RESERVE

MONTANA ADMINISTRATIVE REGISTER

1995 ISSUE NO. 13
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INDEX COPY

EFFECTS OF REORGANIZATION OF STATE AGENCIES

The 1995 Legislature passed SB 234 and SB 345 which became effective July 1, 1995. In essence, these bills:

1) abolished the departments of Family Services (Title 11), Health and Environmental Sciences (Title 16), State Lands (Title 26), and Social and Rehabilitation Services (Title 46);

2) created new departments of Public Health and Human Services (DPHHS), and Environmental Quality (DEQ); and

3) retained the name of the Department of Natural Resources and Conservation (DNRC) (currently Title 36), but changed its function.

As is evident, resolving the issues of this reorganization process will take time. For the time being, the Montana Administrative Register and the Administrative Rules of Montana will still contain references to the abolished agencies. Material adopted prior to July 1, 1995, will remain in the Title under which it was adopted.

Starting with 1995 Montana Administrative Register Issue No. 13, (this issue), material that is affected by the reorganization will not necessarily be identified by Title numbers since final Title designations have not been assigned. For instance, MAR notice numbers using department abbreviations, such as DPHHS-1, DPHHS-2 etc., will be used. MAR notice numbers with this type of letter designation will be printed alphabetically following the regular numerical Title proposal notices. Adoption notices published in the rule section of the Register will also be listed in alphabetical order.

Entries made in the Accumulative Table for the newly created departments will be found after Title 46. Again, these departments will be listed alphabetically.

Permanent rule number designation is still not resolved, but the intention is to keep users well informed and provide easily obtainable information and research capability for materials in the interim. In future issues, the SPECIAL NOTICE AND TABLE SECTION of the Register will be used to help keep you informed.

Please contact the Administrative Rules Bureau at (406) 444-2055 if you have questions or concerns or wish to offer comments or suggestions. We appreciate your patience.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.43.606 pertaining to conversion of an optional retirement upon death or divorce from the contingent annuitant	) NOTICE OF PROPOSED AMENDMENT))) (NO PUBLIC HEARING) CONTEMPLATED))

TO: All Interested Persons.

1. On August 24, 1995, the Public Employees' Retirement Board proposes to amend ARM 2.43.606 pertaining to conversion of an optional retirement upon death or divorce from the contingent annuitant.

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

2.43.606 CONVERSION OF OPTIONAL RETIREMENT UPON DEATH OR DIVORCE FROM THE CONTINGENT ANNUITANT (1) ~~Upon the death of, or divorce from, a named contingent annuitant, a~~ A PERS retiree may convert from ~~optional~~ an option 2, 3, or 4 to ~~a regular retirement~~ an option 1 retirement ~~benefit or may designate a new contingent annuitant and retirement option~~ if the contingent annuitant has died, or the retiree is divorced from the contingent annuitant and ~~, In the case of a divorce, the retiree may only change the contingent annuitant if~~ the court did not award ~~previously assigned~~ any portion of the optional retirement benefits to the ex-spouse (contingent annuitant) as part of the divorce settlement.

(2) ~~In the case of a conversion from an option 2, 3 or 4~~ A retiree desiring to convert to an option 1 retirement benefit ~~after~~ because the ~~death of the former~~ contingent annuitant died, may do so at any time following the contingent annuitant's death. ~~, the~~ The resulting option 1 retirement benefit will be the same dollar amount the retiree was receiving when the contingent annuitant died. ~~—~~ and will be effective as of the date the contingent annuitant died.

(3) ~~In the case of a conversion from an option 2, 3 or 4~~ A retiree desiring to convert to ~~the~~ an option 1 retirement benefit after divorce from the ~~former~~ contingent annuitant~~,~~ ~~the~~ must notify the division within one year following the date the divorce decree was final. The resulting option 1 retirement benefit will be the same as the option 1 retirement benefit calculated ~~at the time of retirement~~ when the member retired, plus ~~an amount equal in dollars to~~ any cost-of-living ~~adjustment~~ adjustments granted after the date of retirement. The change to option 1 will be effective on the first day of the month following the month the division receives the properly completed application forms.

(4) ~~In the case of a subsequent designation of another~~ A retiree who converts to an option 1 retirement as described in (2) or (3) above may subsequently designate a new contingent

annuitant~~, the retiree may again~~ and elect an option 2, 3, or 4 retirement benefit. ~~and the~~ The new benefit amount ~~resulting benefits~~ will be calculated by applying the actuarial reduction factors in use ~~at the time of the original retirement~~ when the member retired ~~(based upon the age of the new contingent annuitant)~~ to the option 1 benefit as described in (2) or (3) above, but based upon the age of the new contingent annuitant.

~~(5) A change of contingent annuitant will become effective on the date a properly completed election form is received by the division. Any~~ The subsequent change ~~in~~ to an ~~optional~~ option 2, 3, or 4 retirement and the amount of the retirement benefit will become effective on the ~~first day of the month following receipt of the written election by the division~~ earliest date the retiree could have designated the new contingent annuitant. If the new contingent annuitant is the retiree's new spouse, the effective date will be the date the retiree married the new contingent annuitant.

(5) All requests filed under this rule must be on current forms provided by the division for this purpose. A request to elect an option 2, 3, or 4 retirement benefit and to designate a new contingent annuitant must be made on properly completed forms and must be received by the division no later than one year following the date the retiree could have designated the new contingent annuitant or the date the retiree married the new contingent annuitant.

AUTH: 19-2-403 MCA
IMP: 19-3-1501 MCA

3. The amendments to ARM 2.43.606 are necessary to set a time limit during which retirees must notify the division of their desire to change their optional retirement benefits or contingent annuitants, and to clarify when the changes will be effective. The time limit is necessary to prevent adverse selection against the retirement system. The clarification of effective dates explains specifically the time periods used to compute the actuarial cost of these elective conversions.

4. Interested persons may present their data, views, or arguments concerning the proposed amendment in writing no later than August 14, 1995 to:

Linda King, Administrator
Public Employees' Retirement Division
P.O. Box 200131
Helena, Montana 59620-0131

5. A person directly affected by the proposed amendment who wishes to express data, views and written or oral arguments at a public hearing must submit a written request for a hearing along with any written comments to the above address. A written request for hearing must be received no later than August 14, 1995.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Those persons directly affected are the members of the retirement systems administered by the Board and ten percent has been determined to be 4,384 persons based on January 1995 payroll reports of active and retired members.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on June 26, 1995.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.12.1221 and ARM 4.12.1224; Repeal of ARM 4.12.1226, 4.12.1227 and 4.12.1228	NOTICE OF A PROPOSED AMENDMENT AND REPEAL OF THE ALFALFA LEAF-CUTTING BEE RULES PERTAINING TO THE REGISTRATION, FEES, STANDARDS, CERTIFICATION AND SALE OF BEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 12, 1995, the Department of Agriculture proposes to amend and repeal the above stated rules.

2. The rules proposed to be repealed are on pages 4-418 and 4-419 of the Administrative Rules of Montana. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

4.12.1221 REGISTRATION PROCEDURES AND FEES (1) through (3) remain the same.

~~(4) Annual registration shall be from November 1 to April 1.~~ ~~(5)~~(4) Any person owning or possessing bees that are not registered ~~on or before April 1 of each year shall be considered to be unregistered and~~ shall be subject to the penalties imposed under ~~section~~ 80-6-1110 and 80-6-1111, MCA.

~~(6)~~(5) Each person who registers bees shall pay a registration fee of $15.00.

AUTH: 80-6-1103 MCA IMP: 80-6-1109 MCA

4.12.1224 OFFICIAL CERTIFICATION PROCEDURES AND FEES (1)(a) through (f) remain the same.

(g) Parasites and pathogens that bees are to specifically be examined for are:

(i) Parasites:

(A) Minute chalcid (Telrastichus megachi).

(B) Sapyga wasp (Sapyga pumila).

(C) Canadian chalcid (Pteromalus venustus).

(D) Imported chalcid (Monodontomerus obscurus).

(ii) Pathogens:

(A) Alfalfa leafcutting bee chalkbrood (Ascosphaera sp.).

(h) Reported parasites and pathogens infestation levels apply to the levels found in the official laboratory sample only, and makes no representation as to the lot from which the sample was collected.

AUTH: 80-6-1103 MCA IMP: 80-6-1103, 80-6-1105 & 80-6-1109 MCA

The rules proposed for repeal are as follows:

4.12.1226 MINIMUM STANDARD FOR LEAF-CUTTING BEES CERTIFIED BY THE COMMITTEE

AUTH: 80-6-1103 MCA IMP: 80-6-1103 and 80-6-1105 MCA

4.12.1227 IMPORTED ALFALFA LEAF-CUTTING BEES - CERTIFICATION
AUTH: 80-6-1103 MCA IMP: 80-6-1103 and 80-6-1105 MCA

4.12.1228 SALES OF BEES
AUTH: 80-6-1103 MCA IMP: 80-6-1105 MCA

REASONS: The Alfalfa Leaf-cutting Bee Management Act (Title 80, chapter 8, part 11 et. seq.) was amended effective February 10, 1995 upon passage and approval of Senate Bill 108. It is necessary to amend the rules adopted under the Act to correspond to the amendments in the Act. The current provisions of ARM 4.12.1226(2)(a) and (b) have been consolidated into existing ARM 4.12.1224 as a result of the amendments to Title 80, chapter 8, part 11. ARM 4.12.1226 is proposed for repeal. The amendment of ARM 4.12.1224 establishes in one rule official certification procedures and fees and the types of parasites and pathogens that these bees, through official sampling, will be examined for in the laboratory.

