or 70 structures per square millimeter of filter (s/mm²), represented by an average of the results of five air samples.

(b) Remains the same.

(c) The five air samples referred to in (1)(a) and (b) must be collected by the individual described in (2)(a) to test for maximum allowable concentration.

(d)-(g) Remain the same.

(h) Analysis for air samples required by this rule must be done by phase contrast microscopy (PCM) utilizing the National Institute of Occupational Safety and Health 7400 method contained in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987, and by a person who has successfully completed the NIOSH 582 course, "Sampling and Evaluating Airborne Asbestos Dust". Analysis for air samples

analyzed by transmission electron microscopy (TEM) must utilize the method in 40 CFR 763.90 (i) (3) and (4), 1993 edition.

(i) Analysis for air samples required by this rule must be done at a laboratory accredited by the American Industrial Hygiene Association (AIHA) or a laboratory which participates in the AIHA proficiency analytical testing (PAT) program and has received a "proficient" rating for asbestos PCM samples. For sampling and sampling analysis, a quality assurance program must be implemented as described in the NIOSH 7400 method or in accordance with 29 CFR 1926.58, Appendix A - Quality Control Procedure, ~~1991~~1993 edition. Quality assurance records and PAT results must be submitted, upon request, to the Montana department of health and environmental ~~sciences~~ quality, occupational and radiological health bureau. Analysis for TEM air samples required by this rule must be analyzed by a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology (NIST).

(2) Remains the same.

(3)(a) In the event that the maximum allowable limit for airborne fibers is exceeded, the accredited asbestos abatement contractor or the accredited asbestos abatement supervisor shall ensure that further evaluation is conducted on air samples, by PCM method outlined in (1)(h) of this rule following further cleaning or by using TEM analysis as outlined in 40 CFR 763.90(i), ~~1991~~1993 edition.

(b) The individual(s) referred to in (2)(a) above must conduct the air sampling referred to in (3)(a). If the TEM analysis indicates that the air concentration inside is higher than the air concentration outside, as specified in 40 CFR 763.90(i)(3) and (4), ~~1991~~1993 edition, then the accredited asbestos abatement contractor or the accredited asbestos supervisor must continue the cleaning effort or response action until it is complete. An asbestos abatement project is complete when the requirements of the TEM analysis are met or when the air concentration is below .01 f/cc as determined by the PCM analysis.

(c) The PCM analysis method is contained in 29 CFR 1910 or 29 CFR 1926.58, ~~1991~~1993 edition, or in the NIOSH 7400 method, published in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(d) The department may grant a waiver from (3)(a)-(c) in the event that an environment is chronically contaminated by fibers and it is determined that the asbestos fiber content does not exceed the maximum allowable concentration as outlined in 40 CFR 763.90(i), ~~1991~~1993 edition.

(e)-(f) Remain the same.

(4) The department hereby adopts and incorporates herein by reference the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, 3rd edition, second supplement, August 1987, which contains a description of the 7400 Analytical Method; 40 CFR 763.90(i)(3) and (4), ~~1991~~1993 edition, which sets forth standards for completion of response actions; 29 CFR 1910, 29 CFR 1926.58, and 29 CFR 1926.58,

Appendix A and G, ~~1991~~1993 edition, which pertain to asbestos standards for general industry, the construction industry, and asbestos abatement and quality assurance procedures, respectively. A copy of each can be obtained from the Occupational and Radiological Health Bureau at the Department of Health and Environmental Sciences Quality, ~~Cegewell Building~~, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

16.42.306 EVALUATION OF ASBESTOS HAZARDS IN LEA SCHOOL BUILDINGS (1) In a LEA school building, the asbestos hazard must be evaluated by the LEA by the appropriate person accredited in an asbestos-type occupation according to the method outlined in 40 CFR 763.85, ~~1991~~1993 edition, (inspections and reinspection); 40 CFR 763.86, ~~1991~~1993 edition, (sampling); 40 CFR 763.87, ~~1991~~1993 edition, (analysis); 40 CFR 763.88, ~~1991~~1993 edition, (assessment); and 40 CFR 763.90, ~~1991~~1993 edition, (response actions).

(2) The department hereby adopts and incorporates herein by reference 40 CFR 763.85 through 40 CFR 763.88, ~~1991~~1993 edition, and 40 CFR 763.90, ~~1991~~1993 edition, which pertain to, respectively, inspections and reinspection, sampling, analysis, assessment, and response actions. Copies of each may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, ~~Cegewell Building~~, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

16.42.307 CLEARING ASBESTOS ABATEMENT PROJECTS IN LEA SCHOOL BUILDINGS (1) A LEA shall ensure that at the conclusion of any asbestos abatement project performed within a LEA school building, inspections and/or sampling techniques, analytical techniques (PCM and TEM), phasing in of transmission electron microscopy (TEM) analysis, and visual inspection are performed and these techniques and analysis are performed in accordance with 40 CFR 763.90 (i), ~~1991~~1993 edition.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 763.90(i), ~~1991~~1993 edition, which sets forth requirements for completion of response actions, a copy of which may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, ~~Cegewell Building~~, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

16.42.308 REQUIREMENTS OF ACCREDITATION AND PERMITTING FOR PERSONS ENGAGED IN AN ASBESTOS-TYPE OCCUPATION

(1) Remains the same.

(2) Accredited persons must have their initial and current accreditation certificates at the location where they are conducting work.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

16.42.309 ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS

MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER (1) Remains the same.

(2) The following asbestos-type occupations must complete the following corresponding training course:

<u>Asbestos Related Occupation</u>	<u>Certified Course</u>
asbestos inspector	3-day training course
asbestos management planner	2-day training course
asbestos abatement project designer ...	3-day training course
asbestos abatement contractor	45-day training course
asbestos abatement supervisor	45-day training course
asbestos worker	34-day training course

(3)-(4) Remain the same.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

16.42.310 RENEWAL OF ACCREDITATION (1) Accreditation for each asbestos-type occupation referred to in ARM 16.42.309 must be renewed annually by each accredited person on or before, or up to one year after, the one-year-anniversary expiration date of completion of the appropriate course which the person took for accreditation upon submission of a properly completed application form, certification of satisfactory completion of the appropriate course, and the appropriate fee to the department. After completing the annual refresher course, a person shall have his/her accreditation extended for an additional year from the date of the refresher course.

(2) Remains the same.

~~(3) If an individual takes the appropriate refresher course after the expiration of the original accreditation, then the new expiration date will be one year from the date of the refresher course.~~

~~(4)(3)~~ Each person must submit an application to the department for renewal with the appropriate fee as specified in ARM 16.42.402 and a copy of the certificate documenting the successful completion of the required refresher course for each discipline as set forth in ~~(5)-(7) (4)-(6)~~.

(5)-(8) Remain the same but are renumbered (4)-(7).

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

16.42.312 APPLICATION FOR ACCREDITATION OF A TRAINING COURSE; CERTIFICATION (1) A person may apply for approval of a training course by submitting by certified mail to the department, bureau of occupational and radiological health, all of the following:

(a)-(d) Remain the same.

(e) a list of instructors and documentation of the instructors' qualifications that includes academic and/or field experience in asbestos abatement;

(f)-(i) Remain the same.

(2) A person providing a training course for an asbestos-type occupation shall provide a certificate with the elements contained in (1)(d) above to all trained persons who success-

fully complete the training course and the examination. The certificate ~~shall~~ must be numbered and ~~shall~~ include:

(a) the person's name and address;
(b) ~~the name and address of the training course sponsor~~
date of the examination;

(c) the signature of one course instructor;
(d) inclusive dates of the training course;
(e) ~~the name or title, address, and telephone number of~~
the training course provider that issued the certificate;

(f) the name and address of the organization which has approved the training course;

(g) a statement that the trainee, by name, has successfully passed the examination for the course; and,

(h) ~~a an expiration date indicating when the certificate expires of one year after the date upon which the person successfully completed the course and examination;~~

(i) discipline of the training course completed; and
(j) a statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under TSCA Title II.

(3) A person providing a training course for an asbestos-type occupation must comply with the following recordkeeping requirements:

(a) retain copies of training course materials, including instructional materials used in the delivery of the classroom training such as student manuals, instructor notebooks, and handouts;

(b) retain copies of all instructors' resumes, and the documents approving each instructor issued by the department;

(c) retain records that accurately identify the instructors that taught each particular course for each date that a course is offered;

(d) retain records that each person who receives an accreditation certificate for initial training course has achieved a passing score on the examination; these records must indicate the date the examination was administered, the training course and discipline for the exam given, the name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam;

(e) maintain records that document the names of all persons who have been awarded certificates, their certificate numbers, the disciplines for which accreditation was conferred, training and expiration dates, and training location. The training provider shall maintain records in a manner that allows verification by telephone of the required information;

(f) maintain all required records for a minimum of 3 years;

(g) allow reasonable access to all of the records, on request, to the U.S. Environmental Protection Agency and the department;

(h) if a provider ceases to conduct training, the training provider shall notify the department and give it the opportunity to take possession of that provider's asbestos training records.

(4) A person providing a training course for an asbestos-

type occupation shall provide the department with written notice of the following at least 10 working days in advance of the date the course commences:

(a) course schedule, including the time allotted to each subject and the name of its instructor;

(b) and a listing of scheduled courses indicating times and location of the course.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

16.42.313 COURSE APPROVAL (1)-(4) Remain the same.

(5) A person providing a training course must notify the department, at least 10 working-days in advance, of the time, location, and dates of the course prior to the offering of any course.

(5)-(6) Remain the same but are renumbered (6)-(7).

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

16.42.314 ASBESTOS INSPECTOR'S COURSE (1) Remains the same.

(2) The asbestos inspectors shall adequately address the following topics and subject matter within each topic:

(a)-(j) Remain the same.

(k) Recordkeeping and writing the inspection report, including labeling of samples and keying sample identification to sampling location; sample labeling recommendations; detailing of ACM inventory; photographs of selected sampling areas and examples of ACM condition; and information required for inclusion in the management plan by the Toxic Substances Control Act (TSCA), Title II, section 203 (i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR 763.80 through 40 CFR 763.99, 19911993 edition.

(l) Regulatory review, including EPA worker protection requirements found at 40 CFR Part 763, subpart G, 19911993 edition; TSCA Title II, Pub. L. No. 99-519, et. seq.; Occupational Safety and Health Administration (OSHA) asbestos construction standard, 29 CFR 1926.58, 19911993 edition; OSHA respirator requirements found at 29 CFR 1910.134, 19911993 edition; the friable ACM in schools rule found at 40 CFR Part 763, subpart F, 19911993 edition; applicable state and local regulations; and differences in federal/state requirements where they apply and the effects, if any, on public and non-public schools.

(m)-(n) Remain the same.

(3) The department hereby adopts and incorporates by reference EPA 560/5-85-030a October 1985, which sets forth a detailed discussion of the simplified sampling scheme for friable surfacing materials; TSCA Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763.80 through 40 CFR 763.99, 19911993 edition, which set forth requirements for the management of asbestos in schools; 40 CFR Part 763, subparts F and G, 19911993 edition, 29 CFR 1926.58, 19911993 edition, and 29 CFR 1910.134, 19911993 edition, which set forth requirements for asbestos worker protection and the management of asbestos in schools. A copy of each may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, Cogswell Building, Capitol Station, Helena, Montana

59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

16.42.315 ASBESTOS MANAGEMENT PLANNERS COURSE (1)
Remains the same.

(2) The course for accreditation of an asbestos management planner must adequately address the following topics and subject matter within each topic:

(a) Remains the same.

(b) Evaluation/interpretation of survey results, including review of the Toxic Substance Control Act (TSCA) Title II requirements for inspection and management plans as given in section 203(i)(1) of TSCA Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763.85 through 40 CFR 763.93, 1991-1993 edition; summarized field data and laboratory results; and comparison between field inspector's data sheet with laboratory results and site survey.

(c)-(g) Remain the same.

(h) Regulatory review, including focusing on the Occupational Safety and Health Administration (OSHA) asbestos construction standard found at 29 CFR 1926.58, 1991-1993 edition; the National Emission Standards for Hazardous Air Pollutants (NESHAPS) found at 40 CFR Part 61, subparts A (general provisions) and M (National Emission Standards for Asbestos), 1991-1993 edition; EPA Worker Protection requirements found at 40 CFR Part 763, subpart G, 1991-1993 edition; TSCA Title II, Pub. L. No. 99-519, et. seq.; and applicable state regulations.

(i) Remains the same.

(j) Assembling and submitting the management plan, including management plan requirements in TSCA Title II section 203(i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR Part 763, 1991-1993 edition; and the management plan as a planning tool.

(k)-(l) Remain the same.

(m) The department hereby adopts and incorporates by reference TSCA Title II section 203(i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR 763.85 through 40 CFR 763.93, 1991-1993 edition, which set forth requirements for inspection and management plans for asbestos in schools; 29 CFR 1926.58, 1991-1993 edition; 40 CFR Part 61, subparts A and M, 1991-1993 edition; 40 CFR Part 763, 1991-1993 edition, subpart G; and TSCA Title II, Pub. L. No. 99-519, et. seq., which set forth requirements for asbestos worker protection, asbestos emissions, and management of asbestos in schools, respectively; and 20 U.S.C. 4011, et. seq., which sets forth requirements for grants and loans under the Asbestos School Hazard Abatement Act. A copy of each may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

16.42.316 ASBESTOS ABATEMENT PROJECT DESIGNER'S COURSE

(1) Remains the same.

(2) The course for accreditation of an asbestos project designer shall adequately address the following topics:

(a)-(b) Remain the same.

(c) Overview of abatement construction projects, including abatement as a portion of a renovation project; Occupational Safety and Health Administration (OSHA) requirements for notification of other contractors on a multi-employer site, which requirements are set forth at 29 CFR 1926.58, ~~1991~~1993 edition.

(d) Safety system design specifications, including ~~design~~ construction, and maintenance of containment barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock-out; proper working techniques for minimizing fiber release; entry and exit procedures for the work area; use of wet methods; ~~proper techniques for initial cleaning~~; use of negative pressure exhaust ventilation equipment; use of high efficiency particulate air (HEPA) vacuums; proper clean-up and disposal of asbestos; work practices as they apply to encapsulation, enclosure, and repair; use of glove bags and a demonstration of glove bag use.

(e) Field trip, including a visit to an abatement site or other suitable building site, including on-site discussions of abatement design, building walk-through inspection, and discussion following the walk-through of the rationale for the concept of functional spaces during the walk-through.

(f)-(i) Remain the same.

(j) Final clearance process, including discussion of the need for a written sampling rationale for aggressive final air clearance; requirements of a complete visual inspection; the relationship of visual inspection to final air clearance; and the need for final air clearance samples to be analyzed by laboratories accredited under the NIST NVLAP.

(j) Remains the same but is renumbered (k).

~~(k)(l)~~ Writing abatement specifications, including preparation of and need for a written project design; means and methods specifications versus performance specifications; design of abatement in occupied buildings; modification of guide specifications to a particular building; worker and building occupant health/medical considerations; ~~and replacement of ACM with non-asbestos substitutes, and clearance of work area after abatement, air monitoring for clearance.~~

~~(l)(m)~~ Preparing abatement drawings, including the significance of and need for drawings; use of as-built drawings ~~as base drawings~~; use of inspections photographs and on-site reports; methods of preparing abatement drawings; diagramming containment barriers; the relationship of drawings to design specifications; and particular problems in related to abatement drawings.

(m)-(q) Remain the same but are renumbered (n)-(r).

~~(r)(s)~~ Relevant federal, state, and local regulatory requirements, procedures and standards, including:

(i) requirements of the Toxic Substance Control Act (TSCA) Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763, ~~1991~~1993 edition;

(ii) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS), subparts A (general provisions) and M (national emission standard for asbestos), ~~1991~~1993 edi-

tion;

(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found in 29 CFR 1910.134, ~~1991~~1993 edition;

(iv) EPA worker protection rule, found at 40 CFR Part 763, subpart G, ~~1991~~1993 edition; and

(v) the OSHA asbestos construction standard found at 29 CFR 1926.58, ~~1991~~1993 edition.

~~(e)~~(f) A review of key aspects of the training course.

(3) The department hereby adopts and incorporates by reference 29 CFR 1926.58, ~~1991~~1993 edition, which pertains to OSHA asbestos standards for the construction industry; TSCA Title II, Pub. L. No. 99-519, et. seq.; 40 CFR 763, ~~1991~~1993 edition; 40 CFR Part 61, subparts A and M, ~~1991~~1993 edition; 29 CFR 1910.134, ~~1991~~1993 edition; 40 CFR Part 763, subpart G, ~~1991~~1993 edition; and 29 CFR 1926.58, ~~1991~~1993 edition, which set forth, respectively, requirements for management of asbestos in schools, asbestos emissions, asbestos worker protection, and asbestos standards for the construction industry. A copy of each may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, ~~Gegswell Building~~, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: ~~75-2-503~~, 75-2-511, MCA

16.42.317 ASBESTOS ABATEMENT CONTRACTOR'S AND SUPERVISOR'S COURSE

(1) A ~~four~~ 5-day training course given to provide the training component necessary for accreditation of an asbestos abatement contractor and/or an asbestos abatement supervisor shall include lectures, demonstrations, ~~6~~ 14 hours of hands-on training, individual respirator fit testing, course review, and a written examination which adequately tests for knowledge of subjects covered in the course.