3. Interested persons may submit their written data, views, or arguments concerning the proposed amendments and repeals to Gil Sorg, c/o Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, no later than August 10, 1995.

4. If a party who is directly affected by the proposed amendments and repeals wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gil Sorg, c/o Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 no later than August 10, 1995.

5. If the department receives requests for a public hearing on the proposed amendments and repeals from either 10% or 25%, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5 people based on the number of alfalfa leafcutting bee registrants.

W. Ralph Peck, Director
DEPARTMENT OF AGRICULTURE

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State June 29, 1995

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the temporary amendment of ARM 18.6.211 concerning application fees for outdoor advertising, complying with Senate Bill 181 (Chapter 510) of the 1995 Legislature	)	NOTICE OF PROPOSED TEMPORARY AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 13, 1995, the Montana Transportation Commission, formerly the Montana Highway Commission, intends to temporarily amend rule 18.6.211 on permits. The rule would be effective until October 1, 1995.

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

18.6.211 PERMITS (1) Applications for permits may be obtained at any of the ~~D~~department of ~~Highways~~ transportation district offices located in Missoula, Butte, Great Falls, Glendive and Billings.

(2) A permit must be obtained for each sign and the application for the permit must be accompanied by ~~an initial fee of six dollars ($6.00)~~ a nonrefundable initial application fee as follows:

32 sf or less	$20
33 sf to 64 sf	$25
65 sf to 128 sf	$30
129 sf to 256 sf	$35
257 sf to 512 sf	$40
513 sf to 672 sf	$45

(3) through (5) will remain the same.

AUTH: 75-15-121, MCA; IMP: 75-15-122, MCA

3. Interested persons may present their data, views or arguments in writing to the Transportation Commission or to the Coordinator of Outdoor Advertising, Richard Munger, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001. Comments must be received no later than August 10, 1995.

4. The authority of the Commission to make the proposed temporary rule is based upon amendments to section 75-15-122, MCA, as amended by Chapter 510 of the 1995 Legislative Session. In that legislation, the fees described in subsections (1)(a) and (b) are to be determined by the square footage of the sign face

and established by rule by the Commission to cover the cost of administering and enforcing section 75-15-122, MCA.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Richard Munger, Coordinator of Outdoor Advertising, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001. Requests must be received no later than August 10, 1995.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature; from a governmental 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 15 based on an expected 150 new sign applications.

MONTANA DEPARTMENT OF TRANSPORTATION

By: _____
THORM FORSETH, Chairman

_____
Lyle Manley, Rule Reviewer

Certified to the Secretary of State July 3, 1995.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new rules I, II, III, IV, V, VI, VII and VIII specifying the procedure for review, approval, supervision and revocation of cooperative agreements between health care facilities or physicians and the issuance and revocation of certificates of public advantage.	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On June 15, 1995, the department published a notice at page 1006 of the Montana Administrative Register, Issue No. 11 of the proposed adoption of the above-captioned rules. The notice of proposed agency action is amended as follows because the required number of persons designated therein have requested a public hearing.

2. On August 2, 1995, at 9:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the adoption of new rules I through VIII.

3. Proposed Rules I through VIII provide a procedure for the review, approval, supervision and revocation of cooperative agreements between health care facilities or physicians and the issuance and revocation of certificates of public advantage. A copy of the proposed rules may be obtained by contacting the Montana Attorney General's Office, Joseph P. Mazurek, Attorney General, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401.

4. The rules are necessary to meet the legislature's intent to provide immunity from the antitrust laws of the United States and the State of Montana to health care facilities and physicians who enter into cooperative agreements that will result in lower health care costs or in improved access to health care or higher quality health care without any undue increase in health care costs. The rules implement 50-4-601 through -612, MCA, and Chs. 378 and 526, L. 1995, which express the Montana legislature's intent that supervision and control over the implementation of cooperative agreements substitute state regulation of health care facilities and physicians for competition between the facilities or physicians. These rules will provide the supervision and control required by the legislature.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Joseph P. Mazurek, Attorney General, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401, and must be received no later than August 10, 1995.

6. A representative of the Legal Services Division of the Attorney General's Office, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401 has been designated to preside over and conduct the hearing.

By: _____
JOSEPH P. MAZUREK
Attorney General

_____
(Rule Reviewer)

Certified to the Secretary of State July 3, 1995.

**BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES
OF THE
STATE OF MONTANA**

In the matter of the adoption of new Rules I through IV pertaining to campaign contribution limitations and surplus campaign funds, and the amendment of Rule 44.10.331	))))))	**NOTICE OF PUBLIC HEARING**

TO: All Interested Persons.

1. On August 3, 1995 at 9:00 a.m., a public hearing will be held in Room 104 State Capitol Building, Helena, Montana, to consider the adoption of new Rules I through IV, and the amendment of 44.10.331.

2. The proposed new rules provide as follows:

RULE I LEADERSHIP POLITICAL COMMITTEES (1) The term "leadership political committee maintained by a political officeholder", as used in section 13-37-216(2)(b), MCA means a "political committee" as defined in section 13-1-101(12), MCA, managed or controlled by an elected official or someone designated by the elected official. The term "elected official" is defined in section 5-7-102(4), MCA.

(2) A leadership political committee managed by an elected official who is also a candidate is considered to be organized on the candidate's behalf, and contributions to the committee are subject to the aggregate contribution limits established in section 13-37-216(1), MCA.

(3) A leadership political committee that makes contributions to another candidate, a candidate's committee, or any political committee organized on a candidate's behalf is subject to the aggregate contribution limits established in section 13-37-216(1), MCA.

(4) A committee established and managed or controlled by an elected official or someone designated by the elected official, which is not a "political committee" as that term is defined in section 13-1-101(12), MCA, is not a "leadership political committee maintained by a political officeholder." Such a committee may raise money for research, educational, and other purposes, so long as the fund raising and expenditures do not constitute "contributions" or "expenditures" pursuant to the definitions in section 13-1-101, MCA. If the fund raising and expenditures result in contributions or expenditures according to the definitions in section 13-1-101, MCA, and the committee is a "political committee" as defined in section 13-1-101(12), MCA, the committee is a "leadership political committee maintained by a political officeholder".

(5) Leadership political committees maintained by a political officeholder are subject to the reporting requirements of title 13, chapter 37, MCA.

(6) The Commissioner shall classify leadership political committees maintained by a political officeholder pursuant to ARM 44.10.327 and 44.10.329 based on the information provided on the statement of organization.

AUTH: Section 13-37-114, MCA
IMP: Section 13-37-216, MCA

RULE II LIMITATIONS ON CONTRIBUTIONS FROM POLITICAL PARTY COMMITTEES (1) Political committees formed by "political party organizations", as that term is defined in section 13-37-216, MCA, are subject to the aggregate contribution limits established in section 13-37-216(3), MCA. Such committees are "political party committees", and include all county central committees, city central committees, women's clubs, and other committees, that fit within the definition of "political committee" in section 13-1-101(12), MCA, and were formed by a political party organization.

(2) Candidates will be responsible for monitoring contributions from political party committees to ensure that the contribution limits are not exceeded.

AUTH: Section 13-37-114, MCA
IMP: Section 13-37-216, MCA

RULE III ELECTIONS TO WHICH AGGREGATE CONTRIBUTION LIMITS APPLY (1) For purposes of the limitations on contributions established in section 13-37-216, MCA, and these rules, the term "election" is defined in section 13-37-216(5), MCA.

(2) The term "contested primary", as used in section 13-37-216(5), MCA, means a primary election in which two or more candidates compete for the same nomination or nominations.

(a) In partisan primary elections, if two or more candidates compete for one party's nomination, but only one candidate seeks a different party's nomination, it is a "contested primary", resulting in two elections to which the contribution limits in section 13-37-216, MCA, apply. For example, if two candidates seek Party A's nomination in the primary election for a public office, but only one candidate seeks the Party B's nomination for the same public office, it is a contested primary.

(b) In judicial and other nonpartisan primary elections, if two or more candidates compete for nomination, it is a "contested primary", resulting in two elections to which the contribution limits in section 13-37-216, MCA apply. For example, if two candidates seek nomination in the primary election for the office of district judge, it is a contested primary even though both candidates will advance to the general election pursuant to section 13-14-117, MCA.

(c) When an incumbent judicial officer is the only candidate who files a declaration for nomination in the primary election, and subsequently faces a vote, pursuant to section 13-14-212, MCA for or against retention in the general election, there is no "contested primary", and there is only one election to which the contribution limits in section 13-37-216, MCA apply.

AUTH: Section 13-37-114, MCA

IMP: Section 13-37-216, MCA

RULE IV DISPOSAL OF SURPLUS CAMPAIGN FUNDS (1) Candidates shall dispose of surplus campaign funds within 120 days of filing the closing campaign report required by section 13-37-228, MCA.

(a) The candidate's closing report shall be filed whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign.

(b) No closing report needs to be filed following a primary election campaign if the candidate will advance to the general election.

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, no further campaign contributions will be received, and no further campaign expenditures will be made.

(3) Surplus campaign funds will be considered to have been "disposed of" on the date payment is made by the candidate or the candidate's committee to a permissible person, entity, or account.

(4) Payment of surplus campaign funds shall be evidenced by a receipt from the recipient containing the following information:

(a) The full name and mailing address of the recipient;

(b) The date the funds were received;

(c) The full name of the candidate from whose campaign the funds were received, and;

(d) The exact amount of funds received.

The candidate shall be responsible for obtaining a receipt containing the requisite information from all recipients of any surplus campaign funds.

(5) Those candidates with surplus campaign funds shall file a supplement to the closing campaign report, on a form prescribed by the Commissioner, showing the disposition of surplus campaign funds. The report shall be accompanied by copies of all receipts required by subsection (4) of this rule. The supplement shall be filed within 135 days after the closing report is filed.

(6) A candidate shall abide by the prohibitions on the use of surplus campaign funds specified in section 13-37-240, MCA.

(a) For purposes of the restrictions on the disposal of surplus campaign funds set forth in section 13-37-240, MCA, "personal benefit" is defined in section 13-37-240(2), MCA. For purposes of this definition, a candidate's "immediate family" includes the candidate's spouse and minor children only, pursuant to the definition of this term in section 5-7-213, MCA.

(b) For purposes of the restrictions on the disposal of surplus campaign funds set forth in section 13-37-240, MCA, "campaign" means any organized effort to secure or prevent the nomination or election of a candidate for public office, or secure or prevent passage of a ballot issue.

(c) The following are examples of permissible uses of surplus campaign funds:

(i) Return of the funds to the contributor, so long as the funds will not result in personal benefit or a contribution to a campaign;

(ii) Donation of the funds to any organization or entity, so long as the use of the funds will not result in personal benefit or a contribution to a campaign;

(iii) Upon election, use of the funds to establish an account to serve a public purpose related to the officeholder's public duties, so long as the funds will not result in personal benefit or a contribution to a campaign.

(7) A candidate shall not contribute surplus campaign funds to a political committee, including a leadership political committee maintained by a political officeholder.

(8) Upon a determination that a candidate made a prohibited disposal of surplus campaign funds, the Commissioner may employ any enforcement measures within his or her jurisdiction.

AUTH: Section 13-37-114, MCA
IMP: Section 13-37-240, MCA

3. The rule proposed to be amended provides as follows (new material is underlined):

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES

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

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

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

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

(3) Pursuant to section 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: Section 13-37-114, MCA
IMP: Section 13-37-218, MCA

4. The proposed new rules and the amendment of the existing rule are necessary to implement the provisions of Initiative 118, passed by the electorate in the 1994 general election.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Ed Argenbright, Commissioner of Political Practices, P.O. Box 202401, Helena, MT 59620-2401, and must be received no later than August 11, 1995.

6. Jim Scheier has been designated to preside over and conduct the hearing.

JIM SCHEIER, Rule Reviewer

ED ARGENBRIGHT, Commissioner

Certified to the Secretary of State June 28, 1995.

BEFORE THE DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rules I through XI and the amendment of rules 46.12.514, 46.12.515, 46.12.516 and 46.12.517 pertaining to medicaid coverage and reimbursement of therapeutic family care.	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES I THROUGH XI AND THE AMENDMENT OF RULES 46.12.514, 46.12.515, 46.12.516 AND 46.12.517 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF THERAPEUTIC FAMILY CARE

TO: All Interested Persons.

1. On August 2, 1995, at 1:30 p.m., a public hearing will be held in room 306 of the Department of Social and Rehabilitation Services building, located at 111 Sanders, Helena, Montana to consider the proposed adoption of rules I through XI and the amendment of rules 46.12.514, 46.12.515, 46.12.516 and 46.12.517 pertaining to medicaid coverage and reimbursement of therapeutic family care.

The department will make reasonable accommodations to allow participation at the hearing of persons with disabilities. Any person wishing to request an accommodation should contact Randy Koutnik, P.O. Box 8005, Helena, Montana 59604, (406) 444-5900, to advise on what is needed.

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

RULE I THERAPEUTIC FAMILY CARE, COMPLIANCE WITH APPLICABLE REQUIREMENTS (1) Participation of therapeutic family care agencies and treatment families in the department's program for therapeutic family care depends on compliance with applicable licensing and program requirements.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE II THERAPEUTIC FAMILY CARE, DEFINITIONS (1) "Active treatment" means an individualized plan of therapeutic interventions provided by or under the direction and supervision of a treatment supervisor directed at specific symptoms and/or behaviors, and which is designed to achieve discharge of the youth at the earliest possible time.

(2) "Certification" or "certified" means that therapeutic family care requirements for medicaid-covered therapeutic family care have been met including the applicable medical necessity criteria for the moderate or intensive level of therapeutic family care and the requirement that the service be ordered by a licensed clinical professional on a medical necessity statement.

(3) "Youth" means a person under the age of twenty-one years.

(4) "Clinical experience" means experience in the direct provision of therapeutic interventions including the development of treatment plans under the direct supervision of a licensed clinical professional.

(5) "Department" means the department of public health and human services.

(6) "Full-time equivalent" (FTE) means the staff person is employed or contracted for forty hours per week of services in connection with provision of therapeutic family care.

(7) "Intensive level" means the supervision and intensity of treatment required in a therapeutic family to manage and treat youths who present severe emotional and/or behavioral disorders as evidenced by meeting 5 or more of the medical necessity criteria set forth in [Rule VII]. This level of therapeutic family care must be certified every ninety days. An individual treatment plan, developed according to the youth's age, diagnosis and behaviors, determines treatment needs. This level requires:

(a) the services of a mental health assistant who receives routine guidance from the treatment parents;

(b) the use of approved passive restraint behavior management methods; and

(c) specialized support services.

(8) "Licensed clinical professional" means a Montana-licensed medical doctor, clinical psychologist, masters level social worker (MSW), or professional counselor.

(9) "Medical necessity statement" means the document which is used to establish the certification criteria in [Rule VII] for intensive or moderate therapeutic family care ordered by a licensed clinical professional.

(10) "Mental health assistant" means a person who is an employee of, or under contract with, the therapeutic family care agency, who provides support services under the supervision of the treatment supervisor or the treatment manager, to a youth certified to receive therapeutic family care, at the intensive level. A mental health assistant must be a high school graduate with at least two years of experience working with emotionally disturbed youth or developmentally disabled youth or providing direct services in a human services field or be a high school graduate with a combination of education and experience equivalent to two years experience. Each year of post-secondary education in a human services field equals one year of experience.

(11) "Moderate level" means the supervision and intensity of treatment required in a therapeutic family to manage and treat youths who present severe emotional and/or behavioral disorders as evidenced by meeting three or more of the medical necessity criteria set forth in [Rule VII]. An individual treatment plan, developed according to the youth's age, diagnosis and behaviors, determines treatment needs. Specialized behavior management techniques are required for some youth at this level of therapeutic family care.

(12) "Passive physical restraint" means the least amount of direct physical contact required to restrain a youth from harming self or others. This method of behavior management may be used only by individuals trained in approved methods of passive physical restraint.

(13) "Severe emotional disturbance" (SED) has the meaning as defined in ARM 46.12.1946.

(14) "Therapeutic family care" means out-of-home care and medical treatment provided to emotionally disturbed youth by a treatment family or treatment parent(s) in the therapeutic family setting. Therapeutic families are recruited, recommended by the therapeutic family care agency for licensure by the department and trained by the therapeutic family care agency.

(15) "Therapeutic family care agency" means an agency licensed by the department as a child placing agency and under contract with the department to provide supervision, training, recruitment, and recommendation for licensure pursuant to ARM 11.11.130, of therapeutic families, and direct treatment services for youths placed with therapeutic families. Therapeutic family care agencies must employ or contract for treatment supervisors, treatment managers, mental health assistants and administrative staff.

(16) "Treatment manager" means a person who is an employee of, or under contract with, the therapeutic family care agency. The treatment manager, under the supervision of the treatment supervisor, develops individual treatment plans, provides therapeutic interventions to youths receiving therapeutic family care, and provides supervision and professional guidance to the treatment supervisor. A treatment manager must have a bachelor's degree in a human services field, or the experience or experience and education, equivalent to a bachelor's degree. Human services experience equivalent to a bachelor's degree for a non-degree program manager is six years. Each year of post-secondary education in human services for a non-degree program manager equals one year of experience.

(17) "Treatment parent(s)" or "treatment family(ies)" means an adult or adults responsible for the day-to-day care and supervision of youth placed in the home of the treatment parent(s) or treatment family(ies). Treatment parents or treatment families provide specific treatment interventions as determined by the youth's individual treatment plan. The treatment manager, under the supervision of the treatment supervisor, supervises all treatment interventions provided in therapeutic family care. On the intensive level of therapeutic family care, treatment parent(s) provide routine guidance to the mental health assistant.

(18) "Treatment supervisor" means a person who is an employee of, or under contract with, the therapeutic family care agency who is responsible for the supervision and overall provision of treatment services to youths in therapeutic family care. The treatment supervisor must be a clinical psychologist, masters level social worker, licensed professional counselor, or have a master's degree in a human services field with a minimum of one year of clinical experience. A treatment supervisor must

spend as much time as necessary with subordinate staff, treatment parents, and youths receiving therapeutic family care to assure that services are provided in an appropriate, safe and effective manner.

(19) "Treatment team" means those individuals identified as responsible for, or having a direct interest in, the treatment services provided to a specific youth. A treatment team must be composed of the professionals providing direct treatment services, the treatment family(ies), and the placing professionals. When necessary and appropriate, the treatment team may also include the youth receiving the therapeutic services, the parent(s) or legal guardian(s) of the youth, siblings of the youth, representatives of the local schools, tribal representatives or other individuals significant to the youth.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE III THERAPEUTIC FAMILY CARE, LEVELS OF SERVICE

(1) Therapeutic family care is provided on two levels, intensive and moderate, as determined by the severity of emotional disturbance of the youth receiving therapeutic family care and the degree of clinical supervision and the frequency of treatment interventions and support services provided to the treatment family and/or the youth receiving therapeutic family care.