(2) The course for accreditation of an asbestos abatement contractor or an asbestos abatement supervisor shall adequately address the following topics and subject matter within each topic:

(a)-(h) Remain the same.

(i) All relevant federal, state, and local regulatory requirements, procedures, and standards, including:

(i) requirements of the Toxic Substance Control Act (TSCA) Title II, Pub. L. No. 99-519, et. seq., and 40 CFR Part 763, ~~1991~~1993 edition;

(ii) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS), subparts A (general provisions) and M (national emission standard for asbestos), ~~1991~~1993 edition;

(iii) the OSHA asbestos construction standard found in 29 CFR 1926.58, ~~1991~~1993 edition;

(iv) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found in 29 CFR 1910.134, ~~1991~~1993 edition;

(v) EPA worker protection requirements found in 40 CFR Part 763, subpart G, ~~1991~~1993 edition.

(j)-(o) Remain the same.

(3) The department hereby adopts and incorporates by reference TSCA Title II, Pub. L. No. 99-519, et. seq.; 40 CFR Part 763, ~~1991~~1993 edition; 40 CFR Part 61, subpart A and M, ~~1991~~1993 edition; 29 CFR 1926.58, ~~1991~~1993 edition; and 29 CFR 1910.134, ~~1991~~1993 edition, which set forth, respectively, requirements for asbestos management in schools, asbestos emissions, worker protection, asbestos standards for the construction industry, and asbestos standards for general industry. A copy of each may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, ~~Cegwell Building~~, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: ~~75-2-503~~, 75-2-511, MCA

16.42.318 ASBESTOS ABATEMENT WORKER'S COURSE (1) A ~~three~~ 4-day training course to provide the training component necessary for accreditation of an asbestos abatement worker shall include lectures, demonstrations, 6 ~~14~~ hours of hands-on training, individual respirator fit testing, course review, and a written examination which adequately tests for knowledge of subjects covered in the course.

(2) Remains the same.

AUTH: 75-2-503, MCA; IMP: ~~75-2-503~~, 75-2-511, MCA

16.42.320 REFRESHER COURSES (1)-(2) Remain the same.

(3) Refresher courses must be approved by the department through submission to the department of a completed application form furnished by the department together with a fee as set forth in ARM 16.42.403. The application form will require information regarding the subject matter to be taught in the refresher course, the course materials to be used, a description and example of the numbered certificates issued to students who complete the refresher course, the instructors teaching the refresher course, and instructors' qualifications, which must include academic and/or field experience in asbestos abatement.

AUTH: 75-2-503, MCA; IMP: ~~75-2-503~~, 75-2-511, MCA

16.42.321 ASBESTOS ABATEMENT PROJECT PERMITS (1) Remains the same.

(2) In order to obtain an asbestos abatement project permit, an owner of the building where an asbestos abatement project is being conducted, or the asbestos abatement contractor must submit to the department, by certified mail, all of the following:

(a)-(b) Remain the same.

(c) A signed statement by the owner or the asbestos abatement contractor that all work performed under authorization of the requested permit will be performed in accordance with 29 CFR 1926.58, ~~1991~~1993 edition, including all appendices, and with 40 CFR Part 763, subpart E, ~~1991~~1993 edition, 40 CFR 763.120, ~~1991~~1993 edition, 40 CFR 763.121, ~~1991~~1993 edition, and 40 CFR 763.124, ~~1991~~1993 edition, and 40 CFR Part 61, subpart M, ~~1991~~1993 edition.

(d)-(f) Remain the same.

(g) A project design, designed by a Montana accredited project designer for all asbestos abatement projects greater than 50 square feet or 50 linear feet. At a minimum, the asbestos abatement project design must contain the following information:

(i)-(viii) Remain the same.

(ix) a description of alternate methods of containment such as glovebags, the removal of the entire asbestos covered pipe or structure, and the construction of mini-enclosures which if used must comply with 40 CFR 763 appendix B to subpart E, ~~1991~~1993 edition and 29 CFR 1926.58 appendix G, ~~1991~~1993 edition;

(x)-(xv) Remain the same.

(h) Remains the same.

(3) All asbestos abatement projects shall be performed in accordance with 29 CFR 1926.58, ~~1991~~1993 edition, including all appendices, and with 40 CFR 763.120, ~~1991~~1993 edition, and 40 CFR 763.121, ~~1991~~1993 edition, and 40 CFR Part 61, subpart M, ~~1991~~1993 edition.

(4)-(5) Remain the same.

(6) If the time during which an asbestos abatement project is to be performed changes, the asbestos contractor shall notify the department of such change by telephone at least 24 hours prior to:

(a) implementation of the new scheduled date; or

(b) the original scheduled date, whichever comes first. This notification must be followed by written notification, utilizing a form provided by the department, to the department of the newly scheduled dates within 72 hours of the telephone call. If the dates are substantively different, the department may require the permit holder to amend his permit.

(7)-(8) Remain the same.

(9) The department hereby adopts and incorporates by reference 29 CFR 1926.58, ~~1991~~1993 edition, including all appendices; 40 CFR Part 763, ~~1991~~1993 edition, 40 CFR 763.120, ~~1991~~1993 edition, 40 CFR 763.121, subpart E, ~~1991~~1993 edition, and 40 CFR 763.124, ~~1991~~1993 edition, which set forth requirements for asbestos standards for the construction industry and worker protection; and 40 CFR Part 61, subpart M, ~~1991~~1993 edition, which sets forth requirements for transportation and disposal of asbestos-containing material. A copy of each may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: ~~75-2-503~~, 75-2-511, MCA

16.42.322 ANNUAL PERMITS (1) The owner and/or operator of a facility that maintains an asbestos health and safety program which incorporates standard operating procedures for employees involved in asbestos abatement projects in accordance with 29 CFR 1926.58, ~~1991~~1993 edition, including all appendices, and with 40 CFR 763.120, ~~1991~~1993 edition, 40 CFR 763.121, ~~1991~~1993 edition, and 40 CFR 763.124, ~~1991~~1993 edition,

and which facility continuously employs asbestos workers accredited by the department, may apply to the department for an annual permit for the facility. An annual permit authorizes the facility to conduct asbestos abatement projects within the confines of the facility's controlled area during the period for which the permit is in force.

(2)-(5) Remain the same.

(6) The owner and/or operator of a facility making application for an annual permit must submit to the department, by certified mail, all of the following:

(a)-(b) Remain the same.

(c) A signed statement that all work performed under authorization of the requested annual permit will be performed in accordance with 29 CFR 1926.58, ~~1991~~1993 edition, including all appendices, and with 40 CFR 763.120, ~~1991~~1993 edition, and 40 CFR 763.121, ~~1991~~1993 edition.

(d)-(f) Remain the same.

(7) The department hereby adopts and incorporates by reference 29 CFR 1926.58, ~~1991~~1993 edition, 40 CFR 763.120, ~~1991~~1993 edition, 40 CFR 763.121, ~~1991~~1993 edition, and 40 CFR 763.124, ~~1991~~1993 edition, which set forth, respectively, requirements for asbestos standards for the construction industry and worker protection. A copy of each may be obtained from the Occupational and Radiological Health Bureau, Department of Health and Environmental Sciences Quality, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: ~~75-2-503~~, 75-2-504, MCA

16.42.323 EMERGENCY ASBESTOS PROJECT PERMITS (1) In an emergency situation where there is an immediate danger to life, health or the environment, property, or facility operation, an asbestos abatement contractor or owner of the building where an asbestos abatement project is being conducted or seeking a permit shall provide the department an application for an asbestos abatement project permit within five working days of the initiation of the project. The application shall be accompanied with a description of the emergency situation and the reasons why the permit was not sought prior to initiation of the project. This rule does not apply to a facility operating with a valid annual permit.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

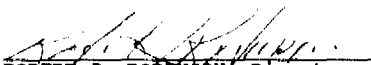
3. The department is proposing these amendments to the rules because they are necessary to conform existing state asbestos abatement regulations to federal requirements and allow Montana to operate an asbestos program to which the Environmental Protection Agency will defer; failure to do so means dual--federal as well as state--regulation, i.e. anyone subject to asbestos-related regulation under state law will also have to meet the federal EPA requirements as well. Dual regulation is a burden on the regulated community that is avoided by promulgation of state rules and rule amendments that conform to federal standards. The amendments proposed in this notice respond to the requirements of Section 15 of the federal

Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA), which mandates that EPA revise its existing Model Accreditation Plan (MAP) promulgated under the Asbestos Hazard Emergency Response Act (AHERA). AHERA, in turn, requires that a state have regulations and legislation at least as stringent as the new MAP before EPA will defer to the state program instead of operating its own separate program. These proposed amendments bring the state rules into conformance with the MAP revisions required by ASHARA.

The major changes to the rule include: (1) added definitions of friable and non-friable asbestos-containing building material, inspection, major and minor fiber release episode, public and commercial building, and small-scale short-duration activities; (2) increasing the number of hours of hands-on training for asbestos contractors, supervisors, and workers; (3) adding new accreditation and recordkeeping requirements; and (4) expanding the curriculum for the project designer training course.

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 Adrian Howe, Department of Health and Environmental Sciences, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, and must be received no later than 5:00 p.m., June 23, 1995.

5. Jim Madden has been designated to preside over and conduct the hearing.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 15, 1995.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED
a rule regarding registration of	)	ADOPTION
interstate and intrastate motor)	
carriers	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On July 1, 1995, the Department of Transportation proposes to adopt a rule regarding the registration of interstate and intrastate motor carriers.

2. The proposed rule provides as follows:

RULE I MOTOR CARRIERS OPERATING INTERSTATE (1) Motor carriers operating interstate and intrastate need only apply to the Montana department of transportation for their registration credentials. Interstate registration credentials will also be honored for intrastate operations.

(2) There is a charge of \$5.00 per motor vehicle for each vehicle registered through the single state registration system.

(3) By reference, the department hereby adopts the rules promulgated by the single state registration system in accordance with 49 U.S.C. § 11506.

(4) By reference, the department hereby adopts the rules of the interstate commerce commission codified as part 1023 of Title 49 of the Code of Federal Regulations, as amended from time to time.

AUTH: Chapter No. 358, Laws of 1995; IMP: Chapter No. 358, Laws of 1995

3. Adoption of the new rule is necessary because of the enactment of Chapter No. 358, Laws of 1995 (SB 378).

4. Interested persons may present their data, views or arguments concerning the proposed rule in writing to Carolyn Knuckles, Motor Carrier Services Division, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, to be received not later than June 26, 1995.

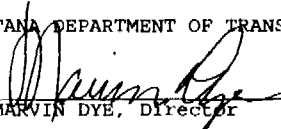
5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Carolyn Knuckles, Motor Carrier Services Division, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001. The comments must be received no later than June 26, 1995.


6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed

adoption; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 40 based on approximately 400 motor carriers operating interstate and intrastate in Montana.

MONTANA DEPARTMENT OF TRANSPORTATION

By:


MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State May 15, 1995.

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

In the Matter of Proposed Adoption)	NOTICE OF PROPOSED
of a Rule Pertaining to Filing of)	ADOPTION OF A NEW
Proof of Insurance by Commercial)	RULE I
Tow Truck Firms.)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On June 26, 1995 the Department of Public Service Regulation proposes to adopt the rule identified in the above title and described in the following paragraph, related to insurance filings by commercial tow truck firms.

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

RULE I. COMMERCIAL TOW TRUCK FIRMS -- PROOF OF REQUIRED INSURANCE (1) Pursuant to [Sec. 15, Ch. 283, L. 1995 (SB 355)] each commercial tow truck firm shall file with the commission proof of insurance coverage in the types and amounts specified by [Sec. 6, Ch. 283, L. 1995] for the classification applicable.

(2) Proof of insurance shall be by a commission certificate of insurance for commercial tow truck firms, form MV-5, which shall also serve as an endorsement to the underlying insurance policy or policies and shall include the following:

(a) a general reference to the laws applicable to filing of insurance by commercial tow truck firms;

(b) identification of the insurer and insured, including name, business name, business address, and business telephone number;

(c) a general reference to the policy coverage requirements and insurer's obligations that, in regard to motor vehicle liability and in regard to cargo or property entrusted to the commercial tow truck firm, coverage shall extend to loss or damage for which the insured may be held liable regardless of whether the motor vehicles, terminals, warehouses, other facilities, or routes used in connection with the tow truck operations are specifically identified in the policy or not;

(d) identification of the class of the insured commercial tow truck firm pursuant to the classification standards of [Sec. 5, Ch 283, L. 1995];

(e) coverage of the types and in the amounts (minimum) of insurance for the appropriate class designation, as required by [Sec. 6, Ch. 283, L. 1995], with no deductibles applicable to any coverage that has a minimum amount specified by statute;

(f) a provision that the insurer agrees to furnish a duplicate original of the actual policy or policies of insurance upon request of the commission;

(g) a provision that any policy endorsement or certificate cannot be cancelled without cancellation of the underlying policy and that cancellation of the policy is not effective until 30 days written notice to the commission by the insurer or its authorized representative; and

(h) a provision for signature of the insurer or its authorized representative.

(3) Policies of insurance issued to commercial tow truck firms shall comply with the terms, conditions, and requirements set forth in this rule and commission form MV-5. Policies may have additional provisions, but no provision inconsistent with the requirements of this rule and commission form MV-5.

(4) Policies of insurance for commercial tow truck firms must be written by insurance companies authorized to conduct business in the state of Montana. AUTH: Sec. 69-12-201, MCA, IMP: Secs. 5, 6, and 15, Ch. 283, L. 1995; and 69-12-402, MCA

3. Rationale: The rule is reasonably necessary to establish the procedure and requirements for proper Commission implementation of, and industry compliance with, Sec. 15, Ch. 283, L. 1995, which requires the Commission to administer the filing of proof of insurance by commercial tow truck firms. The commission views the filing requirement established in that law as intended by the legislature to closely parallel the legislature's previous direction as to insurance filings (see, Sec. 69-12-402, MCA) and the Commission's longstanding implementation and administration of proof of insurance requirements, as applicable to regulated motor carriers (see, ARM 38.3.701 through 38.3.709). The proposed rule, procedure, and form are intended to closely match the rules, procedures, and forms applicable to regulated motor carriers (see, above-referenced rules and Form MV-2, Form MV-4, Form E, Form H). However, because several of the insurance requirements for commercial tow truck firms are unique (include insurance types other than motor vehicle liability and cargo), the existing rules and forms do not readily apply. Therefore, the new rule (and resulting form certificate and endorsement, combined for convenience) are necessary.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than June 26, 1995.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to

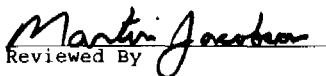
Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than June 26, 1995.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 persons based on the estimated excess of 250 commercial tow truck firms in Montana.

7. The Montana Consumer Counsel, -34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.


Nancy McAffree, Chair

CERTIFIED TO THE SECRETARY OF STATE MAY 15, 1995.


Reviewed By

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED ADOPTION OF
XVI pertaining to health	)	RULES I THROUGH XVI
maintenance organizations	)	PERTAINING TO HEALTH
	)	MAINTENANCE ORGANIZATIONS

TO: All Interested Persons

1. On June 14, 1995, at 9:30 a.m., a public hearing will be held in the Hayne's auditorium of the Montana Historical Society Building, 225 N. Roberts, Helena, Montana to consider the proposed adoption of Rules I through XVI pertaining to health maintenance organizations.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on June 6, 1995, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] HEALTH MAINTENANCE ORGANIZATIONS: DEFINITIONS

(1) "Capitation rate" means the fee the department pays monthly to an HMO for the provision of covered medical and health services to each enrolled recipient. The fee is reimbursed whether or not the enrolled recipient received services during the month for which the fee is intended. The fee may vary by age, sex, eligibility category and region.

(2) "Community-based organizations" means local governmental and nonprofit organizations providing programs of preventive and other health related services. Community-based organizations provide services that include but are not limited to: child immunization, health education, case management, health screening, nutrition, poison prevention, developmental outpatient and health support services and health tracking programs.

(3) "Contract" means a contract between the department and an HMO for the provision of medical and health services to medicaid recipients.

(4) "Covered services" means all or a part of the medical and health services set forth in [Rule V] that an HMO is responsible for delivering to enrolled recipients under a contract with the department.

(5) "Department" means the Montana department of social and rehabilitation services.

(6) "Emergency care" means, as defined at ARM 46.12.102, inpatient and outpatient hospital services that are necessary to prevent the death or serious impairment of the health of a recipient.

(7) "Emergency room screens" means a medical screening examination within the capability of the emergency facility to determine whether an emergency medical condition exists or active labor is occurring.

(8) "Enrolled recipient" means a medicaid recipient who is eligible for HMO enrollment as provided in [Rule II] and who is enrolled with an HMO that has a contract with the department.

(9) "Enrollment area" means the county or counties in which an HMO is licensed to operate by the state of Montana and in which the HMO has service capability as required by the department and set forth in the contract. An enrollment area must not be less than an entire county.

(10) "Federally qualified HMO" means an HMO qualified under section 1315(a) of the Public Health Service Act as determined by the U.S. public health service.

(11) "Grievance" means an incident, complaint or concern of an enrolled recipient.

(12) "Health maintenance organization (HMO)" means a public or private organization established and licensed as provided at 33-31-201, et seq., MCA.

(13) "Managed health care provider" means any one of the alternative systems for delivery of regular fee-for-service medicaid services. Managed health care provider includes health maintenance organizations (HMOs) and primary care case management programs.

(14) "Managed health care contractor" means the entity the department contracts with to perform certain administrative functions of the managed health care programs.

(15) "Participating provider" means a provider of medical and health services subcontracting with or employed by an HMO.

(16) "Primary care provider" means a medical professional directly responsible for the delivery of most routine care and from whom a recipient must gain approval to obtain services from other medical professionals.

(17) "Recipient" means a person who is eligible for medicaid.

(18) "Routine care" means medical care for a condition that is not likely to substantially worsen in the absence of immediate medical intervention and is not an urgent condition or an emergency. Routine care can be provided through regularly scheduled appointments without risk of permanent damage to the person's health status.

(19) "Urgent care" means medical care necessary for a condition that is not life threatening but which requires treatment that cannot wait for a regularly scheduled clinical appointment because of the prospect of the condition worsening without timely medical intervention.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE II] HEALTH MAINTENANCE ORGANIZATIONS: RECIPIENT ELIGIBILITY

(1) A recipient in any one of the following categories is eligible to enroll with an HMO contracting with the department:

(a) an AFDC or AFDC-related recipient required by ARM 46.12.5003 to participate in a primary care case management program; or

(b) beginning July 1, 1996, an SSI recipient or SSI-related recipient required by ARM 46.12.5003 to participate in a primary care case management program.

(2) A newborn recipient must enroll with an HMO contracting with the department if enrollment with an HMO is available to the recipient.

(3) A recipient, exempt from required participation in a primary care case management program as provided in ARM 46.12.5003, is not eligible to enroll with an HMO contracting with the department.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113, 53-6-116 and 53-6-117 MCA

[RULE III] HEALTH MAINTENANCE ORGANIZATIONS: ENROLLMENT

(1) Recipient enrollment with an HMO contracting with the department, except as otherwise provided in [Rule II], is voluntary.

(2) An eligible recipient may request enrollment with a particular HMO.

(a) A newborn recipient must be enrolled with the mother's HMO effective on the date of birth.

(3) An eligible recipient may only enroll with an HMO contracting with the department to provide HMO services in the locality of the recipient's residence.

(4) An eligible recipient who is hospitalized, other than a newborn recipient, may only enroll with an HMO contracting with the department after the recipient's discharge from the hospital.

(5) Enrollment is requested either by completing a form designated by the managed health care contractor or by a written or verbal request to the managed health care contractor.

(a) The form must be available through the county office, the HMO office, the managed health care contractor, or other locations designated by the department.

(b) An HMO or any entity responsible for making the form available, receiving a form or a request, must forward the form or request to the managed health care contractor within 3 working days.

(6) An HMO must accept without restriction eligible recipients in the order in which they enroll until capacity enrollment is reached.

(7) The effective date of enrollment for an eligible recipient must be no later than the first day of the second month subsequent to the date on which the managed health care contractor receives the designated managed health care choice form or written or verbal request. The effective date must be earlier than the second subsequent month if enrollment can be processed before the monthly eligibility deadline.

(8) An HMO may issue an appropriate identification card to an enrolled recipient. A medicaid card is issued to enrolled recipients.

(9) The total number of enrolled recipients and Part A and Part B medicare beneficiaries with a nonfederally qualified HMO may not exceed 75% of the HMO's total enrollment, as provided in 42 CFR 434.26(a), unless the HMO is the subject of one of the exceptions provided at 42 CFR 434.26(b). The department hereby adopts and incorporates by reference 42 CFR 434.26, dated October 1994. A copy of the incorporated provision may be obtained through the Department of Social and Rehabilitation Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 42110, Helena, MT 59604-4210.

(10) An eligible recipient, not requesting a particular HMO, must be assigned to, between, or among the contracting managed health care providers. A recipient must first be assigned based on historical usage. If no appropriate historical usage information is available, a random assignment with appropriate consideration of the recipient's age, sex, and location is made. Random assignment alternates between HMO and PASSPORT programs where both are available.

(11) An eligible recipient, assigned to a managed health care provider, will receive notification of the assignment and the name of the provider in a timely fashion prior to the effective date of enrollment.

(12) An enrolled recipient, assigned to a managed health care provider, as described in this rule, may request a change to a different available managed health care provider. A change is effective in accordance with effective date provisions in this rule and [Rule IV].

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113, 53-6-116 and 53-6-117 MCA

[RULE IV] HEALTH MAINTENANCE ORGANIZATIONS: DISENROLLMENT

(1) An enrolled recipient may request, without good cause, disenrollment from an HMO at any time.

(2) A disenrollment request must be accompanied by a choice for another managed health care provider.

(3) Disenrollment is requested by either completing a form designated by the managed health care contractor or by a written or oral request to the managed health care contractor.

(a) The form must be available through the same locations as specified in [Rule III] for the enrollment form.

(b) An HMO or any other entity responsible for making the form available upon receiving a form or a request, must forward the form or request to the managed health care contractor within 3 working days.

(4) An HMO, based on good cause, may request that the department disenroll a recipient. The request with the basis for the request must be in writing.

(a) Good cause does not include an adverse change in health status.

(5) An HMO may disenroll an enrolled recipient, subject to the prior approval of the department, if the enrollee:

(a) has failed to pay required premiums by the end of the grace period;

(b) has committed acts of physical or verbal abuse that pose a threat to providers or other enrollees of the HMO;

(c) has allowed a nonenrollee to use the HMO certification card to obtain services or has knowingly provided fraudulent information in applying for coverage;

(d) has moved outside of the geographical service area of the HMO;

(e) has violated rules of the HMO stated in the evidence of coverage;

(f) has violated rules adopted by the commissioner of insurance for enrollment in an HMO; or

(g) is unable to establish or maintain a satisfactory physician-patient relationship with the physician responsible for the enrollee's care. Disenrollment of an enrollee for this reason must be permitted only if the HMO can demonstrate that it provided the enrollee with the opportunity to select an alternate primary care physician, made a reasonable effort to assist the enrollee in establishing a satisfactory physician-patient relationship, and informed the enrollee that the enrollee may file a grievance on this matter.

(6) Disenrollment takes effect, at the earliest, first day of the month after the month in which the department receives the request for enrollment, but no later than the first day of the second calendar month after the month in which the department receives a request for disenrollment. The enrolled recipient remains enrolled with the HMO and the HMO is responsible for services covered under the contract until the effective date of disenrollment which is always the first day of a month.

(7) An enrolled recipient must be disenrolled from a particular HMO if:

(a) the contract between the department and the HMO is terminated; or

(b) the recipient permanently moves outside the HMO's enrollment area.

(8) An enrolled recipient must be disenrolled if:

(a) the recipient enters a medicaid eligibility group excluded from HMO enrollment; or

- (b) the recipient becomes ineligible for medicaid.
- (9) If an enrolled recipient becomes ineligible for medicaid and is reinstated into medicaid within 1 month, a recipient may be reenrolled with the HMO.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113, 53-6-116 and 53-6-117 MCA

[RULE VI] HEALTH MAINTENANCE ORGANIZATIONS: COVERED SERVICES

(1) An HMO must provide the following services unless the contract with the department provides otherwise:

- (a) inpatient hospital;
 - (b) outpatient hospital;
 - (c) physician;
 - (d) family planning;
 - (e) home health;
 - (f) early periodic screening, diagnosis and treatment for individuals under the age of 21;
 - (g) laboratory and x-ray;
 - (h) rural health clinic;
 - (i) ambulance;
 - (j) ambulatory surgical center;
 - (k) chiropractor;
 - (l) diagnostic clinic;
 - (m) nutritionist;
 - (n) intrauterine monitoring device;
 - (o) federally qualified health center;
 - (p) hospice;
 - (q) physician assistant;
 - (r) nurse specialist;
 - (s) occupational therapy;
 - (t) physical therapy;
 - (u) podiatry;
 - (v) private duty nursing;
 - (w) public health clinic;
 - (x) respiratory therapy;
 - (y) school based services, except occupational therapy, speech therapy, physical therapy, and private duty nursing;
 - (z) speech therapy;
 - (aa) targeted case management for high risk pregnant women; and
 - (ab) transplant.
- (2) An HMO is not required to provide the following services unless the contract with the department provides otherwise:
- (a) nursing facility service;
 - (b) inpatient psychiatric care provided at a state-administered mental health facility;
 - (c) audiology;
 - (d) durable medical equipment and medical supplies except for intrauterine monitoring devices;
 - (e) drugs;
 - (f) eyeglasses;

- (g) free standing dialysis clinic;
 - (h) hearing aids;
 - (i) home and community based waiver services;
 - (j) home dialysis attendant;
 - (k) non-emergency transportation;
 - (l) optometry;
 - (m) personal care attendant;
 - (n) private duty nursing and occupational, physical, and speech therapies provided in schools;
 - (o) targeted case management except for high risk pregnant women;
 - (p) inpatient and outpatient mental health services that have as a primary diagnosis one of the following ranges of ICD-9 diagnosis codes: 290-302, 306-314, and 316;
 - (q) clinical social worker;
 - (r) licensed professional counselor;
 - (s) psychologist;
 - (t) community mental health center;
 - (u) residential treatment center;
 - (v) therapeutic group home;
 - (w) therapeutic foster care; and
 - (x) Indian health service clinics on reservations.
- (3) In addition to covered services, an enrolled recipient may obtain the following services on an as needed basis:
- (a) family planning services provided by a family planning provider;
 - (b) immunizations provided by a public health clinic;
 - (c) blood lead level testing provided by a public health clinic; or
 - (d) services for an urgent condition or emergency.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE VI] HEALTH MAINTENANCE ORGANIZATIONS: CONTRACTS FOR SERVICES

(1) The department may enter into a contract with an HMO licensed under the provisions of 33-31-201, et seq., MCA, to provide any of the services specified in [Rule V].

(2) An HMO, entering into a contract with the department, must meet the requirements in section (5) of Chapter 502, Laws of Montana, 1995.

(3) A contract for the provision of services through an HMO must meet the requirements of 42 CFR part 434. The department hereby adopts and incorporates by reference 42 CFR part 434, dated October 1994. A copy of the incorporated provisions may be obtained through the Department of Social and Rehabilitation Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(4) An HMO entering into a contract with the department for the delivery of services assumes the risk that the costs of performance may exceed the consideration available through the capitation rate and otherwise.

(5) An HMO must provide the department with documented assurances to show that the HMO is not likely to become

insolvent. This requirement may be satisfied by documenting compliance with 33-31-216, MCA.

(6) An HMO may not in any manner hold enrolled recipients responsible for the debts of the HMO.

(7) A contract with an HMO must:

(a) list the covered services to be provided by the HMO;

(b) specify the method and rate of reimbursement; and

(c) provide for disclosure of ownership and subcontractor relationship.

(8) Prior to termination of a contract or withholding of payments for cause, except as provided in (8)(a), a notice to cure will be sent to the HMO, stating the failures in performance and specifying the number of days the HMO has to correct the failures. The department may proceed with the proposed termination or withholding of payments, if the HMO fails to correct the failures in performance in the specified time period for correction.

(a) A contract with an HMO may be terminated immediately in whole or in part by the department when the HMO becomes insolvent or loses a certificate of authority or the department determines that termination is necessary to protect the health of enrolled recipients.

(9) An HMO may not appeal a contractual matter through the fair hearing process provided at ARM 46.2.201, et seq.

(10) An HMO may specify in a contract a limit to the number of enrolled recipients who can be enrolled with the HMO. If a limit is specified, the HMO must accept the number of voluntarily and assigned enrolled recipients up to the limit specified in the contract.

(11) The department may contract with one or more HMO or other managed health care providers to provide managed health care in an enrollment area.

(12) The department and an HMO may by mutual consent terminate a contract.

(13) The department may terminate a contract for cause. Cause includes, but is not limited to, the following:

(a) There is an inordinate risk of inadequate or inappropriate medical care to the enrolled recipients;

(b) The HMO is insolvent;

(c) The HMO's delivery system is not providing medicaid recipients with adequate access to medical services;

(d) The HMO's delivery system is not providing for the availability of all services covered under the contract;

(e) The HMO is not providing proper assurances of financial solvency;

(f) The HMO is not substantially complying with all provisions of the contract;

(g) The HMO is discriminating against persons eligible to be covered under the contract on the basis of age, race, sex, religion, national origin, creed, color, physical or mental disability, political belief, marital status or health status; or

(h) The HMO is not in compliance with federal or state laws and regulations governing its performance or the provision of services.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE VII] HEALTH MAINTENANCE ORGANIZATIONS: PROVISION OF SERVICES

(1) An HMO may impose the following requirements in the provision of services:

(a) the use of certain types of providers;
(b) the preauthorization for services other than emergency services;

(c) directing an enrolled recipient to the appropriate level of care for receipt of covered services; and

(d) denial of payment to a provider for services provided to an enrolled recipient if these participation requirements are not met by the enrollee.

(2) An enrolled recipient must use the participating providers in the enrolled recipient's HMO.

(3) An enrolled recipient may use a nonparticipating provider in the following circumstances:

(a) the HMO authorizes a nonparticipating provider to provide a service;

(b) the enrolled recipient receives a family planning service provided by a family planning provider;

(c) the enrolled recipient receives an immunization or blood lead level testing provided by a public health clinic; or

(d) the enrolled recipient receives services provided for an urgent condition or emergency.

(4) An HMO must provide services to enrolled medicaid recipients in the same manner as services are provided to non-medicaid enrollees.

(5) To the maximum extent possible, an HMO must inform enrolled recipients of alternate providers for services not covered by the HMO.

(6) An HMO, at a minimum, must provide enrollment recipients the same scope for medical procedures as would be available under regular medicaid for those procedures.

(7) An HMO may at its discretion offer services to enrolled recipients beyond the scope of medicaid as defined in ARM 46.12.501.

(8) An HMO may not impose limitations on days of service or length of stay that are more restrictive than regular medicaid.

(9) An HMO must ensure that services for urgent conditions and emergencies are available on an immediate basis 24 hours a day, 7 days a week.

(a) An HMO may require that follow-up treatment to an urgent condition or emergency be provided by HMO participating providers.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE VIII] HEALTH MAINTENANCE ORGANIZATIONS: PARTICIPATING PROVIDERS

(1) An HMO, except as otherwise provided in this rule, may select the providers of medical services the HMO determines necessary to meet its contractual obligations with the department.

(2) An HMO must make a reasonable good faith effort to contract with federally qualified health clinics, rural health clinics and existing providers of targeted case management for high risk pregnant women. The determination of whether or not there has been a good faith effort is made by the department.

(3) An HMO must cooperate, where appropriate and feasible, with community-based organizations in the referral for and delivery of services available through those organizations.

(4) An HMO may not contract for a service from a provider located over 125 miles distant from the Montana border if services of comparable cost and quality are available from a provider located within Montana.

(5) An HMO may not employ or contract with a provider that has been sanctioned by the medicaid program.

(6) An HMO may set notification and claim filing time limitations relating to the provision of care by nonparticipating providers. Failure to give notice or file claims within those time limitations, however, does not invalidate any claim if it can be shown not to have been reasonably possible to give such notice and that notice was in fact given as soon as was reasonably possible.

(7) A participating provider has no right to an administrative hearing as provided in ARM 46.2.201, et seq., 46.12.409 and 46.12.509A for a denial of payment by the HMO to an enrolled recipient.

(8) A participating provider, in providing services under contract with an HMO, is not subject to any requirements or rights provided in ARM 46.12.302(1), pertaining to medicaid provider enrollment, ARM 46.12.303 pertaining to medicaid billing and, ARM 46.12.307, pertaining to provider rights.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE IX] HMO: REIMBURSEMENT OF PROVIDERS (1) An HMO may reimburse a participating provider in the manner and the amounts the HMO determines are appropriate to the provision of services.

(2) An HMO need not reimburse, except as otherwise provided in this rule, claims for services provided by nonparticipating providers if the same service is covered by the HMO under its contract with the department.

(3) An HMO must reimburse family planning services provided by a nonparticipating family planning provider to an enrolled recipient who sought the services without referral.

(4) An HMO must reimburse immunizations and blood lead testing provided by a public health clinic to an enrolled recipient.

(5) An HMO must reimburse a nonparticipating provider for any covered service furnished by the provider that was provided

because the service was needed immediately to meet an urgent condition or emergency and the circumstances did not permit a choice of provider.

(6) An HMO must reimburse nonparticipating providers for services for urgent conditions, emergencies or emergency room screenings provided to an enrolled recipient while the recipient is temporarily outside the HMO's enrollment area.