(2) Therapeutic family care agencies will limit the numbers of youth receiving therapeutic family care in any treatment family to a maximum of two. Of these two youths, two may be moderate level or one intensive level youth may be served in the treatment family along with one moderate level youth. However, no treatment family may provide services for two intensive level youths.

(3) Youths not certified for therapeutic family care may be placed with certified youths in a treatment family when:

(a) this service is necessary to maintain an intact sibling group;

(b) this service is necessary to maintain a parent/child relationship when the parent is a youth who has been certified for therapeutic family care; or

(c) disruption of the foster care services would place the youth at risk of medical treatment in a more restrictive environment.

(4) At the moderate and intensive level of therapeutic family care, there must be sufficient administrative staff to allow the treatment supervisor or the treatment manager under the supervision of the treatment supervisor to:

(a) develop, implement and revise each youth's individual treatment plan;

(b) develop written quarterly treatment summaries and develop and implement revisions/modifications to the youth's individual treatment plan as necessary;

(c) conduct weekly visits to each treatment family for the

purpose of reviewing the youth's individual treatment plan, monitoring the youth's progress and discussing the treatment interventions provided by the treatment parents;

(d) provide twice monthly individual treatment sessions based on the individual treatment plan to each youth supervised by the treatment manager; and

(e) conduct treatment team meetings within 30 days of admission and at least every 90 days thereafter.

(5) Intensive level therapeutic family care provides the service of a mental health assistant 10 hours per week.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE IV THERAPEUTIC FAMILY CARE, STAFF (1) Therapeutic family care agencies employ or contract with treatment supervisors, treatment managers and mental health assistants.

(2) A FTE treatment supervisor is responsible for not more than 5 FTE treatment managers.

(3) The treatment supervisor:

(a) is responsible for the overall provision of therapeutic services for youths certified to receive therapeutic family care through the provision of clinical oversight, supervision and consultation;

(b) provides regular support and guidance to the treatment manager through at least twice monthly treatment supervisory meetings; and

(c) provides coordination and back-up to assure 24-hour on-call intervention services are available and delivered as needed.

(4) A FTE treatment manager is responsible for not more than ten youths at any time.

(5) A treatment manager:

(a) provides twenty-four hour on-call intervention services to treatment parents;

(b) organizes and leads all treatment team meetings; and

(c) provides direct therapeutic services and consultation as needed.

(6) A mental health assistant is assigned to provide services for 10 hours per week to each youth receiving intensive level therapeutic family care.

(7) The mental health assistant:

(a) receives supervision and work assignments from the treatment manager under the supervision of the treatment supervisor and routine guidance from the treatment parent(s) in the provision of services described in the youth's individual treatment plan. These services include:

(i) one-on-one supervision;

(ii) behavior management; and

(iii) assistance to the treatment parents in the provision of treatment services.

(b) A mental health assistant does not:

(i) provide services which are the responsibility of a public school district;

(ii) provide transportation services which are reimbursed by the Montana medicaid program;

(iii) provide housekeeping services to the therapeutic family;

(iv) supervise and/or care for a youth or youths other than the youth certified to receive intensive level therapeutic family care; or

(v) provide any services beyond those identified in the youth's individual treatment plan.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE V THERAPEUTIC FAMILY CARE, TREATMENT PARENTS

(1) The therapeutic family care agency recruits, trains and supervises treatment parents. In addition, the therapeutic family care agency recommends treatment families for licensure by the department, as specified under ARM 11.11.130.

(2) Therapeutic treatment parents are in-home treatment providers who, in addition to carrying out usual family foster parent responsibilities, implement treatment strategies and provide treatment interventions under the supervision of the therapeutic family care agency's clinical staff according to the youth's individual treatment plan.

(3) Therapeutic family care requires one parent be available to provide twenty-four hour per day supervision and be able to deliver therapeutic services as needed. Parenting skills must be appropriate to the level of therapeutic family care being provided and adequate to deal with the needs of emotionally disturbed youths in the areas of behavior management, supportive counseling and implementation of the treatment interventions contained in the youth's individual treatment plan.

(4) Treatment parents providing intensive level therapeutic family care must be able to provide routine guidance to the mental health assistant to assure that these services support the goals and objectives of the youth's individual treatment plan.

(5) Treatment parents are members of the youth's treatment team and must be available to participate in treatment team meetings.

(6) Treatment parents must regularly document the youth's progress toward achievement of the individual treatment plan. This documentation must be in writing and incorporated as documented into the youth's case file every 30 days.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE VI THERAPEUTIC FAMILY CARE, INDIVIDUAL TREATMENT PLAN

(1) An individual treatment plan must be developed by the therapeutic child care agency within 30 days of placement of a youth in a therapeutic family care setting. The treatment manager normally develops the individual treatment plan under

the supervision of the treatment supervisor in coordination with the youth's treatment team. All individual treatment plans, reviews, revisions and/or modifications must be in writing, signed and dated by the treatment supervisor.

(2) An individual treatment plan will be based on the principles of active treatment. Individual treatment plan reviews will be conducted at least every ninety days to assure that services and treatment goals are appropriate to the youth's needs and to assess the youth's progress and continued need for services.

(3) All individual treatment plans must:

(a) be based on the youth's psychiatric diagnosis;

(b) identify treatment goals and objectives;

(c) identify specific treatment interventions;

(d) identify the measurements to be used to evaluate the youth's progress and the criteria for achievement of the individual treatment plan goals and objectives;

(e) support the youth's permanency plan;

(f) show the date the individual treatment plan is initiated, the anticipated and actual individual treatment plan completion date, and the date(s) revisions and/or modifications are made to the individual treatment plan;

(g) include the initial medical necessity statement and any subsequent certifications as required in [Rule VII];

(h) include chemotherapy as prescribed, response to the chemotherapy, all physical reactions and the recommendation for continuance/discontinuance. The youth's attitude toward the prescribed chemotherapy will also be recorded; and

(i) identify the circumstances under which passive physical restraint may be used and the individuals who may use this form of restraint. The individual treatment plan will further document all prohibitions to the use of passive physical restraint or other behavioral control/modification techniques.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

Rule VII THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY CERTIFICATION-CRITERIA (1) Intensive and moderate level therapeutic family care must be ordered by a licensed clinical professional who is not an employee of or under contract with the therapeutic family care provider or an employee of a state department or agency.

(a) Providers of moderate level therapeutic family care will accept for service only those youths suffering from a primary diagnosis of serious emotional disturbance (SED) as defined in ARM 46.12.1946, or those youths with both an emotional disturbance and a developmental disability. In addition, the condition of each youth served at the moderate level must meet at least 4 of the medical necessity criteria listed in (2) below.

(b) Providers of intensive level therapeutic family care will accept for service only those youths suffering from a primary diagnosis of serious emotional disturbance (SED) as

defined in ARM 46.12.1946, or those youths with both an emotional disturbance and a developmental disability. In addition, the condition of each youth served at the intensive level must meet at least 5 of the medical necessity criteria listed in (2) below. A youth may not receive intensive level therapeutic family care treatment for more than 90 consecutive days unless the treatment is re-ordered by a licensed clinical professional.

(2) Medical necessity criteria for therapeutic family care are as follows:

(a) the youth displays behaviors which indicate an emotional disturbance of severe or persistent nature which requires more intensive treatment interventions and supervision than can be provided through out-patient mental health treatment;

(b) the youth has a poor treatment prognosis in a level of treatment lower than moderate or intensive therapeutic family care;

(c) the youth is at risk of psychiatric hospitalization or placement in a psychiatric residential treatment facility or therapeutic youth group home licensed by the department if therapeutic family care is not provided;

(d) the youth is currently being treated or has a history of treatment in psychiatric hospitals, psychiatric residential treatment and/or therapeutic youth group homes and continues to require supervision and mental health treatment in a less restrictive level of care;

(e) the youth exhibits an inability to perform activities of daily living due to psychiatric symptoms; or

(f) the youth exhibits maladaptive or disruptive behaviors due to serious emotional disturbance and/or physical and/or sexual abuse.

(3) The completed medical necessity statement form documents the level of therapeutic family care which has been ordered by the licensed professional and authorizes the therapeutic family care provider to seek medicaid reimbursement for this service.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE VIII THERAPEUTIC FAMILY CARE, WELL-CHILD SCREENING AND CHEMOTHERAPY (1) Each therapeutic family care agency must assure and provide appropriate documentation that:

(a) all youths receiving therapeutic family care services receive a well-child screening on an annual basis; and

(b) all youths receiving chemotherapy are examined and evaluated by a licensed medical doctor at least quarterly or more frequently as required by the accepted protocol for the prescribed chemotherapy.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE IX THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL SERVICES (1) These rules do not preclude a medicaid eligible youth from receiving individual therapy services in addition to intensive or moderate therapeutic family care services or other medicaid reimbursed services when there is compliance with medicaid requirements for reimbursement.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE X THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL CASE RECORDS (1) The case record of each youth receiving therapeutic family care services must contain documentation required by ARM 11.11.134 and all of the following:

(a) medical necessity statement and required recertifications;

(b) written individual treatment plans;

(c) written quarterly treatment summaries and revisions/modifications to the youth's individual treatment plan as necessary:

(d) written documentation of:

(i) weekly visits to each treatment family by the treatment supervisor or treatment manager for the purpose of reviewing the youth's individual treatment plan, monitoring the youth's progress and discussing the treatment interventions provided by the treatment parents;

(ii) monthly individual treatment sessions based on the individual treatment plan for each youth supervised by the treatment manager;

(iii) treatment team meetings within 30 days of admission and at least every ninety days thereafter;

(iv) paraprofessional service of a mental health assistant, ten hours per week for youth receiving intensive level therapeutic family care;

(v) orders for chemotherapy and supervision by a licensed physician;

(vi) other medicaid reimbursed services;

(vii) annual well-child screen; and

(viii) treatment parent(s) notes recording the youth's progress toward meeting the goals and objectives of the individual treatment plan.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

RULE XI THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL TRAINING REQUIREMENTS (1) Treatment parents must complete orientation and training as described in ARM 11.12.614.