(7) An HMO, owned, controlled or sponsored by or affiliated with a religious organization, must reimburse a covered service received by an enrolled recipient that the HMO does not make available due to the service constituting a violation of the religious tenets of the organization, to which the HMO is related.

(8) An HMO is not responsible for reimbursement of the disproportionate share payments for inpatient hospital services provided to an enrolled recipient.

(9) An HMO must reimburse services for an urgent condition, emergency or emergency room screens in an amount that is not less than the department's medicaid rates for those services.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE X] HEALTH MAINTENANCE ORGANIZATIONS: REIMBURSEMENT OF HMOs

(1) In consideration for all services rendered by an HMO under a contract with the department, the HMO will receive a payment each month for each enrolled recipient. This payment is the capitation rate. The capitation rate represents the total obligation of the department with respect to the costs of medical care and services provided to each enrolled recipient under the contract.

(a) The capitation rate must be actuarially determined.

(b) The capitation rate must be:

(i) based on medicaid fee-for-service expenses incurred in the provision of the HMO-covered services to a non-HMO population of similar characteristics during the base fiscal year; and

(ii) based on services that are reasonably available to the enrolled recipients of the HMO.

(c) The capitation rate may not exceed the cost to the department of providing the same services to an actuarially equivalent nonenrolled population group.

(d) The capitation rate may be updated annually.

(e) The capitation rate does not include:

(i) any amounts for the recoupment of losses suffered by an HMO for risks assumed under the contract or any previous risk contract; and

(ii) any disproportionate share payments.

(2) The HMO may retain any savings realized by the HMO from the expenditures for necessary health services by the enrolled population totalling less than the capitation rate paid by the department.

(3) The department reimburses to federally qualified health clinics and rural health clinics that are participating providers the difference between the amounts paid to them by the HMO and the reasonable cost of providing services to enrolled recipients.

(4) The department reimburses disproportionate share payments for inpatient hospital services provided to recipients.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE XI] HEALTH MAINTENANCE ORGANIZATIONS: ACCESS TO SERVICES

(1) An enrolled recipient must have the opportunity to choose a primary care provider to the extent possible and medically appropriate from any of the participating primary care providers in the recipient's HMO.

(2) An HMO's medical service delivery site must:

(a) be located within the normal service delivery area of the personal residences of enrolled recipients;

(b) have a sufficient number of participating providers available to adequately provide the medical services contracted for by the site including physicians or providers with relationships with physicians with admitting privileges at one or more participating hospitals;

(c) meet the applicable standards for participating in the Medicaid program; and

(d) be in compliance with all applicable local, state and federal standards related to the service provided as well as those for fire and safety.

(3) An HMO must have procedures for the scheduling of appointments for enrolled recipients that are appropriate in relation to the reason for the visit.

(a) An enrolled recipient with urgent symptoms must be seen within one day of contacting the participating provider.

(b) Routine visits must be scheduled within 2 to 4 weeks of the date an enrolled recipient requests an appointment with the participating provider.

(c) Appointments must be scheduled by specific time intervals and not on a block basis.

(4) An HMO must have in effect the following arrangements which provide for adequate after hours call-in coverage by participating providers:

(a) An after hours call-in must include 24-hour-a-day phone coverage;

(b) If a medical provider is unavailable to answer the initial telephone call, there must be a written protocol specifying when the answering party must consult a medical provider;

(c) Calls requiring a medical decision must be forwarded to the on-call medical provider;

(d) A response to each call which requires a medical decision must be provided by the medical provider within 60 minutes.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE XII] HEALTH MAINTENANCE ORGANIZATIONS: GRIEVANCE PROCEDURES

(1) An enrolled recipient has the right of appeal as provided at ARM 46.2.201, et seq.

(2) An HMO must have a written procedure, approved in writing by the department prior to implementation, for resolution of grievances brought by enrolled recipients either individually or as a class.

(3) An enrolled recipient must exhaust the HMO's grievance procedure before appeal of the matter may be made to the department under the provisions of ARM 46.2.201, et seq.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE XIII] HEALTH MAINTENANCE ORGANIZATIONS: RECORDS AND CONFIDENTIALITY

(1) An HMO must comply with the provisions of ARM 46.12.308 regarding maintenance and retention of medical and fiscal records.

(2) An HMO must submit reports and maintain records as required in the contract with the department.

(3) An HMO must have in effect arrangements to provide for an adequate medical record-keeping system which includes a complete medical record for each enrolled recipient in accordance with provisions set forth in the contract.

(4) An HMO and participating providers must maintain the confidentiality of medical record and other confidential information.

(a) Consent for release must be obtained from an enrolled recipient for release or use of confidential information unless the release or use is authorized by this rule or the provisions of the department of social and rehabilitation services' confidentiality policy.

(i) The department of social and rehabilitation services' confidentiality policy, adopted October 1, 1988, and published in the Department of Social and Rehabilitation Services Policy Manual ADM 102 is hereby adopted and incorporated by reference. Copies of the policy may be obtained from the Department of Social and Rehabilitation Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(b) Confidential information may be used as necessary for administrative purposes or for delivery of medical services.

(i) Consent for release is not required for the transmission of medical record information to participating providers providing services to the enrolled recipient or to specialty providers who are retained by an HMO to provide services.

(ii) Consent for release is not required for department staff assisting in the administration of the program, reviewers from the external quality review organization, monitoring authorities from the health care financing administration

(HCFA), an HMO itself or other participating providers that require information.

(iii) Consent for release is not required for the transmission of medical record information to physicians or facilities providing care for an urgent condition or emergency.

(c) The extent of medical record information to be released in each instance must be determined in accordance with the circumstances of medical necessity and the need for the practitioner or facility to use the information.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE XIV] HEALTH MAINTENANCE ORGANIZATIONS: RECIPIENT EDUCATION

(1) An HMO must provide to all applicants and enrolled recipients a written explanation of all fee for service and managed health care plans available to recipients.

(2) An HMO must have written instructions for enrolled recipients in the use of all services provided. The policy must include, but is not limited to, written information on service restrictions and limitations regarding appropriate use of the referral system, grievance procedure, after hours call-in system, provisions for emergency treatment, how the recipient may obtain services that are the responsibility of the HMO under [Rule V] and the contract between the HMO and the department but which are not available through the HMO due to religious objections and how to request a list of providers for the HMO.

(3) An HMO must have a written statement of patient rights and responsibilities. The statement must be sent to all new enrolled recipients. The statement must be available to recipients upon request. The right of the recipient to request disenrollment must be stated in the statement.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE XV] HEALTH MAINTENANCE ORGANIZATIONS: QUALITY ASSURANCE

(1) An HMO must have in effect an internal quality assurance system as specified in the contract.

(2) An internal quality assurance system must meet the requirements of 42 CFR 434.34. The department hereby adopts and incorporates by reference 42 CFR 434.34, dated October 1994.

(a) Copies of 42 CFR 434.34 may be obtained through the Department of Social and Rehabilitation Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

[RULE XVII] HMO, THIRD PARTY

(1) The HMO is responsible for investigating third party resources and seeking payment from these sources.

(2) The HMO may retain all funds collected from third party resources.

(3) A complete record of all payments received from third party sources must be maintained and reported as required in the contract.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

3. The Department of Social and Rehabilitation Services has determined that the management of the provision of medical and medically-related services to recipients of medicaid may be improved for certain populations of recipients by incorporating health management organizations (HMOs) into the delivery system for the medicaid program. The proposed rules are generally necessary to implement the delivery of medicaid services by HMOs. The implementation of the delivery of services by HMOs should improve administrative efficiency for the delivery of services to the designated populations and reduce direct expenditures for services over time.

Proposed Rule I, Definitions, is necessary to provide definitions for the purposes of the substantive rules. The definitions improve comprehension of the rules by providing appropriate definitions of principal words and terminology.

Proposed Rule II, Recipient Eligibility, designates the populations of medicaid recipients that are eligible for enrollment with an HMO contracting with the department to manage the delivery of medical and medically related services for the medicaid program. The designation of populations is necessary to provide for manageable development of the HMO delivery systems for medicaid and to target the populations of recipients for which administrative efficiencies and program cost savings are most likely to be realized through management of service delivery by HMOs.

Proposed Rule III, Enrollment, and Proposed Rule IV, Disenrollment, are necessary to provide procedures to govern the entry and exit of medicaid recipients from the designated populations into and out of the HMOs, to state certain requirements that implement federal and state law, and to manage entry and exit in a manner that respects the interests of the recipients while providing for efficient processing of entrants.

Proposed Rule V, Covered Services, specifies the services that HMOs are generally required to deliver and the services that the department may require by contract to be delivered. The rule also specifies those services that an enrolled recipient may obtain without referral through the HMO. These listings are necessary to define the expectable scope for HMOs and for recipients of the basic coverage and potential medicaid coverage available through HMOs and to allow the enrolled recipients to access without limitation certain types of services that are readily available without cost or are necessary to save a life, treat serious injury or prevent serious harm.

Proposed Rule VI, Contracts for Services, states certain basic requirements that govern the contractual relationship between HMOs and the department and provides certain requirements for inclusion in contracts the department enters into with HMOs. The requirements are necessary to implement federal and state laws relating to the provision of services for the medicaid program through HMOs and to provide basic criteria to protect the public's interests in the delivery of medicaid services.

Proposed Rule VII, Provision of Services, states requirements and criteria to govern the provision of medicaid services by the HMO to recipients. The rule also states the requirements and restraints that apply to medicaid recipients enrolled with HMOs delivering services for the medicaid program. The provisions of the proposed rule are necessary to assure the delivery of appropriate and necessary services by HMOs in a manner that meets the purposes of the medicaid program while providing a more efficient and economical delivery of the needed services. The provisions are necessary to assure that medical needs are meant and that the services differ in no significant respect as to scope and outcomes from medicaid services delivered by other modes.

Proposed Rule VIII, Participating Providers, states requirements and criteria to govern the relationship of HMOs and the department with subcontractors and the delivery of services by those subcontractors.

The proposed rule states the general discretion of HMOs in contracting for providers and places certain limitations upon HMOs in the choice of providers. These provisions are necessary to accord HMOs necessary discretion for the efficient and economical provision of services while protecting the overall integrity of the medicaid program.

The proposed rule in several provisions directs HMOs contracting with the department to consider and respect certain existing providers of services, that provide basic services, particularly preventive services, without cost or that are critical facilities for the delivery of medical services to certain regions or populations. These provisions are necessary to maintain and foster sources of services that are important in the delivery of medical services in the state.

The proposed rule limits the recourse of providers in relation to certain rights and requirements for medicaid providers. These provisions, in distinguishing medicaid providers of usual course from the providers of services through HMOs, further the administrative management of services by the HMOs and remove requirements that have no applicability in the relationships occurring in the HMO context.

Proposed Rule IX, Reimbursement of Providers, states the discretion to be accorded HMOs in reimbursing providers of

services. The proposed rule in addition directs HMOs to reimburse nonparticipating providers in certain circumstances. The proposed rule is necessary to distinguish the reimbursement of providers by HMOs from medicaid reimbursement generally. The required reimbursement of nonparticipating providers in the specified circumstances is necessary to assure the delivery of services to enrolled recipients in critical circumstances and to foster forms and sources of services that are important in the delivery of medical services in the state.

Proposed Rule X, Reimbursement of HMOs, provides the requirements and criteria to govern the determination and provision of reimbursement by the department to HMOs. The proposed rule is necessary to provide a formula for deriving an appropriate reimbursement rate for HMOs. In addition the proposed rule is necessary to comply with certain federal requirements for reimbursement of actual costs for services provided by federally qualified health clinics and rural health clinics. The proposed rule also is necessary to preclude undue burden on the HMOs by specifying that responsibility for reimbursement of disproportionate share payments for inpatient hospital services is the responsibility of the department.

Proposed Rule XI, Access to Services, provides criteria relating to access by enrolled recipients to HMOs and participating providers. The proposed rule is necessary to meet the medical needs of enrolled recipients by providing for adequate numbers of providers, appropriate types of providers, and availability of providers geographically and temporally.

Proposed Rule XII, Grievance Procedures, is necessary to provide appropriate due process for enrolled recipients so that a recipient who may wish to question the delivery of services has recourse for resolution of the matter.

Proposed Rule XIII, Records and Confidentiality, is necessary to protect the privacy interests of enrolled recipients while allowing for appropriate programmatic use of the records relating to enrolled recipients.

Proposed Rule XIV, Recipient Education, is necessary to assure that applicants and enrolled recipients are apprised of the nature of the HMO delivery system and any rights provided to them under the medicaid program.

Proposed Rule XV, Quality Assurance, provides the requirement and specifies the criteria for an HMO to monitor the services being provided to enrolled recipients. The proposed rule is necessary to assure that providers participating in the HMO are providing appropriate and quality services.

Proposed Rule XVI, Third Party, delegates responsibility for collection of payments from insurers and other third party providers to the enrolled recipient's HMO and provides for

retention of recovered sums by the HMO. This proposed rule is necessary to provide for definitive administrative responsibility for collections and to assure diligent pursuit of collections by HMOs from third parties.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 22, 1995.

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


Rule Reviewer


Director, Social and
Rehabilitation Services

Certified to the Secretary of State May 15, 1995.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rules	)	THE PROPOSED AMENDMENT OF
46.12.520, 46.12.521,	)	RULES 46.12.520, 46.12.521,
46.12.522, 46.12.2002,	)	46.12.522, 46.12.2002,
46.12.2011 and 46.12.2013	)	46.12.2011 AND 46.12.2013
pertaining to medicaid	)	PERTAINING TO MEDICAID
podiatry, physician and mid-	)	PODIATRY, PHYSICIAN AND
level practitioner services	)	MID-LEVEL PRACTITIONER
	)	SERVICES

TO: All Interested Persons

1. On June 15, 1995, at 10:00 a.m., a public hearing will be held in Room 306 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.520, 46.12.521, 46.12.522, 46.12.2002, 46.12.2011 and 46.12.2013 pertaining to medicaid podiatry, physician and mid-level practitioner services.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on June 6, 1995, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.520. PODIATRY SERVICES. DEFINITION (1) "Orthotic" means a mechanical device to assist in restoring normal function of the foot, applied to the foot or used with the shoe either as an insert for the shoe or as an attachment to the exterior of the shoe.

(1)-(2) "Podiatry services" are means those services provided by individuals licensed under state law to practice podiatry which are within the scope of the their practices of his profession.

(3) "Routine podiatric care" means the cutting or removing of corns and calluses, the trimming of nails or the application of skin creams and other hygienic, preventive maintenance care and debridement of nails.

AUTH: Sec. 53-6-113 MCA

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

46.12.521 PODIATRY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.309 rule provisions generally applicable to medicaid providers.

(2) The department or its designated review organization may conduct utilization and peer review of podiatry services shall be conducted by the designated review organization.

(3) Coverage for routine podiatric care, other than debridement of nails, is limited to one visit every 60 days.

(4) Coverage for orthotic services is limited to one visit every 24 months.

AUTH: Sec. 53-6-113 MCA

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

46.12.522 PODIATRY SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The department will pay the lowest of the following for podiatry services not also covered by medicare:

(a) the provider's actual submitted charge for the service; or

(b) the department's fee schedule maintained in accordance with the methodology described in subsection (4).

(2) The department will pay the lowest of the following for podiatry services which are also covered by medicare:

(a) the provider's actual submitted charge for the services;

(b) the amount allowable for the same service under medicare; or

(c) the department's fee schedule maintained in accordance with the methodology described in subsection (4).

(3) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Medicaid Services Division, Department of Social and Rehabilitation Services, 111 Sanders, P.O. 4210, Helena, Montana 59604-4210.

(4) The department's fee schedule, referred to in subsections (1) and (2), shall include fees set and maintained according to the following methodology:

(a) At least annually, the department will review billings for procedures, except those procedures for which a specific fee has been set under the provisions of subsection (b), to determine the total number of times each such procedure has been billed by all providers in the aggregate within the previous 12-month period.

(b) Upon review of the aggregate number of billings as provided in subsection (a), the department will establish a fee for each procedure which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 70% of the

average charge billed by all providers in the aggregate for such procedure during such previous 12-month period.