(2) Treatment parents and mental health assistants must receive a minimum of 15 hours of training annually directly related to:

(a) the special needs of youth with emotional disturbances

receiving treatment for their emotional disturbance in a treatment family environment;

(b) the use of non-physical methods of controlling youth to assure the safety and protection of the youth and others;

(c) the use of approved passive physical restraint methods; and/or

(d) the use of approved behavioral modification techniques.

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111 MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105 MCA

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

46.12.514 ~~KIDS COUNT/~~EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), PURPOSE AND SCOPE (1) The ~~kids count or~~ EPSDT program is a medicaid program which provides coverage of ~~the~~ preventive health screenings, ~~and~~ diagnostic services, and medically necessary treatment services specified in these rules to eligible medicaid recipients under age 21.

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

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

46.12.515 ~~KIDS COUNT/~~EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REQUIRED SCREENING AND PREVENTIVE SERVICES (1) The ~~kids count/~~EPSDT program provides coverage of screening and preventive services provided in accordance with these rules.

Subsection (1)(a) remains the same.

(b) The screening periodicity schedules contained in the department's ~~kids count~~ EPSDT provider manual provide suggested guidelines for determining the minimum number and timing of comprehensive health, vision, hearing and dental screenings for children under age 21. More frequent screening services are covered when considered medically necessary to determine the existence of suspected physical or mental illnesses or conditions. A copy of the department's ~~kids count~~ EPSDT provider manual is available from the Department of ~~Social and Rehabilitation~~ Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(c) All of the components listed in subsection (2) are necessary for a complete ~~kids count~~ EPSDT/Wellchild screen. Individual components must be performed by appropriate practitioners in accordance with state professional licensing laws.

Subsection (2) remains the same.

(a) A comprehensive age-appropriate health and developmental history, including assessment of both physical and mental health development, as specified in the ~~kids count~~ EPSDT provider manual. A copy of the department's ~~kids count~~ EPSDT

provider manual is available from the Department of ~~Social and Rehabilitation~~ Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

Subsections (2)(a)(i) through (2)(c)(i) remain the same.

(d) Laboratory tests to include lead blood level assessment appropriate to age and risk as specified in the ~~kids count~~ EPSDT provider manual.

Subsection (2)(e) remains the same.

(f) Vision services, including age-appropriate vision tests as specified in the ~~kids count~~ EPSDT provider manual. A copy of the department's ~~kids count~~ EPSDT provider manual is available from the Department of ~~Social and Rehabilitation~~ Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

Subsections (2)(f)(i) through (2)(h)(iii) remains the same.

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

46.12.516 ~~KIDS COUNT/EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES, ADDITIONAL SERVICES~~ (1) In addition to the services specified in ARM 46.12.515 and services generally available to medicaid recipients, the following services are covered by ~~the~~ medicaid under the EPSDT program in accordance with these rules for medicaid eligible children under age 21.

Subsection (1)(a) through (1)(c) remains the same.

(i) intensive outpatient treatment provided by a chemical dependency treatment program approved by the department ~~of corrections and human services (DCHS)~~ under ARM Title 20, chapter 3 provides intensive outpatient services according to applicable laws, rules and regulations;

(A) A plan of care for intensive outpatient treatment must be prepared in accordance with ~~DCHS approval~~ the department's criteria under ARM Title 20, chapter 3 for intensive outpatient treatment, and must include aftercare.

Subsections (1)(c)(i)(B) remains the same.

(ii) basic outpatient treatment provided by a chemical dependency treatment program approved by ~~DCHS~~ the department under ARM Title 20, chapter 3 to provide basic outpatient services according to applicable laws, rules and regulations;

(A) A plan of care for basic outpatient treatment must be prepared in accordance with ~~DCHS approval~~ the department's criteria adopted under ARM Title 20, chapter 3, for basic outpatient treatment.

(iii) aftercare treatment provided by ~~DCHS~~ department approved providers to adjudicated youth who have received inpatient treatment funded by the department or the department of ~~family services~~ corrections; and

Subsections (1)(c)(iv) through (1)(e) remain the same.

(i) The therapeutic portion of intensive level therapeutic youth group home treatment, as defined in ~~department of family services (DFS) rules~~ ARM Title 11, chapters 12 and 13, is

covered when provided by a therapeutic youth group home, licensed by ~~DPS~~ the department and under contract with the department to provide intensive level therapeutic youth group home services, to a child who meets ~~DPS~~ medical necessity criteria at ARM Title 11, chapter 13 for placement at the intensive level of treatment.

(ii) The therapeutic portion of campus based therapeutic youth group home treatment, as defined in ~~DPS rules~~ ARM Title 11, chapters 12 and 13, is covered when provided by a therapeutic youth group home, licensed by ~~DPS~~ the department and under contract with the department to provide campus based therapeutic youth group home services, to a child who meets ~~DPS~~ medical necessity criteria at ARM Title 11, chapter 13 for placement at the campus based level of treatment.

(iii) The therapeutic portion of moderate level therapeutic youth group home treatment, as defined in ~~DPS rules~~ ARM Title 11, chapters 12 and 13, is covered when provided by a therapeutic youth group home, licensed by ~~DPS~~ the department and under contract with the department to provide moderate level therapeutic youth group home services, to a child who meets ~~DPS~~ medical necessity criteria at ARM Title 11, chapter 13 for placement at the moderate level of treatment.

Subsection (1)(e)(iv) remains the same.

(f) The therapeutic portion of therapeutic family care treatment is covered when the treatment is considered appropriate by a physician, psychiatrist, clinical psychologist, masters level social worker (MSW) or a licensed professional counselor (LPC).

(i) The therapeutic portion of intensive level therapeutic family care treatment, as provided by [Rules I through XI], is covered when provided by a therapeutic family care agency, licensed by the department and under contract with the department to provide intensive level therapeutic family care service, to a child who meets the medical necessity criteria in [Rule VII] for placement at the intensive level of treatment.

(ii) The therapeutic portion of moderate level therapeutic family care treatment, as provided by [Rules I through XI], is covered when provided by a therapeutic family care agency, licensed by the department to provide moderate level therapeutic family care service, to a child who meets the medical necessity criteria in [Rule VII] for placement at the moderate level of treatment.

(iii) Medicaid will not reimburse for room, board, maintenance or any other non-therapeutic component of therapeutic family care treatment.

~~(f)~~(g) ~~Kids count~~/EPDST covers pharmaceutical drugs approved for use under investigational drug status by the federal drug administration and provided under specific controlled programs under the supervision of a physician licensed to practice medicine.

~~(g)~~(h) Subject to the requirements of ARM Title 46, chapter 12, ~~Kids count~~/EPSDT covers any vision, hearing, dental, nutrition or other health care service which ~~is~~ the department

determines medically necessary as defined in department rules if it is a service which states are permitted by federal law, regulation and policy to cover under the medicaid program, regardless of whether such services are otherwise covered under the Montana medicaid state plan.

(i) Services, items and provider categories not specifically covered under this chapter are reimbursable by Montana medicaid under the EPSDT program only if:

(A) the provider is in compliance with any applicable licensure requirements of state law for provision of the proposed services or items; and

(B) prior to provision of the service or item, the department authorizes medicaid coverage of the service or item after consideration of medical necessity of the proposed service or item, the proposed setting for delivery of the service or item, the proposed provider of the service or item, the recipient's access to alternative treatments, settings or providers, and other relevant factors.

(ii) This rule shall not be construed to require EPSDT coverage of every federally permitted service or item through every possible treatment, setting or provider type.

(iii) Requests for prior authorization may be made in writing to the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, Montana 59604-4210, or by phoning the medicaid services division at (406) 444-4540.

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

46.12.517 ~~KIDS COUNT/~~EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT

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

(2) The department's fee schedule for ~~kids count/~~EPSDT services which are generally covered for recipients of all ages under this chapter shall be ~~as~~ the reimbursement specified in the department's rules applicable to each particular service.

(3) The department's fee schedule for ~~kids count/~~EPSDT services which are not generally covered for recipients of all ages under this chapter shall be as follows:

Subsections (3)(a) through (3)(c) remain the same.

(i) An initial per diem fee shall be set by the department for each level of service in an amount equal to a percentage of the ~~department of family services (DFS)~~ department's non-medicaid per diem rate effective for the same level of service, where such percentage is the same percentage of total ~~DFS~~ non-medicaid payments for therapeutic youth group home treatment services which is reasonably allocable to the therapeutic component of the services.

(A) For purposes of setting the initial fee for intensive and moderate level therapeutic youth group home treatment services, the ~~DFS~~ department's non-medicaid per diem rate shall be the ~~DFS~~ department's non-medicaid per diem rate effective January 1, 1993. For purposes of setting the initial fee for

campus based services, the ~~DFS~~ department's non-medicaid per diem rate shall be the DFS per diem rate effective July 1, 1993.

Subsections (3)(c)(i)(B) through (3)(c)(ii) remain the same.