(i) ~~Once the department has established a fee as provided in subsection (4)(b), such fee will not be adjusted except as provided in subsection (4).~~

(ii) ~~When billed with a modifier, payment for a procedure for which a fee has been established under the provisions of subsection (4)(b) shall be as provided in subsection (5).~~

(c) ~~For all procedures for which no fee has been set under the provisions of subsection (4)(b), the department's fee schedule amount shall be 70% of the provider's actual charge, regardless of whether the procedure is billed with a modifier.~~

(d) ~~The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature as follows:~~

(i) ~~The department shall increase or decrease those fees established as provided in subsection (4)(b) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective at the time provided by the legislature.~~

(ii) ~~The department shall not apply any legislative increase or decrease to those procedures described in subsection (c), unless specifically directed by legislative enactment to do so.~~

(5) ~~Subject to the provisions of subsection (5)(b), when billed with a modifier, payment for a procedure for which a fee has been established under the provisions of subsection (4)(b) will be a percentage of the fee established for the procedure under subsection (4)(b).~~

(a) ~~The methodology to determine the specific percent for each modifier is as follows:~~

(i) ~~The department will calculate the difference between the average billed charge for the procedure with the modifier and the averaged billed charge for the procedure without a modifier.~~

(ii) ~~The department will obtain information from medicare and other third party payers regarding the comparative value utilized for payment of procedures billed with modifiers.~~

(iii) ~~The department will establish a specific percentage for each modifier based upon the purpose of the modifier, the comparative value of the modified service and the medical insurance industry trend of reimbursement for the modifier.~~

(b) ~~Regardless of the provisions of subsections (4)(b), (5) and (5)(a), when a procedure modifier combination is so unusual as to prevent the department from gathering sufficient data to set a fee, payment for procedures billed with a modifier will be as provided in subsection (4)(c).~~

(c) ~~The department will periodically review and update the modifier percentages established under subsection (a).~~

(d) ~~Subsection (5) shall not apply to any procedure for which no fee has been established under subsection (4)(b).~~

(1) Reimbursement for podiatry services is that available according to the requirements, procedures and fees specified for physicians under ARM 46.12.2003, except that for all procedures

for which no fee has been set under the provisions of ARM 46.12.2003(3)(b), the department's fee schedule amount is 70% of the provider's actual charge, regardless of whether or not the procedure is billed with a modifier.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.309 rule provisions generally applicable to medicaid providers.

(a)(2) The department or its designated review organization may conduct utilization and peer review of physician services shall be conducted by the designated review organization.

(b)(3) Physician services for conditions or ailments that are generally considered cosmetic in nature are not a benefit of the medicaid program except in such cases where it can be demonstrated that the physical and psycho-social well-being of the recipient is severely affected in a detrimental manner by the condition or ailment. Such services must be prior authorized by the medicaid services division, and will be based on recommendations of the designated peer review organization.

(i)(a) The A request for prior authorization shall must include all relevant information to justify the need for the service. This information shall include statements from a physician qualified in the area of concern, and a potential provider, and a social worker involved with the case.

(ii)(b) The information must clearly document the necessity for the service and include assurance that the plan will be followed to completion.

(e)(4) Coverage of Physicians' physician services provided for sterilization procedures must meet the following requirements in order to receive medicaid reimbursement is limited as follows:

Subsection (1)(c)(i) remains the same in text but is renumbered (4)(a).

(ii)(b) The recipient to be sterilized must be at least 21 years old of age or older at the time of informed consent to sterilization is obtained from the recipient.

Subsection (1)(c)(iii) remains the same in text but is renumbered (4)(c).

(5) Physician services for sterilization must meet the following requirements in order to receive medicaid reimbursement:

(iv)(a) The recipient to be sterilized must give informed consent, in accordance with the medicaid approved informed consent to sterilization form, not less than 30 days nor more than 180 days prior to sterilization except in the case of premature delivery or emergency abdominal surgery. For these exceptions, at least 72 hours must pass between informed consent and the sterilization procedure. In cases of premature

delivery, informed consent must have been ~~be~~ given at least 30 days before the expected delivery date.

Subsections (1)(c)(v) and (1)(c)(vi) remain the same in text but are renumbered (5)(b) and (5)(c).

~~(4)(6) Coverage of Pphysician services for hysterectomies must meet the following requirements in order to receive medicaid reimbursement is limited as follows:~~

~~(i)(a) medicaid reimbursement for hysterectomies which are The surgery must not be solely for the purpose of rendering the recipient incapable of reproducing is prohibited; and~~

~~(ii)(b) medicaid reimbursement for a hysterectomy is allowed only when the surgery is must be medically necessary to treat injury or pathology.~~

~~(7) Physician services for hysterectomies must meet the following requirements in order to receive medicaid reimbursement:~~

~~(i)(a) The physician must inform the recipient that the hysterectomy will render her permanently incapable of reproducing; and~~

~~(iv)(b) a completed copy of the approved acknowledgement of receipt of hysterectomy information form must be attached to the medicaid claim when billing for hysterectomy services; except~~

~~(A)(c) In a cases where the recipient was is sterile before the hysterectomy or there is a life-threatening emergency that precludes the recipient from giving prior acknowledgement of receipt of hysterectomy information the requirements in (7)(a) and (7)(b) do not apply. Instead, and~~

~~(B) the physician who performed the hysterectomy certifies, in writing, that either:~~

~~(i) must certify in writing that the recipient was sterile before the hysterectomy and states the cause of sterility; or~~

~~(C) the physician who performed the hysterectomy certifies, in writing,~~

~~(ii) must certify in writing that the hysterectomy was performed during a life-threatening emergency situation that precluded the recipient from giving prior acknowledgement of receipt of hysterectomy information and gives a description of the nature of the emergency.~~

~~(4)(8) Coverage of Pphysician services for abortions procedures must meet the following requirements in order to receive medicaid payment is limited as follows:~~

~~(a) the life of the mother will be endangered if the fetus is carried to term; or~~

~~(b) the pregnancy is the result of an act of rape or incest.~~

~~(9) Physician services for abortions in a case of endangerment of the mother's life must meet the following requirements in order to receive medicaid reimbursement:~~

~~(i)(a) The physician has found must find, and certified certify in writing, that on the basis of his/her in the physician's professional judgement, the life of the mother would will be endangered if the fetus were is carried to term. The~~

certification must contain the name and address of the patient and must be on or attached to the medicaid claim, ~~or.~~

~~(ii) The pregnancy is the result of an act of rape or incest and the certifications required by subsection (f) are attached to the claim form.~~

~~(f)(10) Medicaid will reimburse Physician services for abortions in cases of pregnancy resulting from an act of rape or incest only if must meet the following requirements in order to receive medicaid reimbursement:~~

Subsections (1)(f)(i) through (1)(f)(ii)(B) remain the same in text but are renumbered (10)(a) through (10)(b)(ii).

~~(11) Physician services for routine podiatric care and orthotics must be in accord with the definitions of ARM 46.12.520 and meet the requirements of ARM 46.12.521.~~

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.2011 MID-LEVEL PRACTITIONER SERVICES, DEFINITIONS

For the purpose of these rules, the following definitions will apply:

(1) "Advanced practice registered nurse" means a registered professional nurse licensed as provided in Title 37, chapter 8, MCA and ARM Title 8, chapter 32, subchapter 3 and includes nurse practitioner, nurse anesthetist, and nurse midwife. ~~The term does not include and clinical nurse specialist as defined, licensed and certified under these statutes and rules.~~

~~(2) "Clinical nurse specialist" means a person who is licensed in accord with 37-8-405 through 37-8-407, MCA and ARM 8.32.304 through 8.32.307.~~

Subsections (2) through (13) remain the same in text but are renumbered (3) through (14).

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

IMP: Sec. 53-6-101 MCA

46.12.2013 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT

~~(1) These requirements are in addition to those rule provisions generally applicable to medicaid providers.~~

~~(2) Medicaid reimbursement to coverage of mid-level practitioners services is only available for limited to those services listed in the procedure code report (PCR) incorporated by reference in ARM 46.12.2003.~~

Subsection (2) remains the same but is renumbered (3).

~~(3)(4) Medicaid reimburses coverage of mid-level practitioner services is limited to the provision of services by the following providers of mid-level practitioner services:~~

Subsections (3)(a) through (3)(c)(ii) remain the same in text but are renumbered (4)(a) through (4)(c)(ii).

~~(4)(5) Reimbursement for services, except as otherwise provided in this rule, is the lowest lower of:~~

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

~~(5)(6)~~ Reimbursement for immunizations, family planning services, services billed under HCPCS "J" codes, radiology, laboratory and pathology, cardiography and echocardiography services and for kids count/early and periodic screening, diagnostic and treatment services ~~as authorized at ARM 46.12.514 through 46.12.517~~ is the lowest ~~lower~~ of:

Subsections (5)(a) through (6) remain the same in text but are renumbered (6)(a) through (7).

~~(7)(8)~~ Reimbursement for drugs which are billed under HCPCS "J" and "Q" codes is the lowest ~~lower~~ of:

Subsections (7)(a) and (7)(b) remain the same in text but are renumbered (8)(a) and (8)(b).

~~(8)(9)~~ The following services are not ~~reimbursed~~ covered by medicaid as mid-level practitioner services:

~~(a) psychiatric counseling;~~

Subsections (8)(b) through (8)(h) remain the same in text but are renumbered (9)(a) through (9)(g).

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

IMP: Sec. 53-6-101 MCA

3. Podiatry services are medical and medically-related services that may be provided to persons who are medicaid eligible persons. The purpose of the services is to provide treatment and devices to alleviate conditions arising in relation to the foot that cause pain or impair a person's physical capabilities.

The proposed amendments to the podiatry, physician and mid-level practitioner rules are generally necessary to conform terminology, to provide definitions of principal words and terminology, to restructure the rules for better comprehension, to remove and add requirements as necessary and to revise the reimbursement methodology.

The proposed amendments to ARM 46.12.520, Podiatry Services, Definitions, revising definitions, are necessary to improve administration of the program and comprehension of the rules by providing more appropriate definitions of principal words and terminology.

The proposed amendments to ARM 46.12.521, Podiatry Services, Requirements, are necessary to improve comprehension, to give providers notice of the applicability of general medicaid requirements by a broader reference and to lower the permissible number of service visits to more appropriate levels.

The limitations, proposed in ARM 46.12.521, upon service visits are necessary to reform the service and incur program cost savings by setting service availability at levels that reflect the characteristics and therefore the general service needs of persons.

The proposed amendments to ARM 46.12.522, Podiatry Services, Reimbursement, are necessary to simplify the reimbursement methodology and administration of the program. The current reimbursement methodology includes several factors and a podiatric fee schedule. The new methodology is generally, by reference, the physician services methodology. This methodology will provide for reasonable reimbursement in a well-known and established reimbursement methodology. A complex separate reimbursement methodology will be eliminated.

The proposed amendments to ARM 46.12.2002, Physician Services, Requirements, are necessary to improve comprehension, to give providers notice of the applicability of general medicaid requirements by a broader reference and to conform the provision of podiatric services among podiatrists and physicians by providing that the provision of podiatric services by physicians be subject to the definitions and requirements present in the podiatry rule.

The proposed amendments to ARM 46.12.2002 do not change the procedures and substantive criteria governing the coverage of sterilization, hysterectomies or abortions by the medicaid programs. The proposed amendments restructure the sections of the rule pertaining to those services to provide better comprehension.

The proposed amendments to ARM 46.12.2011, Mid-level Practitioner Services, Definitions, are necessary to allow for coverage by the medicaid program of medical services provided by clinical nurse specialists. The professional status of clinical nurse specialists, inclusive of extensive educational and other requirements, was recognized by the Montana Board of Nursing in 1994 through adoption of a rule governing the practices of clinical nurse specialists. The department has determined that clinical nurse specialists are clearly qualified to deliver their specialty services and that it would be appropriate to extend medicaid coverage to include services provided by such professionals.

The proposed amendments to ARM 46.12.2013, Mid-Level Practitioner Services, Reimbursement, are necessary to improve comprehension, to give providers notice of the applicability of general medicaid requirements by a broader reference and to foster the delivery of certain important medical services to medicaid recipients by providing for reimbursement of those services at a higher rate of reimbursement.

The proposed deletion in ARM 46.12.2013 of psychiatric counseling as one of the service exclusions from mid-level practitioners will allow clinical nurse specialists to receive reimbursement for psychiatric counseling. This amendment is necessary to make the services more readily available for recipients and to recognize that clinical nurse specialists

specializing in psychiatry are well trained professionals capable of effectively delivering psychiatric counseling.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 22, 1995.

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

Russell E. Cater
Rule Reviewer

Peter J. Blouin, Jr.
Director, Social and
Rehabilitation Services

Certified to the Secretary of State May 15, 1995.

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

In the matter of the adoption)	NOTICE OF ADOPTION AND
of a temporary rule on a)	AMENDMENT OF TEMPORARY
policy charge and a temporary)	RULES
amendment to minimum yearly)	
premium.)	

TO: All Interested Persons:

1. On April 13, 1995, the State Compensation Insurance Fund published notice of the proposed adoption of a temporary rule on a policy charge and a temporary amendment to minimum yearly premium at page 516 of the 1995 Montana Administrative Register, Issue No. 7.

2. The Board adopts Rule 1 as proposed.
AUTH: Sec. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-2311 and 39-71-2316 MCA

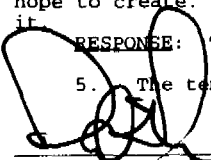
3. The Board has amended rule 2.55.326 as proposed.
AUTH: Sec. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-2311 and 39-71-2316 MCA

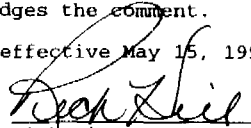
4. The Board thoroughly considered the following comment:

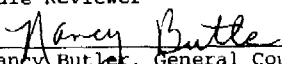
COMMENT: Mr. David Owen of the Montana Chamber of Commerce testified in support of the proposed temporary rules. He stated the vast majority of chamber members are small businesses that do not have anywhere else to go as the private market has not shown a great deal of interest in small businesses. Mr. Owen commented that the carefully constructed premium charge goes a long way to get resources to make sure rates for small businesses do not climb up through the roof based on experience. In lack of other options, this is embraced as a concession of reality, if not enthusiastically, to offer the kind of future we hope to create. It is the step we need to take and we support it.

RESPONSE: The Board acknowledges the comment.

5. The temporary action is effective May 15, 1995.


Dal Smine, Chief Legal Counsel
Rule Reviewer


Rick Hill
Chairman of the Board


Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State May 15, 1995.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION
new rules implementing) OF NEW RULES
standardized health claim forms)
)

TO: All Interested Persons.

1. On December 8, 1994, the State Auditor's Office published notice of the proposed adoption of new rules I-VIII concerning the implementation of standardized health claim forms at page 3060 of the 1994 Montana Administrative Register, issue number 23.

2. The agency has adopted new rules I-VIII with the following changes.

RULE I (6.6.5501) PURPOSE OF RULES The agency has adopted rule I (6.6.5501) as proposed.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

COMMENT:

The proposed language generally appears to be identical to existing practices. Is that the purpose of the proposal?

RESPONSE:

Yes, the purpose of the rule is to make the existing practice uniform and official.

RULE II (6.6.5503) DEFINITIONS For the purposes of this sub-chapter, the following terms have the following meanings:

(1)-(4) same as proposed.

(5) "HCFA Form 1450 (UB-92)" means the health insurance claim form maintained by HCFA for use by institutional care practitioners.

(6)-(10) same as proposed rule.

(11) "Issuer" means an insurance company, fraternal benefit society, health service ~~plan~~ corporation, or health maintenance organization. This ~~may include~~ third party administrators and any other entity reimbursing the costs of health care expenses at the direction of an issuer. The term "issuer" does not include any insurer or self-insurer providing coverage pursuant to the Workers' Compensation and Occupational Disease Act. This definition does not include recipients of medicaid.

(12) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage as defined in 33-17-102(3), MCA.

(123) "J512 form" means the uniform dental claim form approved by the American dental association for use by dentists.

(124) "Revenue codes" means the codes established for use by institutional care practitioners by the national uniform billing committee.

(15) The updated versions of the above-referenced codes will be in use within 90 days of adoption of this rule.

AUTH: 50-4-501, MCA

IMP: 50-4-305 and 50-4-501, MCA

COMMENT 1:

Why is form 1450 used in language and not cross-referenced as UB-92?

RESPONSE:

UB-92 has been inserted in the text.

COMMENT 2:

When referring to the publication (HCPCS, CPT, ICD-9), there is no mention of "most current edition."

RESPONSE:

Subsection (15) has been added pursuant to this suggestion.

COMMENT 3:

While significant numbers of claims are received using standardized forms, it was recommended that the agency delay the mandatory use of standardized claim forms until other providers can make the necessary adjustments.

RESPONSE:

The entire point of the rule-making process is to begin the move toward a consistent claim format system-wide. Any delay in implementation will only slow the process. Latitude for delayed implementation for the electronic side of claims processing is intended to allow time for adjustment. On the widely-used and accepted paper forms side of the issue, implementation will occur upon adoption in order to facilitate the goal of this rule process.

COMMENT 4:

It was noted that the proposed rule probably does not extend to medicaid or to workers' compensation claims.

RESPONSE:

A sentence has been added under rule II subsection (11) and rule III to provide this clarification.

COMMENT 5:

Rule II should have the reference to "Health Service Plan" amended to read "Health Service Corporation."

RESPONSE:

Rule II has been amended to read Health Service Corporation.

COMMENT 6:

It is suggested the department clarify whether it intends to make third party administrators subject to the regulations.

RESPONSE:

Rule II has been amended. Further, a new section (12) has been added to define a third party administrator per 33-17-102(3), MCA.

RULE III (6.6.5505) APPLICABILITY AND SCOPE (1) same as proposed rule.

(2) Nothing in this subchapter shall prevent an issuer from requesting additional information that is not contained on the forms required under this subchapter to determine eligibility of the claim for payment if required under the terms of the policy or certificate issued to the claimant. This subchapter does not apply to workers' compensation and occupational diseases insurance services provided pursuant to the workers' compensation and occupational disease act. This rule does not apply to medical assistance-medicaid as referenced in 53-6-101 through 402, MCA. Nothing in this rule prohibits such insurers and medical providers from complying with this subchapter, however, to the extent that such compliance is consistent with workers' compensation or medicaid laws and rules.

(3) same as proposed rule.

AUTH: 50-4-501, MCA

IMP: 50-4-305 and 50-4-501, MCA

COMMENT 1:

The proposed rules do not address standardizing the release of records. Could this be included?

RESPONSE:

No, this is beyond our authority. The purpose of the rule is to address standardized health claim forms. Possible remedies may be found in 33-18-202, MCA.

COMMENT 2:

It is suggested the commissioner add language to restrict the amounts and type of information which may be requested to supplement claims data. It is further suggested the commissioner require an issuer to pay 90 percent of a claim when supplemental information is referred for claims audit and/or utilization review.

RESPONSE:

The authority to adopt these proposed rules can be found in 50-4-501, MCA. The ability to address types of information or require a specific amount of payment is not contemplated by the statute and therefore cannot be addressed. Current statute does provide remedy in 33-18-231 through 235, MCA.

COMMENT 3:

Do these rules apply to workers' compensation/occupational disease or medicaid?

RESPONSE:

These rules are not intended to apply to workers' compensation/occupational disease or to medicaid. The rules have been amended in rules II and III.

RULE IV (6.6.5507) REQUIREMENTS FOR USE OF HCFA FORM

1500 (1) Health care practitioners, other than dentists, shall use the HCFA Form 1500 and instructions provided by HCFA for use of the HCFA Form 1500 when filing claims with issuers for professional services. Health care practitioners that bill patients directly shall provide a properly completed HCFA Form 1500 in addition to any other explanatory information used to bill the patient when requested by the patient. Institutional care practitioners may use HCFA Form 1500 when billing services for employees or as part of outpatient services.

(2)-(5) remain the same.

(6) Health care practitioners shall provide the unique physician identification number, ~~as~~ if assigned by HCFA, in box 17a and either the federal tax identification number or social security number to complete item 25 of the HCFA Form 1500, as required by the HCFA instructions.

AUTH: 50-4-501, MCA

IMP: 50-4-305 and 50-4-501, MCA

COMMENT 1:

Only physicians have a physician's identification number assigned by HCFA. Consequently, there is concern that the proposed rule would preclude billing by physician assistants - certified or other mid-level practitioners.

RESPONSE:

Rule IV subsection (6) has been changed to address this concern.

COMMENT 2:

It is suggested that institutional care practitioners when billing for health care practitioner services for employees or as part of out-patient services should be able to use HCFA Form 1500 and rule V seems to preclude that use.

RESPONSE:

The appropriate place to address this concern is in rule IV subsection (1). The concern has been addressed there.

RULE V (6.6.5509) REQUIREMENTS FOR USE OF HCFA FORM 1450 (UB-92)

(1) Institutional care practitioners shall use the HCFA Form 1450 (UB-92) and instructions provided by HCFA for use of the HCFA Form 1450 (UB-92) when filing claims with issuers for health care services. Institutional care providers that bill patients directly shall provide a properly completed HCFA Form 1450 (UB-92), in addition to any other explanation information used to bill the patient when requested by the patient.

(2) Issuers may only require institutional care practitioners to use the following coding system for the initial filing of claims for health care services:

(a)-(c) remain the same.

(d) the information outlined in ARM 6.6.5507, if the charges include direct service furnished by a health care practitioner, and the direct service is not covered by the instructions for the HCFA Form 1450 (UB-92).

(3) Hospitals may use the HCFA Form 1500 to supplement a HCFA Form 1450 (UB-92) if necessary in billing patients or their representatives or filing claims with issuers for outpatient services.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

COMMENT:

There is an omission of the details of UB-92.

RESPONSE:

The use and proscribed format are specified in rule V.

RULE VI (6.6.5511) REQUIREMENTS FOR USE OF J512 FORM

(1) and (2) remain the same.

(3) Oral surgeons may use HCFA Form 1500 when appropriate relative to the services performed.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

COMMENT 1:

It was suggested that the rule that restricts dentists' use to HCFA Form J512 would create problems for oral surgeons.

RESPONSE:

Rule VI has been changed accordingly.

RULE VII (6.6.5513) GENERAL PROVISIONS (1)-(2) (a) remain the same.

(b) modify their billing and claim reimbursement practices to encompass the coding changes for all billing and claim filing by the effective date of the changes set forth by the developers of the forms, codes, and procedures required under this subchapter. The updated versions of the above-referenced forms will be in use within 90 days of adoption of these rules.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

COMMENT:

When referring to publications there is no mention of "most current edition."

RESPONSE:

In addition to the adjustment made in rule II, rule VII has also been changed.

RULE VIII (6.6.5515) MANDATORY ELECTRONIC FORMAT (1)

Issuers that receive claims or send payments by electronic means shall, within one year after May 26, 1995, or the date on which the health care financing administration requires it of medicare intermediaries and carriers, whichever is earlier, accept the ASC X12N standard format or the national uniform billing data element specifications as developed by the national uniform billing committee for the health care claims submission transaction set (837) and send the ASC X12N health care payment transaction set (835).

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

COMMENT 1:

The HCFA is no longer planning to require practitioners to use the ANSI format for electronic claims. Rather, practitioners will be required to submit medicare claims on either ANSI or national format.

RESPONSE:

Rule VIII has been changed per this suggestion.

COMMENT 2:

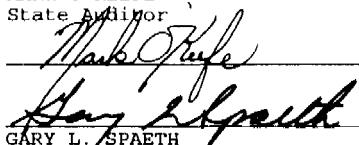
We would have difficulty implementing new system technology to accommodate the standard claim forms. In particular, the use of forms 837 and 835 by the date set forth.

RESPONSE:

The intent of the rules is to standardize the paper and the electronic formats. The extension of one year from the implementation date of these rules seems adequate for any entity to make the necessary changes in new systems technology.

MARK O'KEEFE
State Auditor

By: _____


GARY L. SPAETH
Rules Reviewer

Certified to the Secretary of State this 15th day of May, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

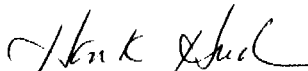
In the matter of the amendment)	NOTICE OF AMENDMENT OF RULE
of Rule 11.7.603 pertaining to)	11.7.603 PERTAINING TO
foster care support services,)	FOSTER CARE SUPPORT
diaper allowance.)	SERVICES, DIAPER ALLOWANCE

1. On January 26, 1995, the Department of Family Services published notice of the proposed amendment Rule 11.7.603 pertaining to foster care support services, diaper allowance, at page 93 of the 1995 Montana Administrative Register, issue number 2.

2. The department has amended the rule as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, May 15, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 11.14.226 pertaining to) 11.14.226 PERTAINING TO
caregivers in day care centers) CAREGIVERS IN DAY CARE
for children.) CENTERS FOR CHILDREN

TO: All Interested Persons

1. On April 13, 1995, the Department of Family Services published notice of the proposed amendment of Rule 11.14.226 pertaining to caregivers in day care centers for children at page 526 of the 1995 Montana Administrative Register, issue number 7.

2. One comment was received. The Administrative Code Committee commented:

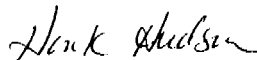
COMMENT: The department cited Section 52-2-735, MCA, as implemented by the proposal. However, this statute does not appear to be implemented by this rule-making.

RESPONSE: The department agrees. Section 52-2-735, MCA, was mistakenly substituted for the statute which should have been cited as implementing authority. The proper citation in substitution of Section 52-2-735, MCA, is Section 52-2-731, MCA, providing that the department shall develop standards regarding the character, suitability and qualifications of persons responsibility for the care of children.

3. The rules is amended as proposed except that the authority and implementing citations are amended as follows:

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-735731 MCA.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, May 15, 1995.

BEFORE THE FISH, WILDLIFE, & PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of amendment of) NOTICE OF AMENDMENT
ARM 12.6.904 relating to public) OF 12.6.904
access below Rainbow Dam and)
Madison Dam)

To: All Interested Persons

1. On March 16, 1995, the Fish, Wildlife & Parks Commission (commission) published notice of the proposed amendment of the above-captioned rule at page 333, 1995 Montana Administrative Register, issue number 5.

2. The commission has adopted the rule amendment as proposed.

AUTH: 87-1-303, MCA IMP: 87-1-303, MCA

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


COMMENT: Three persons stated they were against the closure because of the beauty and recreational value of the Missouri River below Rainbow Dam which would be closed to recreational use. They did not want to be restricted because a few others could not obey the warnings.

RESPONSE: The commission believes the threat to human safety is real based on recent past experiences and because warning systems have not been adequate to ensure the safety of persons exposed to rapidly rising river water when the water is spilled over the dam. In addition, most of the persons recreating along this section of the Missouri River have trespassed across closed lands of the Montana Power Company to gain access. Further, Montana Power Company, under its federal relicensing, will be spending \$3.3 million dollars along the Missouri River in the vicinity of Great Falls as mitigation for this closure, as well as other impacts connected to the operation of its dams near Great Falls. One person commented in favor of the closure, recognizing Montana Power Company's plan to use funds for recreation along the river.

4. The rule has been reviewed and approved by the Department of Health and Environmental Sciences as required by §87-1-303(2), MCA, with a determination that the rule would not have an adverse impact on public health or sanitation.

RULE REVIEWER

-----FISH, WILDLIFE & PARKS COMMISSION


Robert N. Lane


Patrick J. Graham, Secretary

Certified to the Secretary of State May 15, 1995.

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

In the matter of the adoption) NOTICE OF ADOPTION OF NEW
of 15 new rules related to the) RULES AND REPEAL OF EXISTING
operation of the uninsured) RULE
employers' fund and the)
underinsured employers' fund,)
and the repeal of ARM)
24.29.2801)

TO ALL INTERESTED PERSONS:

1. On January 26, 1995, the Department published MAR Notice No. 24-29-62 at pages 101 through 108 of the Montana Administrative Register, Issue No. 2, regarding a public hearing to consider the adoption of 15 new rules related to the operation of the uninsured employers' fund and the underinsured employers' fund, and the repeal of ARM 24.29.2801. On February 23, 1995, the Department published notice at page 280 of the Montana Administrative Register, Issue No. 4, that the public hearing was being continued and the comment period was being extended. On March 30, 1995, the Department published a supplemental notice at pages 444 through 445 of the Montana Administrative Register, Issue No. 6, that a public hearing would be held on April 27, 1995, and the comment period was being extended until May 4, 1995.

2. On April 27, 1995, a public hearing was held in Helena concerning the proposed rules and the proposed repeal. No oral or written comments were offered by members of the public at that time. No written comments were received prior to the closing date of May 4, 1995.

3. The Department has adopted the rules and repealed ARM 24.29.2801 exactly as proposed. The new rules are numbered as follows:

RULE I (24.29.2803) DEFINITIONS

RULE II (24.29.2811) MONTHLY CALCULATIONS OF FUND
BALANCES AND PAYMENTS--UEF

RULE III (24.29.2814) DETERMINING THE AMOUNT OF THE
ADMINISTRATIVE COSTS BALANCE--UEF

RULE IV (24.29.2817) DETERMINING WHETHER THERE IS A
POSITIVE FUND BALANCE--UEF

RULE V (24.29.2821) MONTHLY CALCULATIONS OF FUND BALANCES
AND TRANSFERS--UIEF

RULE VI (24.29.2824) DETERMINING THE AMOUNT OF THE
ADMINISTRATIVE COSTS BALANCE--UIEF

RULE VII (24.29.2827) DETERMINING WHETHER THERE IS A POSITIVE FUND BALANCE -UIEF

RULE VIII (24.29.2829) NO BENEFITS PAID FROM THE UIEF TO CLAIMANTS

RULE IX (24.29.2831) COLLECTION OF PENALTIES AND OTHER PAYMENTS FROM UNINSURED EMPLOYERS

RULE X (24.29.2834) COLLECTION OF PENALTIES AND OTHER PAYMENTS FROM UNDERINSURED EMPLOYERS

RULE XI (24.29.2837) CALCULATION OF PENALTY ON UNDERINSURED EMPLOYERS

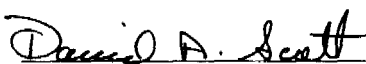
RULE XII (24.29.2841) CLAIMS FOR BENEFITS

RULE XIII (24.29.2843) PAYMENT OF ACCRUED BENEFITS

RULE XIV (24.29.2846) PRIORITY OF PAYMENT OF CURRENT BENEFITS

RULE XV (24.29.2849) PAYMENT OF CLAIMS WHERE LIABILITY IS DISPUTED

4. The new rules and the repeal are effective July 1, 1995.



David A. Scott
Rule Reviewer



Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: May 15, 1995.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules I through	)	RULES I THROUGH IX
IX pertaining to self-	)	PERTAINING TO SELF-
sufficiency trusts	)	SUFFICIENCY TRUSTS

TO: All Interested Persons

1. On March 30, 1995, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I through IX pertaining to self-sufficiency trusts at page 446 of the 1995 Montana Administrative Register, issue number 6.

2. The Department has adopted rules [RULE I] 46.2.501, SELF-SUFFICIENCY TRUSTS: PURPOSE; [RULE II] 46.2.502, SELF-SUFFICIENCY TRUSTS: DEFINITIONS; [RULE III] 46.2.503, SELF-SUFFICIENCY TRUSTS: ELIGIBLE BENEFICIARY; [RULE IV] 46.2.505, SELF-SUFFICIENCY TRUSTS: QUALIFYING TRUSTS; [RULE V] 46.2.508, SELF-SUFFICIENCY TRUST: LIFE CARE PLAN APPROVAL AND PAYMENT; [RULE VI] 46.2.509, SELF-SUFFICIENCY TRUST: LIFE CARE PLAN IMPLEMENTATION; [RULE VII] 46.2.511, SELF-SUFFICIENCY TRUST: SPECIAL CHARITABLE ACCOUNT; [RULE VIII] 46.2.512, SELF-SUFFICIENCY TRUST: REPORTING REQUIREMENTS; [RULE IX] 46.2.513, SELF-SUFFICIENCY TRUST: STATE SELF-SUFFICIENCY TRUST ACCOUNT as proposed.

3. No written comments or testimony were received.


Rule Reviewer


Director, Social and
Rehabilitation Services

Certified to the Secretary of State May 15, 1995.

VOLUME NO. 46

OPINION NO. 4

CITIES AND TOWNS - Procedure for and effect of closure or vacation of streets by mayor-council form of government;
MUNICIPAL GOVERNMENT - Commission-manager form, mayor-council form: procedure for and effect of closure or vacation of city streets;

TRAFFIC - Procedure for and effect of closure or vacation of city streets by mayor-council form of municipal government;
MONTANA CODE ANNOTATED - Sections 7-3-4301, -4448, 7-14-4101, -4114;

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 24 (1985).

HELD: Mont. Code Ann. § 7-14-4114 gives a municipality the authority either to close all or part of a street to through traffic without giving up its legal interest in the street, or to vacate all or part of the street and revoke its legal interest in it. A municipality with a mayor-council form of government is not bound by Mont. Code Ann. § 7-3-4448 and must follow the procedures set forth in Mont. Code Ann. § 7-14-4114 when it seeks to discontinue, close, or vacate a street. The procedure for either type of action is the same and is prescribed in the statute; choosing between the two alternatives is a matter for the discretion of the city or town council.

May 3, 1995

Mr. John T. Flynn
Broadwater County Attorney
P.O. Box 96
Townsend, MT 59644-0096

Dear Mr. Flynn:

You have requested my opinion on a question I have phrased as follows:

When a city that has a traditional mayor-council form of government wishes to vacate a street, what procedure is required, and what is the legal effect of the vacation on the city's interest in the property?

As you correctly point out, the case of Wynia v. City of Great Falls, 183 Mont. 458, 600 P.2d 802 (1979), is the source of many questions in this area. In that case, a basic distinction was made between: (1) a city's action in "closing" a street to through traffic, but not revoking its interest in the street; and (2) a city's action in "vacating" a street and revoking its legal interest in the street. Wynia, 183 Mont. at 469-70, 600

P.2d at 809. This distinction is an important element of your question. Unfortunately, the terms "closure," "abandonment," "discontinuance" and "vacation" as applied to trafficways are not used consistently in Mont. Code Ann. § 7-14-4114 or among the several states. In an attempt to bring clarity to this area, the following distinction in terminology will be used in this opinion: To "close" a street will mean that a municipality has closed a street to through traffic without revoking its legal interest in the street; to "vacate" a street will mean that a municipality has foregone the use of a street and has revoked its legal interest in the street. However, as the following analysis shows, the legislature has not always used these terms in this technical sense. The lack of consistency in the usage of the terms alluded to above is, if anything, more pronounced in the cases of "abandoned" and "discontinued" trafficways. I see no need to further complicate the discussion by offering my opinion on those terms.