(d) Reimbursement for the therapeutic portion of intensive and moderate level therapeutic family care treatment services shall be as specified in a fee schedule set and maintained by the department as follows:

(i) An initial per diem fee shall be set by the department for each level of service in an amount equal to a percentage of the department's non-medicaid per diem rate effective for the same level of service, where such percentage is the same percentage of total non-medicaid payments for therapeutic family care treatment services which is reasonably allocable to the therapeutic component of the services.

(A) For purposes of setting the initial fee for intensive and moderate level therapeutic family care treatment services, the department's non-medicaid per diem rate shall be the department's non-medicaid per diem rate effective July 1, 1995.

(B) For purposes of setting fees under subsection (3)(d)(i), the therapeutic component of therapeutic family care treatment services excludes room, board, maintenance and other non-therapeutic services.

(ii) Initial fees set under subsection (1) shall be increased or decreased only as authorized or directed by the legislature.

(4) Medicaid reimbursement for services not specifically listed as covered under the ~~kids count/~~EPSDT program will be reimbursed at a rate negotiated in advance of providing the service. Such services provided before negotiating and agreeing upon a rate with the department will be reimbursed at a rate determined by the department.

(5) Information regarding current reimbursement or copies of fee schedules for ~~kids count/~~EPSDT services may be obtained from the Department of ~~Social and Rehabilitation~~ Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

(6) Providers of ~~kids count/~~EPSDT services must comply with all applicable licensing and certification requirements and must comply with all enrollment, participation, billing and other requirements generally applicable to medicaid providers under the department's rules.

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

4. The proposed amendments are necessary to maximize the use of federal medicaid matching funds and to provide a more cost effective means of providing for the medical needs of children. These rules will implement medicaid coverage of the therapeutic portion of therapeutic family care treatment for medicaid,eligible children under age 21. This coverage is being implemented under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program.

Under the federal EPSDT statutes, the state is required, subject to certain limitations, to provide to children under age 21 all medically necessary services which federal medicaid laws allow the states to cover, even if such services are not otherwise covered under the state's medicaid state plan. Therapeutic family care will be a state plan service under 42 CFR 440.130 "Rehabilitative Services", with the goal of restoring the child to his or her best possible functional level.

The proposed amendments and adoptions are necessary to specify the requirements for coverage of therapeutic family care services and the reimbursement allowed for such services. Medicaid will reimburse for the therapeutic treatment portion of therapeutic family care services. Previously, such services were most frequently reimbursed with general fund dollars. Under the proposed adoptions and amendments, federal medicaid funds will be available to fund a share of the payments for the therapeutic component of services. Other portions of the daily rate for the services will be paid with funds from parents or through non-medicaid department funding.

The amount of medicaid reimbursement for therapeutic services will be specified in a fee schedule established by the department in accordance with a methodology specified in the proposed amendment to rule 46.12.517. Fees are based upon a reasonable allocation between therapeutic and other components of the per diem rate formulated pursuant to ARM 11.7.313.

Only those therapeutic family care agencies licensed by, and contracting with the department to provide intensive or moderate level therapeutic family care may receive medicaid reimbursement. Medicaid reimbursement will be available for medicaid eligible children under age 21 who meet medical necessity criteria for placement at either intensive or moderate level treatment and who are treated through a licensed therapeutic family care agency. Services will not be limited to children in the custody of the department.

The rules will also be clarified by deleting the words "Kids Count". The words "Kid Count" are no longer used to represent medicaid's EPSDT Program.

The proposed changes to ARM 46.12.516(1)(h) are necessary to specify federal and department policy regarding EPSDT coverage of services that are not specifically covered under the department's rules or the medicaid plan. The proposed rule specifies that providers must meet the requirements generally applicable to medicaid providers and must meet applicable state licensure requirements. In addition, the service must be prior authorized by the department. Federal law, regulations and policy do not require that every service permitted by federal medicaid law be provided through every possible treatment, setting, or provider type. Further, the determination of medical necessity is a state agency function. The proposed

rules are necessary to ensure that the department has an advance opportunity to review the proposed service or item to determine whether coverage is required in light of relevant factors. The rules are necessary to assure that providers meet applicable licensure standards, remain accountable for the services provided and follow medicaid billing procedures.

5. The proposed amendments regarding coverage and reimbursement of therapeutic family care shall be applied retroactively to July 1, 1995 to allow providers to access additional funds, for budgetary purposes. The rules were not in place prior to the start of the new fiscal year because department staff have been working with providers to ensure that their needs and concerns were considered prior to proposing the changes. At a meeting with department staff in May of 1995, provider representatives made suggestions which have been incorporated into this notice. The changes required additional inter-departmental review, and thus the proposal could not be published at an earlier date.

6. 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 Public Health and Human Services, PO Box 4210, Helena, MT 59604-4210, no later than August 10, 1995.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 3, 1995.

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

In the matter of the adoption of rules relating to mailing information on behalf of non-profit organizations.	NOTICE OF ADOPTION

TO: All Interested Persons.

1. On May 11, 1995, the Public Employees' Retirement Board published a notice proposing to adopt new rules pertaining to mailing information to retirement system participants on behalf of eligible non-profit organizations, at page 727 of the 1995 Montana Administrative Register, Issue No. 9.

2. On June 22, 1995 the Public Employees' Retirement Board adopted the new rules as proposed.

RULE I (ARM 2.43.308) MAILING ON BEHALF OF NON-PROFIT ORGANIZATIONS -- ELIGIBILITY AND APPLICATION PROCESS-- PAYMENTS

RULE II (ARM 2.43.309) ACCEPTABLE DOCUMENTS MAILED ON BEHALF OF NON-PROFIT ORGANIZATIONS

RULE III (ARM 2.43.310) RIGHT TO BE EXCLUDED -- NON-PROFIT ORGANIZATIONS

3. No written or oral comment was received.

By: _____
Terry Teichrow, President
Public Employees' Retirement Board

_____
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on June 26, 1995.

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

In the matter of the amendment of ARM 2.43.418 pertaining to accrual of membership service and service credit for elected officials	) NOTICE OF AMENDMENT))))

TO: All Interested Persons.

1. On May 11, the Public Employees' Retirement Board published notice of the proposed amendment of ARM 2.43.418 pertaining to accrual of membership service and service credit for elected officials, at page 733 of the 1995 Montana Administrative Register, Issue No. 9.

2. The Board has amended ARM 2.43.418 as proposed.

3. No written or oral comment was received.

By: _____
Terry Teichrow, President
Public Employees' Retirement Board

_____
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on June 26, 1995.

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

In the matter of the amendment of ARM 2.43.451 and 2.43.452 pertaining to purchase of service for members who are involuntarily terminated after January 1, 1995 but before July 1, 1997 and limitations on their return to employment within the jurisdiction	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On May 11, 1995, the Public Employees' Retirement Board published notice of the proposed amendment of ARM 2.43.451 and 2.43.452 pertaining to purchase of service for members who are involuntarily terminated after January 1, 1995 but before July 1, 1997 and limitations on their return to employment within the same jurisdiction, at page 730 of the 1995 Montana Administrative Register, Issue No. 9.

2. The Board has amended ARM 2.43.451 and 2.43.452 as proposed.

3. No written or oral comment was received.

By: _____
Terry Teichrow, President
Public Employees' Retirement Board

_____
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on June 26, 1995.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new Rule I (ARM 4.12.219) and repeal of ARM 4.12.201 through ARM 4.12.217	) NOTICE OF AN ADOPTION) AND REPEAL OF FEED) AND PET FOOD RULES AND) REGULATIONS

TO: All Interested Persons

1. On February 23, 1995 the Department of Agriculture published a notice of a proposed adoption and repeal of the above-stated rules at page 243 of the 1995 Montana Administrative Register, issue no. 4.

2. The department has adopted the new rule and repealed rules as proposed with the following clarifications:

a. In clarification, the exact referenced model regulations are found on pages 78-94 titled Model Feed Regulations and on pages 109-115 titled Pet Food Regulations in the 1995 Official Publication of the Association of American Feed Control Officials Inc. (AAFCO). These model regulations have some underlined portions which merely denote changes to the 1995 AAFCO Official Publication from the previous edition in 1994.

b. The AAFCO model feed regulations contain a number of blanks that are intended to be filled in by the state adopting the model regulations. In clarification, the blanks would be filled with Director, Montana Department of Agriculture on page 78, regulation 1. (a) and (b); page 80, regulation 3.(a)(1)VI; page 87, regulation 3.(a)(5)I and III; and page 90, regulation 5.(b)(2). The blanks on page 93, regulation 10.(b), would be filled with the statement, "established in 4.12.3010 ARM" and "established in 4.12.3011 ARM" respectively. These are the weed seed levels allowed through the Montana Agricultural Seed Act and Administrative Rules.

c. The blanks occurring on page 89 are to be completed by the feed labeler with the correct figures for that product.

d. October 1, 1996 is the implementation date of these rules.

COMMENT: It is requested that the implementation date of the new labeling requirements be changed to one year after the effective date of the rule to allow industry time to comply.

RESPONSE: The Montana Department of Agriculture (MDA) agrees the proposed implementation date could provide hardships for feed registrants. Therefore, the implementation date will be October 1, 1996, with the effective date remaining October 1, 1995. After October 1, 1996, all labels for commercial feeds and pet foods sold in Montana must be in compliance with the new rules.

COMMENT: The Association of American Feed Control Officials Inc. (AAFCO) regulations should not be adopted by reference because this would allow automatic adoption and the Industry needs the opportunity to respond to proposed regulations. The text of the AAFCO model rules should be published as Montana Administrative rules and not reference another publication.

RESPONSE: The Montana feed industry came to the department to update existing rules to match current AAFCO model rules. The adoption by reference allows the savings of administrative costs associated with the official notification of a lengthy document and the uniformity of utilizing the appropriate versions of the AAFCO official publication. However, all subsequent changes in or in addition to the AAFCO rules must undergo the same process of the Montana Administrative Procedure Act (MAPA) before the rules are effective. Therefore, there are no "automatic adoptions".

COMMENT: Why not delete reference to the year 1995 of the Official Publication of AAFCO? The rule could incorporate by reference the Official Publication no matter what year thus eliminating the need to update the rules each successive year.

RESPONSE: The reference to the year 1995 in the 1995 AAFCO Official Publication sets an exact standard of the rules in place in Montana. Until a subsequent edition of the AAFCO Official Publication has been officially adopted through the MAPA, any changes from the standards listed in the 1995 publication are not effective in Montana. The updating of rules must be done through the MAPA to give the public, including industry, the opportunity to review and comment.

MONTANA DEPARTMENT OF AGRICULTURE

W. RALPH PECK — 6/30/95
DIRECTOR — DATE

TIMOTHY J. MELOY — 6/30/95
RULE REVIEWER — DATE

Certified to the secretary of state on the 30th day of June, 1995.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the adoption of new rules I (ARM 4.12.1507 through rule IV (ARM 4.12.1510)	) NOTICE OF ADOPTION OF NEW) RULES PERTAINING TO THE) IMPORTATION OF MINT PLANTS) AND EQUIPMENT INTO MONTANA

TO: All Interested Persons:

1. On March 30, 1995, the department published a notice of a proposed adoption of the above-stated new rules in the Montana Administrative Register at page 422, issue No. 6.

2. The department has adopted New Rule I (ARM 4.12.1507), Rule II (ARM 4.12.1508), Rule III (ARM 4.12.1509) and Rule IV (ARM 4.12.1510) as proposed.

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

COMMENT: It is essential that we have as many reliable sources as possible for root stock. Montana's law should not be so stringent for out-of-state growers. If these mint quarantine rules go into effect, it would put costs higher and become a burden to the conscientious growers putting the Montana mint producers at a disadvantage by closing the door on imported mint root stock.

RESPONSE: The adopted rules will not unduly restrict the entry of mint root stock into Montana. The rules allow entry of mint root stock if the importer meets one of four methods of importing root stock, all of which prevent the entry of unwanted pests and diseases. The flexibility of more than one means of importing mint root stock will result in minimum effect upon availability of root stock or cost of importation.

COMMENT: No mention is made as to root stock being moved from a Montana grower to another Montana grower anywhere within Flathead county or anywhere else in the state. Persons selling mint plants within our own state should meet the same requirements (as those importing mint plants). The same rules should apply to intrastate as apply to interstate.

RESPONSE: The adopted rules only address the importation of mint root stock into Montana. The intrastate movement of mint root stock will need to be addressed in a separate rule should the Montana Mint Committee decide that such rules are necessary based upon recommendations of mint producers.

COMMENT: No mention, other than the mention of noxious weeds in Rule I(9), is made as to the presence of or lack of presence of weeds in fields being dug and sold as mint root stock.

RESPONSE: By defining noxious weeds as a mint "pest", noxious weeds will be prohibited from entering Montana in imported shipments of mint plants (rule II (1),(b),(c) and (2)(e). The rules do not address, nor were they intended to address, the issue of weeds which are not noxious weeds. Weeds not declared noxious are generally found throughout areas in which mint is grown in Montana, therefore, a prohibition would not be feasible.

W. RALPH PECK, DIRECTOR
DEPARTMENT OF AGRICULTURE

TIMOTHY J. MELOY
RULE REVIEWER

Certified to the Secretary of State on the 29th day of June, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of 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	NOTICE OF AMENDMENT OF 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

TO: All Interested Persons

1. On May 25, 1995, the Department of Family Services published notice of the proposed amendment of 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, at page 872 of the 1995 Montana Administrative Register, issue number 10.

2. The department amended the rule as proposed by Order of the Director on June 26, 1995, and also as proposed and required by HB 2, the amendment was applied effective July 1, 1995.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, June 29, 1995.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of a new rule establishing procedures for collecting processing fees for late claims	))))	NOTICE OF ADOPTION OF NEW RULE I (COLLECTING PROCESSING FEES FOR LATE CLAIMS)

TO: All Interested Persons.

1. On May 11, 1995, the department published notice of the proposed adoption of the above captioned rule at pages 764 and 765 of the Montana Administrative Register, Issue No. 9.

2. The department adopts the rule as proposed with the following changes (new material is underlined; material to be deleted is interlined):

RULE I (36.12.1101) PAYMENT DATE FOR FILING OF LATE CLAIMS (1) For a statement of claim filed after April 30, 1982, but prior to July 1, 1993, the $150 processing fee must be paid to the department. The department shall give notice of payment due by mailing a billing invoice to the current late claim owner or owners as documented in the department's records. If payment is not received within ~~30~~ 60 days the department shall send a second notice by certified mail. If the processing fee is not received within 45 days of the second notice the department shall add a remark to the claim stating: "No processing fee has been received for this late claim. Total amount due $150.00." ~~rendering the claim subject to termination by the Water Court for failure to pay the appropriate processing fee.~~" This remark will also be added to any late claim for which the department is unable to determine a correct address or new owner for a billing invoice that is undeliverable by United States mail. The department will complete its mailing notifications under this rule prior to June 30, 1996.

(2) For a statement of claim filed by a state agency from April 30, 1982 to July 1, 1996, the $150 processing fee must be paid to the department. The department will notify the state agency by billing invoice of the processing fee. The state agency must pay the processing fee to the department by July 30, 1997. If the processing fee is not received by July 30, 1997 the department shall add the remark provided under subsection (1) to the claim.

(3) Same as proposed.

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

COMMENT: There should be a requirement that the

department use its best efforts to locate the owners if invoices are not delivered, and the department file and serve a receipt of payment.

RESPONSE: The department uses all information in its records to locate owners. The department researches all undeliverable mail to determine the location of owners if invoices are not delivered by the U.S. mail. The suggestion that receipt of payment be served by the department is unnecessary when a canceled check or a bank statement indicates payment. No modification to this section of the rule is made.

COMMENT: Private individuals are given a shorter time frame for payment of fees than a state agency. Private claimants should be given until the end of the statutory period to pay. If private claimants are required to pay processing fees as late claims are filed, then the state should be under the same obligation absent some compelling reason.

RESPONSE: Payment of fees should be paid at the time of the filing of a claim. Efficiency in processing is achieved by requiring prompt payment. However, because government must operate under the budget established by the legislature, allowance is made for state agencies to use the budget process to make appropriate payment. Additionally, no costs are incurred in locating state agencies for payment, since they are part of the state government structure. Allowing non-governmental agencies to defer payment would place additional unnecessary and costly accounting burdens on the department and increase the cost of the adjudication. The initial time frame for the first invoice has been increased from 30 days to 60 days.

COMMENT: The statute does not specify that the claims are terminable upon non-payment, other alternatives may be available to the court.

RESPONSE: The proposed remark added for non-payment merely notifies the court of the failure to file fees. The water court must decide whether or not to terminate the claim for lack of fees. In addition, the water court may certainly change the wording of the remark before a decree for a basin is issued. The rule has been amended.

COMMENT: The "termination" remark is not added to state claims if they don't pay.

RESPONSE: The same remark added to private individuals' claims for non-payment of processing fees will be added to each state agency late claim for which a processing fee is not received by June 30, 1997. The rule has been amended.

COMMENT: The Department of State Lands (DSL) suggests that it pay half the amount of the total filing bill by July 30, 1997 and the remainder of the bill by July 1, 1999 so that they would not have to pay for late claims that are withdrawn.

RESPONSE: The purpose of the processing fee is to reimburse the department for the cost of processing a late claim. This involves entering the claim into the centralized computer, and microfilming, storing, examining, and decreeing the claim. Even if DSL withdraws certain late claims, the terminated claims are still entered, microfilmed, stored, and decreed which requires an expenditure of department funds. No modification to this section of the rule is made.

Donald D. MacIntyre
Chief Legal Counsel
Rule Reviewer

Mark A. Simonich, Director
Department of Natural
Resources and Conservation

Certified to the Secretary of State June 30th, 1995

VOLUME NO. 46 OPINION NO. 5

ANNEXATION - Authority of city council to adopt interim zoning regulations as to newly annexed lands;
CITIES AND TOWNS - Obligation to comply with statutory protest provision when interim zoning ordinance modified operation of existing zoning ordinance;
LAND USE - Obligation of city council to comply with statutory protest provision when interim zoning ordinance modified operation of existing zoning ordinance;
MUNICIPAL GOVERNMENT - Obligation to comply with statutory protest provision when interim zoning ordinance modified operation of existing zoning ordinance;
MONTANA CODE ANNOTATED - Sections 76-2-303 to -307, 76-2-310;
MONTANA LAWS OF 1975 - Chapter 488, § 1;
MONTANA LAWS OF 1929 - Chapter 136;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 68 (1986).

HELD: The protest provisions in Mont. Code Ann. § 76-2-305(2) are available to affected landowners whenever an existing zoning regulation is changed within the scope of Mont. Code Ann. § 76-2-305(1) through exercise by a city or town council of its interim zoning authority under Mont. Code Ann. § 76-2-306.