The distinction between "vacation" and "closure" was necessary in the Wynia case because of two overlapping statutes regarding the closure, vacation, and discontinuance of city streets. Mont. Code Ann. § 7-14-4114 deals with general municipal powers related to closure of trafficways and sets forth procedures for cities and towns to "discontinue," "close," or "vacate" streets. As Wynia demonstrates, its provisions apply to both mayor-council and commission-manager municipalities, despite its references only to the "council." Mont. Code Ann. § 7-3-4448, on the other hand, deals with a particular form of municipal government, the commission-manager form (which in Wynia was the defendant City of Great Falls' form of government), and specifies the procedures that must be used when such a city or town "vacates" a street. Based on the facts, the consistent use of "vacate" throughout Mont. Code Ann. § 7-3-4448, and the fact that "vacate" was described in the statute to include relinquishment of ownership, the Court concluded that the City had merely (but plainly) intended to "close" the street to through traffic, and that Mont. Code Ann. § 7-14-4114 controlled.

Because your questions concern the mayor-council form of government and its powers and required procedures when either closing or vacating streets, I must initially make several points. First, Mont. Code Ann. § 7-3-4448 applies only to commission-manager forms of government. Mont. Code Ann. § 7-3-4301. The Wynia case gives no indication to the contrary. Second, under procedures set forth in Mont. Code Ann. § 7-14-4114, cities and towns have authority to both close and vacate public streets. Wynia, 183 Mont. at 468-69. Smart v. City of Big Timber, 165 Mont. 328, 335, 528 P.2d 688, 692 (1974); 40 Op. Att'y Gen. No. 24, 92 (1983).

In Smart, the Court observed that the legislature did not use great precision in drafting the various amendments to the statutes which ultimately became Mont. Code Ann. § 7-14-4114. The court stated:

[T]he present statute is the amalgam of the intent of a number of legislatures. This is important when this single statute purports to deal with the "discontinuance", "closing", and "vacation" of streets. It appears that the terms were thought of by the draftsmen as interchangeable.

165 Mont. at 335. With this observation in mind, this statute should not be read as though the legislature used the quoted terms in their technical senses, as words of limitation. Thus, the reference in subsection (1) of Mont. Code Ann. § 7-14-4114 to the power to "discontinue" a street should be read to include both "closure" and "vacation," as those distinct terms were used by the Court in Wynia. Similarly, the procedure for "closing" a street or alley for school purposes in subsection (2) of the statute should be followed whether the council wishes to "vacate" the street or alley or to "close" it. Similarly, the Wynia decision stands for the proposition that the notice provisions of subsection (3) of Mont. Code Ann. § 7-14-4114 apply when a street is "closed," even though the notice provisions by their terms refer only to a petition asking that a street be "vacated."

The upshot of all this is that a commission-manager municipality seeking to "vacate" a street apparently must follow Mont. Code Ann. § 7-3-4448, but may choose to rely on Mont. Code Ann. § 7-14-4114 for any action short of "vacation." Any other form of municipal government which seeks to either "vacate" or "close" a street must follow Mont. Code Ann. § 7-14-4114.

You ask what specific procedure a city or town with a mayor-council form of government must follow in order to vacate a street. No Montana statute specifies a procedure beyond that set forth in Mont. Code Ann. § 7-14-4114 to close or vacate a street. That statute says nothing to differentiate the procedure for "closing" a street from that used to "vacate" a street. In an analogous situation, the Montana Supreme Court has said:

Where a power is conferred upon a municipality and the mode [of exercise] is prescribed, such mode must be followed; but if no mode is prescribed, the power is to be exercised in such manner as municipal officials, in their discretion, shall determine upon.

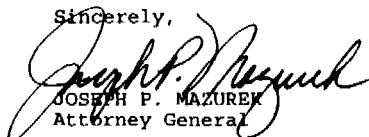
State v. Stark, 100 Mont. 365, 370, 52 P.2d 890, 892 (1935) (citations omitted); quoted in Leischner v. City of Billings, 135 Mont. 109, 113, 337 P.2d 359, 361 (1959). Thus, I conclude that when the municipal officials of a "traditional" mayor-

council government vacate a street, they must follow the mode of exercise of the power specified in Mont. Code Ann. § 7-14-4114, but the choice between vacating a street and closing a street lies within their discretion.

THEREFORE, IT IS MY OPINION:

Mont. Code Ann. § 7-14-4114 gives a municipality the authority either to close all or part of a street to through traffic without giving up its legal interest in the street, or to vacate all or part of the street and revoke its legal interest in it. A municipality with a mayor-council form of government is not bound by Mont. Code Ann. § 7-3-4448 and must follow the procedures set forth in Mont. Code Ann. § 7-14-4114 when it seeks to discontinue, close, or vacate a street. The procedure for either type of action is the same and is prescribed in the statute; choosing between the two alternatives is a matter for the discretion of the city or town council..

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/rfs/brf

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1995. This table includes those rules adopted during the period April 1, 1995 through June 30, 1995 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 March 31, 1995, 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 and 1995 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

(Public Employees' Retirement Board)

- | | |
|----------|---|
| I | Approval of Requests for Retirement and Authorizing Payment of Retirement Benefits, p. 2686, 3182 |
| I-III | Mailing Information on Behalf of Non-profit Organizations, p. 727 |
| 2.43.203 | Deadline for Submitting Facts and Matters When a Party Requests Reconsideration of an Adverse Administrative Decision, p. 3116, 205 |
| 2.43.305 | and other rules - Mailing Membership Information for Non-profit Organizations, p. 2688, 3181 |
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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, 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 2-15-108, MCA, is 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 effective in April, 1995, appear. Vacancies scheduled to appear from June 1, 1995, through August 31, 1995, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 1, 1995.

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 APRIL, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Athletics (Commerce)			
Mr. John Kinna	Governor	Halseth	4/25/1995
Bozeman			4/25/1996
Qualifications (if required):	public member		
Mr. Gary Langley	Governor	reappointed	4/25/1995
Helena			4/25/1998
Qualifications (if required):	public member		
Dr. Andrew Vandolah	Governor	reappointed	4/25/1995
Conrad			4/25/1997
Qualifications (if required):	public member		
Board of Clinical Laboratory Science Practitioners (Commerce)			
Ms. Eileen Flynn	Governor	reappointed	4/16/1995
Townsend			4/16/1999
Qualifications (if required):	public member		
Ms. JoAnn Schneider	Governor	reappointed	4/16/1995
Clancy			4/16/1999
Qualifications (if required):	clinical laboratory science practitioner		
Board of Livestock (Livestock)			
Mr. Lee Cornwell	Governor	Salmond	4/26/1995
Glasgow			3/1/2001
Qualifications (if required):	cattle producer		
Mr. John Paugh	Governor	Lane	4/26/1995
Bozeman			3/1/2001
Qualifications (if required):	cattle producer		

BOARD AND COUNCIL APPOINTEES FROM APRIL, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Nursing Home Administrators (Commerce)			
Mr. Ray Hoffman	Governor	Borgman	4/5/1995
Butte			5/28/1998
Qualifications (if required): nursing home administrator			
Board of Optometrists (Commerce)			
Ms. Charlene Staffanson	Governor	reappointed	4/3/1995
Deer Lodge			4/3/1999
Qualifications (if required): public member			
Capital Finance Advisory Council (Administration)			
Rep. Ray Peck	Governor	Bardanoue	4/26/1995
Havre			3/30/1996
Qualifications (if required): legislator			
Family Services Advisory Council (Family Services)			
Sen. James H. "Jim" Burnett	Governor	not listed	4/5/1995
Luther			12/31/1996
Qualifications (if required): chairman of a legislative committee			
Rep. John Cobb	Governor	not listed	4/5/1995
Augusta			12/31/1996
Qualifications (if required): chairman of a legislative committee			
Rep. Duane Grimes	Governor	not listed	4/5/1995
Clancy			12/31/1996
Qualifications (if required): chairman of a legislative committee			
Ms. Jeri Snell	Governor	Coats	4/5/1995
Miles City			4/15/1996
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM APRIL, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)			
Ms. Darlyne Dascher	Governor	Rector	4/3/1995
Fort Peck			1/1/1999
Qualifications (if required):	representative of District IV		
Mr. Dale Tash	Governor	Allestad	4/3/1995
Dillon			1/1/1999
Qualifications (if required):	representative of District II		
Public Employees Retirement Board (Administration)			
Mr. Terry Teichrow	Governor	reappointed	4/1/1995
Helena			4/1/2000
Qualifications (if required):	public employee		
State Advisory Council on Food and Nutrition (Health and Environmental Sciences)			
Sen. Sharon Estrada	Governor	Harding	4/7/1995
Billings			8/30/1996
Qualifications (if required):	state senator		
Ms. Janet Myren	Governor	Morril	4/6/1995
Helena			8/30/1996
Qualifications (if required):	representative of food programs for the elderly		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Chemical Dependency (Corrections & Human Services)		
Rep. Steve Benedict, Hamilton	Director	7/1/1995
Qualifications (if required): none specified		
Sen. B.F. "Chris" Christiaens, Great Falls	Director	7/1/1995
Qualifications (if required): none specified		
Justice Janet Eschler, Billings	Director	7/1/1995
Qualifications (if required): none specified		
Mr. Jim Gamell, Great Falls	Director	7/1/1995
Qualifications (if required): none specified		
Ms. Judith Gedrose, Helena	Director	7/1/1995
Qualifications (if required): none specified		
Ms. Sandra Lambert, Miles City	Director	7/1/1995
Qualifications (if required): none specified		
Mr. Marko Lucich, Butte	Director	7/1/1995
Qualifications (if required): none specified		
Mr. Curtis Moxley, Chinook	Director	7/1/1995
Qualifications (if required): none specified		
Ms. Betty Wing, Missoula	Director	7/1/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Governor) Father Carl Erickson, Fort Benton Qualifications (if required): representative of Region III	Governor	7/18/1995
Mr. R.H. (Buff) Hultman, Drummond Qualifications (if required): representative of Region V	Governor	7/18/1995
Ms. Fern Prather, Big Timber Qualifications (if required): representative of Region II	Governor	7/18/1995
Ms. Ena D. Simpson, Polson Qualifications (if required): representative of Region VI	Governor	7/18/1995
Agricultural Development Council (Agriculture) Mr. P.L. "Joe" Boyd, Billings Qualifications (if required): active in agriculture	Governor	7/1/1995
Mr. Leo Giacometto, Helena Qualifications (if required): Director of Agriculture	Governor	7/1/1995
Mr. Larry Johnson, Kremlin Qualifications (if required): active in agriculture	Governor	7/1/1995
Mr. Jon Noel, Helena Qualifications (if required): Director of Commerce	Governor	7/1/1995
Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture) Dr. Gary Jensen, Bozeman Qualifications (if required): representative of Montana Cooperative Extension Service	Governor	7/1/1995
Mr. Allen Whitmer, Bloomfield Qualifications (if required): representative of a seed association	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

Board/current position holder	Appointed by	Term end
Board of Architects (Commerce) Mr. Thomas L. Geelan, Havre Qualifications (if required): public member	Governor	7/1/1995
Board of Banking (Commerce) Mr. Douglas K. Morton, Kalispell Qualifications (if required): national bank officer	Governor	7/1/1995
Mr. Gary Rebal, Great Falls Qualifications (if required): public member	Governor	7/1/1995
Board of Barbers (Commerce) Mr. Max Demars, Big Timber Qualifications (if required): barber	Governor	7/1/1995
Board of Cosmetologists (Commerce) Mr. Dick Meyers, Billings Qualifications (if required): licensed cosmetologist	Governor	7/1/1995
Board of Hearing Aid Dispensers (Commerce) Ms. Patricia Ingalls, Butte Qualifications (if required): hearing aid dispenser	Governor	7/1/1995
Board of Morticians (Commerce) Mr. John J. Michelotti, Billings Qualifications (if required): licensed mortician	Governor	7/1/1995
Board of Nursing (Commerce) Ms. Sherri Chatham, Great Falls Qualifications (if required): licensed practical nurse	Governor	7/1/1995
Ms. Nancy Heyer, Missoula Qualifications (if required): registered nurse	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Pharmacy (Commerce) Ms. Patricia M. Mitchell, Dillon Qualifications (if required): pharmacist	Governor	7/1/1995
Board of Physical Therapy Examiners (Commerce) Mr. Thomas K. Meagher, Cut Bank Qualifications (if required): physical therapist	Governor	7/1/1995
Board of Private Security Patrol Officers and Investigators (Commerce) Mr. Gary Gray, Great Falls Qualifications (if required): contract security member	Governor	8/1/1995
Ms. Mary'l G. Luntsford, Kalispell Qualifications (if required): represents a proprietary security company	Governor	8/1/1995
Board of Professional Engineers and Land Surveyors (Commerce) Mr. David E. Bowman, Ennis Qualifications (if required): surveyor	Governor	7/1/1995
Dr. Fred E. Walter, Butte Qualifications (if required): engineer	Governor	7/1/1995
Board of Public Accountants (Commerce) Mr. Gary Nelson, Plentywood Qualifications (if required): certified public accountant	Governor	7/1/1995
Board of Radiologic Technologists (Commerce) Dr. Stephen Becker, Libby Qualifications (if required): radiologist	Governor	7/1/1995
Mr. Jim Winter, Great Falls Qualifications (if required): radiologic technologist	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

Board/current position holder	Appointed by	Term end
Board of Regents of Higher Education (Education) Mr. Jim Brown, Libby Qualifications (if required): student representative	Governor	6/1/1995
Board of Sanitarians (Commerce) Ms. Melissa Tuemmler, Ulm Qualifications (if required): registered sanitarian	Governor	7/1/1995
Board of Veterinary Medicine (Commerce) Ms. Catherine L. Kuhl, Superior Qualifications (if required): public member	Governor	7/31/1995
Dr. Minott E. Pruyn, Missoula Qualifications (if required): veterinarian	Governor	7/31/1995
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Pat J. Byrne, Great Falls Qualifications (if required): water well contractor	Governor	7/1/1995
Committee on Telecommunication Services for the Handicapped (Social and Rehabilitation Services) Mr. Ron Bibler, Great Falls Qualifications (if required): handicapped member	Governor	7/1/1995
Mr. John Delano, Helena Qualifications (if required): 1 of 4 handicapped members, 2 must be deaf or hard hearing	Governor	7/1/1995
Mr. Ben Havdahl, Helena Qualifications (if required): 1 of 4 handicapped members, 2 must be deaf or hard hearing	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Services Advisory Council (Governor)		
Ms. Norma Bixby, Lane Deer	Governor	7/1/1995
Qualifications (if required): represents Native Americans		
Ms. Candace Bowman, Lewistown	Governor	7/1/1995
Qualifications (if required): public member		
Ms. Susan Callaghan, Butte	Governor	7/1/1995
Qualifications (if required): represents business		
Ms. Nancy Coopersmith, Helena	Governor	7/1/1995
Qualifications (if required): represents Office of Public Instruction		
Mr. George Dennison, Missoula	Governor	7/1/1995
Qualifications (if required): represents University Systems		
Ms. Gertrude Downey, Butte	Governor	7/1/1995
Qualifications (if required): represents non-profit organization		
Ms. Patricia J. Gunderson, Belgrade	Governor	7/1/1995
Qualifications (if required): represents labor		
Ms. Meredith Hariton, Missoula	Governor	7/1/1995
Qualifications (if required): represents program participants, ages 16 through 29		
Ms. Kay Hopkins, Kalispell	Governor	7/1/1995
Qualifications (if required): represents public		
Ms. Jan Kenitzer, Baker	Governor	7/1/1995
Qualifications (if required): represents public		
Ms. Billie Krenzler, Billings	Governor	7/1/1995
Qualifications (if required): represents local government		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Services Advisory Council (Governor) cont.		
Mr. Joe R. Lovelady, Helena	Governor	7/1/1995
Qualifications (if required): entity receiving assistance under Domestic Volunteer Service Act		
 Mr. Charles McCarthy, Helena	Governor	7/1/1995
Qualifications (if required): represents Department of Family Services		
Major Loren Oelkers, Helena	Governor	7/1/1995
Qualifications (if required): represents Department of Military Affairs		
Mr. Andy Oldenburger, Manhattan	Governor	7/1/1995
Qualifications (if required): represents public		
Dr. Arnold Olsen, Helena	Governor	7/1/1995
Qualifications (if required): represents Fish, Wildlife and Parks		
Ms. Kathy Sovo Ramirez, Helena	Governor	7/1/1995
Qualifications (if required): represents non-profit organization		
Mr. Bob Simoneau, Helena	Governor	7/1/1995
Qualifications (if required): represents Department of Labor and Industry		
Mr. Peyton Terry, Glasgow	Governor	7/1/1995
Qualifications (if required): public member		
Council on Physical Fitness and Sports (Governor)		
Ms. Mary Kay Bennett, Helena	Governor	7/12/1995
Qualifications (if required): public member		
Ms. Jeri Domme, Helena	Governor	7/12/1995
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Ron Egeland, Billings Qualifications (if required): public member	Governor	7/12/1995
Mr. Todd Foster, Great Falls Qualifications (if required): public member	Governor	7/12/1995
Mr. Dick Harte, Bozeman Qualifications (if required): public member	Governor	7/12/1995
Ms. Malia Kipp, Missoula Qualifications (if required): public member	Governor	7/12/1995
Ms. Cindy Lewis, Helena Qualifications (if required): public member	Governor	7/12/1995
Ms. Judy Martz, Butte Qualifications (if required): public member	Governor	7/12/1995
Mr. Robert W. Moon, Helena Qualifications (if required): public member	Governor	7/12/1995
Mr. Bob Norbie, Great Falls Qualifications (if required): public member	Governor	7/12/1995
Mr. Tom Osborne, Billings Qualifications (if required): public member	Governor	7/12/1995
Mr. Hal Rawson, Helena Qualifications (if required): public member	Governor	7/12/1995
Mr. Pat Rummerfield, Colstrip Qualifications (if required): public member	Governor	7/12/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Spencer Sartorius, Helena Qualifications (if required): public member	Governor	7/12/1995
Dr. Brian Sharkey, Missoula Qualifications (if required): public member	Governor	7/12/1995
Ms. Judy Spolstra, Bozeman Qualifications (if required): public member	Governor	7/12/1995
Mr. Dan Thoene, Butte Qualifications (if required): public member	Governor	7/12/1995
Dr. Manuel White, Helena Qualifications (if required): public member	Governor	7/12/1995
Electrical Board (Commerce) Mr. Charles T. Sweet, Kalispell Qualifications (if required): master electrician	Governor	7/1/1995
Flathead Basin Commission (Governor) Ms. M. Colleen Allison, Columbia Falls Qualifications (if required): public member	Governor	6/30/1995
Ms. Marilyn Wood, Kalispell Qualifications (if required): public member	Governor	6/30/1995
Governor's Trade Advisory Council (Agriculture) Ms. Fran Marceau, Kalispell Qualifications (if required): labor representative	Governor	8/29/1995
Mr. Jim Waldo, Billings Qualifications (if required): labor representative	Governor	8/29/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

Board/current position holder	Appointed by	Term end
Health Care Authority Board (Health and Environmental Sciences)		
Ms. Marget V. Newman, Ronan	Governor	6/30/1995
Qualifications (if required): none specified		
Historical Society Board of Trustees (Historical Society)		
Ms. Ana Brenden, Scobey	Governor	7/1/1995
Qualifications (if required): public member		
Mr. John Burke, Butte	Governor	7/1/1995
Qualifications (if required): public member		
Mr. Jack Hayne, Dupuyer	Governor	7/1/1995
Qualifications (if required): public member		
ICC for State Prevention Programs (Governor)		
Ms. Marilyn Thornquist Chakos, Billings	Governor	7/1/1995
Qualifications (if required): experience in private or nonprofit provision of prevention program		
Incentive Awards Advisory Council (Administration)		
Mr. Jim Adams, Helena	Director	7/1/1995
Qualifications (if required): general public member		
Ms. Ann Bartel, Great Falls	Director	7/1/1995
Qualifications (if required): general public member		
Mr. Bartley J. Campbell, Helena	Director	7/1/1995
Qualifications (if required): state employee		
Mr. Mark Cress, Helena	Director	7/1/1995
Qualifications (if required): ex-officio non-voting		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Incentive Awards Advisory Council (Administration) cont. Mr. Russell G. McDonald, Helena Qualifications (if required): state employee	Director	7/1/1995
Mr. Erich Merdinger, Helena Qualifications (if required): state employee	Director	7/1/1995
Ms. M. Carol Ogle, Helena Qualifications (if required): state employee	Director	7/1/1995
Mr. Jim Pellegrini, Helena Qualifications (if required): state employee	Director	7/1/1995
Ms. Janet Reller, Helena Qualifications (if required): state employee	Director	7/1/1995
Mr. Joe Williams, Helena Qualifications (if required): state employee	Director	7/1/1995
Indian Burial Preservation Board (Commerce) Ms. Karen Atkinson, Pablo Qualifications (if required): represents Salish Kootenai Tribe	Governor	8/22/1995
Mr. Francis Auld, Elmo Qualifications (if required): represents Salish Kootenai Tribe	Governor	8/22/1995
Mr. Carl Fourstar, Poplar Qualifications (if required): represents Assiniboine Tribe	Governor	8/22/1995
Mr. Dale Herbort, Helena Qualifications (if required): represents Montana Historic Preservation Office	Governor	8/22/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Indian Burial Preservation Board (Commerce) cont. Dr. Randall Skelton, Missoula Qualifications (if required): physical anthropologist	Governor	8/22/1995
Ms. Charline Smith, East Missoula Qualifications (if required): physical anthropologist	Governor	8/22/1995
Rep. Jay Stovall, Billings Qualifications (if required): public member	Governor	8/22/1995
Mr. William Tallbull, Busby Qualifications (if required): represents Northern Cheyenne Tribe	Governor	8/22/1995
Mr. Clarence "Curly Bear" Wagner, Browning Qualifications (if required): represents Blackfeet Tribe	Governor	8/22/1995
Interagency Coordinating Council for Prevention Programs Ms. Robin Morris, Havre Qualifications (if required): representative of prevention programs and services	Governor (Family Services)	7/1/1995
Job Training Coordinating Advisory Council (Labor and Industry) Ms. Judy Birch, Helena Qualifications (if required): none specified	Governor	7/1/1995
Mr. Peter S. Blouke, Helena Qualifications (if required): none specified	Governor	7/1/1995
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): represents business	Governor	7/1/1995
Mr. Fred "Rocky" Clark, Butte Qualifications (if required): represents labor/community-based organizations	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Job Training Coordinating Advisory Council (Labor and Industry) cont.		
Mr. Rick Day, Helena	Governor	7/1/1995
Qualifications (if required): none specified		
Ms. Jane Delong, Helena	Governor	7/1/1995
Qualifications (if required): represents business		
Ms. JoEllen Estenson, Columbia Falls	Governor	7/1/1995
Qualifications (if required): none specified		
Mr. Hank Hudson, Clancy	Governor	7/1/1995
Qualifications (if required): represents state or local government		
Ms. Helen Kellicut, Deer Lodge	Governor	7/1/1995
Qualifications (if required): represents business		
Mr. Bob Marks, Clancy	Governor	7/1/1995
Qualifications (if required): represents business		
Ms. Sue Matthews, Miles City	Governor	7/1/1995
Qualifications (if required): none specified		
Ms. Felicity McFerrin, Helena	Governor	7/1/1995
Qualifications (if required): represents labor/community-based organizations		
Mr. Steve P. Nelsen, Bozeman	Governor	7/1/1995
Qualifications (if required): none specified		
Mr. Jon Oldenburg, Lewistown	Governor	7/1/1995
Qualifications (if required): represents labor/community-based organizations		
Mr. David Owen, Helena	Governor	7/1/1995
Qualifications (if required): represents business		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Job Training Coordinating Advisory Council (Labor and Industry) cont.		
Ms. Diane Ruff, Billings	Governor	7/1/1995
Qualifications (if required): represents business		
Mr. Randy Siemers, Billings		
Qualifications (if required): none specified	Governor	7/1/1995
Ms. Sherry Stevens Wulf, Kalispell		
Qualifications (if required): none specified	Governor	7/1/1995
Sen. Mignon Waterman, Helena		
Qualifications (if required): none specified	Governor	7/1/1995
Mr. Noel Williams, Eureka		
Qualifications (if required): none specified	Governor	7/1/1995
Rep. Karyl Winslow, Billings		
Qualifications (if required): none specified	Governor	7/1/1995
Joint Committee on Post-Secondary Education Policy & Budget (Legislative Fiscal Analyst)		
Ms. D'Anna Smith, Bozeman	Governor	6/30/1995
Qualifications (if required): student representative		
Judicial Standards Commission (Judicial)		
Ms. Jean Grow, Glendive	Governor	7/1/1995
Qualifications (if required): public member from Congressional District II		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Judicial Unification and Finance Commission (Legislative Council)		
Ms. Toni Atwood, Livingston	Governor	6/30/1995
Qualifications (if required): public member		
Ms. Barbara Ford, Bigfork	Governor	6/30/1995
Qualifications (if required): public member		
Mr. J. Perry Wolfe, Scobey	Governor	6/30/1995
Qualifications (if required): public member		
Library Services Advisory Council (Education)		
Ms. Greta Chapman, Libby	Director	6/1/1995
Qualifications (if required): represent public libraries		
Ms. Beverly Knapp, Bozeman	Director	6/1/1995
Qualifications (if required): represents users of public library service in Broad Valleys Federation		
Ms. Anita Nelson, Missoula	Director	6/1/1995
Qualifications (if required): represents the disabled		
Ms. Sue Nissen, Butte	Director	7/1/1995
Qualifications (if required): none specified		
MIAMI Project Advisory Council (Health and Environmental Sciences)		
Ms. Lil Anderson, Billings	Governor	6/30/1995
Qualifications (if required): represents local health department		
Ms. Nancy Colton, Bozeman	Governor	6/30/1995
Qualifications (if required): involved in kids' issues & represents parents' organization		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

Board/current position holder	Appointed by	Term end
MIAMI Project Advisory Council (Health and Environmental Sciences) cont.		
Mr. Dan Dennehy, Butte	Governor	6/30/1995
Qualifications (if required): represents service providers		
Ms. Nancy Ellery, Helena	Governor	6/30/1995
Qualifications (if required): representing Department of Social and Rehabilitation Services who administers or supervises services under Montana Medicaid program		
Ms. Betty Hidalgo, Great Falls	Governor	6/30/1995
Qualifications (if required): represents nonprofit health organization		
Dr. Jeffrey P. Hinz, Great Falls	Governor	6/30/1995
Qualifications (if required): private physician who specializes in obstetric or pediatric care		
Rep. Angela Russell, Lodge Grass	Governor	6/30/1995
Qualifications (if required): member of Crow Tribe and is knowledgeable and involved in health services to Native Americans		
Mr. Dale Taliaferro, Helena	Governor	6/30/1995
Qualifications (if required): represents preventative health services for women & kids		
Mental Health Advisory Council on Youth (Corrections and Human Services)		
Ms. Shirley Brown, Helena	Governor	6/30/1995
Qualifications (if required): represents Department of Family Services		
Sen. Ethel Harding, Polson	Governor	6/30/1995
Qualifications (if required): state legislator		
Ms. Toni Jensen, Helena	Governor	6/30/1995
Qualifications (if required): parent of emotionally disturbed child		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

Board/current position holder	Appointed by	Term end
Mental Health Advisory Council on Youth (Corrections and Human Services) cont.		
Mr. Ted Lechner, Billings	Governor	6/30/1995
Qualifications (if required): represents youth court		
Mr. Glenn McFarlane, Billings	Governor	6/30/1995
Qualifications (if required): represents service provider groups		
Mr. Mike McLaughlin, Great Falls	Governor	6/30/1995
Qualifications (if required): represents service provider groups		
Mr. Bob Runkel, Helena	Governor	6/30/1995
Qualifications (if required): represents Office of Public Instruction		
Ms. Barbara Sample, Billings	Governor	6/30/1995
Qualifications (if required): represents youth service advocacy		
Mr. Pete Surdock, Helena	Governor	6/30/1995
Qualifications (if required): represents Department of Corrections and Human Services		
Microbusiness Finance Program Advisory Council (Commerce)		
Ms. Barbara Burke, Missoula	Governor	7/1/1995
Qualifications (if required): none specified		
Mr. Dolph Harris, Sidney	Governor	6/30/1995
Qualifications (if required): represents business owners		
Ms. Jamie Kay, Missoula	Governor	7/1/1995
Qualifications (if required): none specified		
Mr. Richard C. King, Havre	Governor	7/1/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Microbusiness Finance Program Advisory Council (Commerce) cont.		
Mr. Duane Kurokawa, Wolf Point	Governor	7/1/1995
Qualifications (if required): none specified		
Ms. Robyn Morrison Hampton, Helena		
Qualifications (if required): represents expertise in revolving loan fund administration	Governor	6/30/1995
Ms. Kim L. Peterson, Havre		
Qualifications (if required): represents low-income persons	Governor	6/30/1995
Mr. Rick Sharp, Butte		
Qualifications (if required): none specified	Governor	7/1/1995
Mr. Craig Smith, Wolf Point		
Qualifications (if required): represents cities with population less than 15,000	Governor	6/30/1995
Mr. Robert N. Storey, Missoula		
Qualifications (if required): represents microbusiness owners	Governor	6/30/1995
Montana Mint Committee (Agriculture)		
Mr. Dale Sonstelie, Kalispell	Governor	7/1/1995
Qualifications (if required): active mint grower		
Motorcycle Safety Advisory Committee (Office of Public Instruction)		
Mr. Robert E. Brown, Glasgow	Superintendent	7/1/1995
Qualifications (if required): certified motorcycle safety instructor		
Mr. Dal Smilie, Helena		
Qualifications (if required): represents motorcycle group	Governor	7/1/1995
Mr. Ron Ullom, Red Lodge		
Qualifications (if required): peace officer	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Advisory Council Mr. Barry Bowles, Townsend Qualifications (if required): herbicide dealer and applicator	Director	6/30/1995
Mr. Dane Castleberry, Ekalaka Qualifications (if required): livestock production	Director	6/30/1995
Ms. Linda Ellison, Bozeman Qualifications (if required): sportsman/wildlife group	Director	6/30/1995
Mr. Charles M. Jarecki, Polson Qualifications (if required): member at large	Director	7/1/1995
Ms. Mercy Knowlton, Poplar Qualifications (if required): agriculture crop production	Director	6/30/1995
Mr. Lonnie McCurdie, Conrad Qualifications (if required): consumer group	Director	6/30/1995
Mr. Terry Turner, Havre Qualifications (if required): none specified	Director	6/30/1995
Petroleum Tank Release Compensation Board (Health and Environmental Sciences) Mr. Al Audet, Great Falls Qualifications (if required): representative of petroleum service industry	Governor	6/30/1995
Mr. John Dove, Missoula Qualifications (if required): representative of insurance company	Governor	6/30/1995
Mr. Dean South, Helena Qualifications (if required): represents petroleum services industry	Governor	6/30/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (Health and Environmental Sciences) cont. Mr. Howard Wheatley, Great Falls Qualifications (if required): representative of independent petroleum marketers & chain retailer	Governor	6/30/1995
Reserved Water Rights Compact Commission (Governor) Sen. Lorents Grosfield, Big Timber Qualifications (if required): member appointed by Senate	Senate	6/1/1995
Mr. Dennis Iverson, Helena Qualifications (if required): member appointed by Governor	Governor	6/1/1995
Mr. Joseph P. Mazurek, Helena Qualifications (if required): member appointed by Senate	Senate	6/1/1995
Rep. Bob Thoft, Stevensville Qualifications (if required): none specified	Governor	6/1/1995
Mr. Chris D. Tweeten, Helena Qualifications (if required): member appointed by Attorney General	Attorney General	6/1/1995
State Emergency Response Commission (Governor) Mr. Steve Barry, Helena Qualifications (if required): represents Department of Justice	Governor	7/21/1995
Mr. Pat Brannon, Helena Qualifications (if required): represents Department of Transportation and Highways	Governor	7/21/1995
Ms. Judy Browning, Helena Qualifications (if required): represents Governor's Office	Governor	7/21/1995
Ms. Beate Galda, Helena Qualifications (if required): represents Fish, Wildlife and Parks	Governor	7/21/1995

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

Board/current position holder	Appointed by	Term end
State Emergency Response Commission (Governor) cont.		
Mr. Jim Greene, Helena	Governor	7/21/1995
Qualifications (if required): represents Disaster and Emergency Services		
Mr. Marv Jochems, Billings	Governor	7/21/1995
Qualifications (if required): none specified		
Mr. Pat Keim, Helena	Governor	7/21/1995
Qualifications (if required): none specified		
Ms. Yvonne Kobasziar, Great Falls	Governor	7/21/1995
Qualifications (if required): none specified		
Mr. Curt Laingen, Helena	Governor	7/21/1995
Qualifications (if required): none specified		
Mr. Bob Robinson, Helena	Governor	7/21/1995
Qualifications (if required): none specified		
Mr. Seldon Weedon, Great Falls	Governor	7/21/1995
Qualifications (if required): none specified		
Teachers' Retirement Board (Administration)		
Mr. E. Joseph Cross, Billings	Governor	7/1/1995
Qualifications (if required): member of a retirement system		
Tourism Advisory Council (Commerce)		
Ms. Maureen Averill, Bigfork	Governor	7/1/1995
Qualifications (if required): represents Glacier Country		
Ms. Diane Brandt, Glasgow	Governor	7/1/1995
Qualifications (if required): represents Missouri River Country		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1995 through August 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Commerce) cont.		
Mr. David Hemion, Helena Qualifications (if required): represents Montana Chamber of Commerce	Governor	7/1/1995
Ms. Edythe McCleary, Hardin Qualifications (if required): represents Custer Country	Governor	7/1/1995
Ms. Lisa Reid Perry, Shepherd Qualifications (if required): public member	Governor	7/1/1995
Wheat and Barley Committee (Agriculture)		
Mr. Fred L. Elling, Rudyard Qualifications (if required): Republican representing District II	Governor	8/20/1995
Ms. Judy Vermulm, Out Bank Qualifications (if required): Democrat representing District III	Governor	8/20/1995