June 20, 1995

Mr. Jim Nugent
Missoula City Attorney
435 Ryman
Missoula, MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning the proper application of Mont. Code Ann. § 76-2-306. After review of your request, I have determined that this opinion should be limited to resolving the relationship between that provision and Mont. Code Ann. § 76-2-305. I have therefore phrased the question you present as follows:

> Under what circumstances, if any, do the protest provisions in Mont. Code Ann. § 76-2-305(2) apply to the adoption of interim zoning ordinances under Mont. Code Ann. § 76-2-306?

I conclude that the two sections must be read in pari materia and that, when an interim zoning ordinance or regulation adopted in accordance with § 76-2-306 amends, supplements, changes, modifies or repeals an existing zoning ordinance, the provisions of § 76-2-305(2) must be complied with if an appropriate protest is filed.

The core of Montana's municipal zoning law was taken from the Standard State Zoning Enabling Act ["SSZEA"] and was adopted in 1929. 1929 Mont. Laws, ch. 136; see generally 4 Patrick J. Rohan, Zoning and Land Use Controls § 35.04[1] (1994) ["Rohan"]. Then and now, the Montana statute authorizes a city council to adopt and amend zoning regulations but, before doing so, requires not only that the municipality's zoning commission hold public hearings and issue a final report to the council but also that the council itself hold a public hearing as to which at least 15 days' notice is given. 1929 Mont. Laws, ch. 136, §§ 4-6 (codified as amended at Mont. Code Ann. §§ 76-2-303, -305, -307). Aside from these basic requirements, any change in a zoning regulation is subject to protest by affected landowners:

> In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extended 150 feet therefrom or of those adjacent on either side within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

§ 76-2-305(2); see 41 Op. Att'y Gen. No. 68 at 283 (1986). Comments to the SSZEA indicated that the protest provision reflected "the practice . . . of permitting ordinary routine changes to be adopted by a majority vote of the local legislative body but requiring a three-fourths vote in the event of a protest from a substantial proportion of property owners whose interests are affected" and that such practice "tended to stabilize the ordinance." 8 Rohan, § 53.01[1] at 53-10.

Neither the SSZEA nor the Montana statute as originally enacted specifically addressed interim zoning--i.e., a temporary action which "either classifies or reclassifies land and imposes restrictions on uses allowed thereon in support of a contemplated pending zoning plan or zoning change." 1 Ziegler Rathkopf's The Law of Zoning and Planning § 11.01, at 11-3-4 (1994); see generally 1 Robert M. Anderson, American Law of Zoning 3d § 5.23 at 408-09 (1986) ("One to three years may be required to complete the essential studies and evolve a comprehensive plan. . . . During this period of study and enactment, the development of the community continues. If the evolving land-use plan and its implementing regulations are made public, the period between public knowledge and final enactment may be used by some landowners and developers to construct buildings and establish uses which will disrupt the land-use plan"). The explanatory notes to the SSZEA discouraged the use of interim ordinances (8 Rohan § 53.01[1] at 53-55) and, while their adoption fell within the authority of legislative bodies, such authority arguably could be exercised only in compliance with the stringent procedural requirements imposed

under the law with respect to the more general adoption or amendment of ordinances (3 Rohan § 22.02[3] at 22-25, -31).

The Montana legislature, however, established a special procedure for the adoption of interim zoning ordinances in 1975. 1975 Mont. Laws, ch. 488, § 1. That procedure is codified in § 76-2-306:

> (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.
>
> (2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.
>
> (3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

Subsection (1) thus exempts an interim ordinance from "the procedures otherwise required preliminary to the adoption of a zoning ordinance" but, when read together with the remaining subsections, imposes various conditions on the use of that power: the existence of an exigency requiring prohibition of certain uses inconsistent with a zoning proposal under consideration; a public hearing prior to the ordinance's adoption preceded by at least seven days' notice; a limitation on the geographical scope of the ordinance to one mile beyond municipal boundaries notwithstanding the provisions of Mont. Code Ann. § 76-2-310 which, for first- and second-class cities, allow municipal zoning provisions to extend, respectively, three and two miles beyond their boundaries; and a restriction on the ordinance's duration. Consistent with exception from "the procedures otherwise required preliminary to the adoption of a zoning ordinance," interim ordinances are excluded from the zoning commission hearing and report requirements imposed under § 76-2-307.

Your opinion request seeks determination of how the interim zoning provisions in § 76-2-306 apply in several general factual contexts. You ask first whether those provisions may be applied by a city council to prohibit a proposed use which is permitted under an existing ordinance. You next ask whether the provisions may be applied to permit a use prohibited under an existing ordinance. Lastly, you ask whether § 76-2-306 may be applied to newly annexed lands to which the city's zoning ordinance has not extended previously and, with respect to such lands, whether it is possible to tack interim zoning ordinances together for the purpose of exceeding the 2½-year limitation imposed under subsection (3).

The basic concern you express with respect to each hypothetical is application of § 76-2-306 in a manner which interferes with statutory protest rights under § 76-2-305(2). The phrase "procedures otherwise required preliminary to the adoption of a zoning ordinance," however, indicates your concern is unwarranted. That phrase, when construed most naturally, refers to the procedural requirements under §§ 76-2-303 and -307 and, conceivably, any additional procedures provided independently under the municipality's ordinances. This interpretation is particularly compelling in light of the express exception to the zoning commission hearing and report requirements in § 76-2-307 with respect to interim ordinances, an exception not made with respect to the supermajority vote needed to approve changes when a valid protest has been filed under § 76-2-305(2). See State ex rel. Diehl Co. v. State of Montana, 181 Mont. 306, 314, 593 P.2d 458, 462 (1979) (observing that "only in following [§ 76-2-306]" could a city commission "act on a moratorium without first referring the matter to the Zoning Commission" under § 76-2-307). Absent explicit statutory direction, I am unwilling to imply what is, in essence, the repeal of a landowner's protest rights whenever a change in an existing ordinance is made through use of the interim zoning ordinance procedure. E.g., Kuchan v. Harvey, 179 Mont. 7, 10, 585 P.2d 1298, 1300 (1978).

The issue therefore becomes whether, in the situations you have posed, a change within the scope of § 76-2-305 exists. The first two hypotheticals do involve such a change and, while the city council has authority to utilize the interim zoning ordinance mechanism to effect the change temporarily, exercise of that authority is subject to the protest provisions in § 76-2-305(2). As to the third hypothetical, my understanding concerning the operation of Missoula's zoning ordinance is that recently annexed land remains unzoned until the council takes affirmative action to zone. Under those circumstances, § 76-2-305 has no application because no change in the ordinance itself is contemplated; the council instead merely exercises authority, otherwise conferred under the ordinance, to zone property as it deems appropriate.

Finally, whether the council can tack one interim zoning ordinance to another and thereby extend the duration of interim zoning beyond the period allowed under § 76-2-306(3) cannot be resolved conclusively on the basis of the facts you have supplied. By

stating that no extensions other than the two provided under subsection (3) may be adopted, the statute itself counsels against any attempt to use a second ordinance as a subterfuge for continuing the interim zoning process beyond two and one-half years. Nevertheless, I am not prepared to hold that there are no circumstances under which consecutive interim ordinances would be proper.

THEREFORE, IT IS MY OPINION:

The protest provisions in Mont. Code Ann. § 76-2-305(2) are available to affected landowners whenever an existing zoning regulation is changed within the scope of Mont. Code Ann. § 76-2-305(1) through exercise by a city or town council of its interim zoning authority under Mont. Code Ann. § 76-2-306.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/crs/bjh

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

In the matter of:	)	NOTICE OF WITHDRAWAL
The applicability of	)	OF PETITION FOR
37-51-321(1)(i) and (2)(a),	)	DECLARATORY RULING
MCA, regarding the ability	)	
of a "limited Buyer Broker"	)	
to make a buyer aware of	)	
non-listed property	)	

TO: All Interested Persons:

1. On April 27, 1995, the Board of Realty Regulation caused to be published in the Montana Administrative Register a Petition for Declaratory Ruling filed by one Pat M. Goodover, II, of Great Falls, Montana 59403. Mr. Goodover inquired as to whether he as a broker, acting as a purchaser's agent, could inform the potential purchaser of properties he knew were available for sale but had not been listed for sale.

2. The Board of Realty Regulation was prepared to consider his petition at its meeting of June 23, 1995. At that meeting, however, the Petitioner, Mr. Goodover, withdrew his request for a declaratory ruling on the issue because he was satisfied that rule amendments the Board intends to propose in the immediate future for adoption this Autumn address and answer his concerns.

3. The Board accepted Mr. Goodover's withdrawal of his Petition for Declaratory Ruling and entered no ruling on this question.

BOARD OF REALTY REGULATION
STEVE CUMMINGS, CHAIRMAN

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 3, 1995.

BEFORE THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the application of First Interstate Bank of Commerce, Billings, First Security Bank of Bozeman, and Valley Bank of Kalispell for a Declaratory Ruling on the Authority of the Owner of an Electronic Terminal to Impose a Surcharge for the Use of its Electronic Terminal	)))))))	NOTICE OF PETITION FOR DECLARATORY RULING

1. On July 25, 1995 at 10:00 am, in the upstairs conference room of the Department of Commerce Building, 1424 9th Avenue, Helena, Montana, the Division of Banking and Financial Institutions will consider a petition for declaratory ruling on the authority of the owner of an electronic terminal to impose a surcharge for the use of its electronic terminal.

2. This petition is brought by First Interstate Bank of Commerce, Billings, Montana, First Security Bank of Bozeman, and Valley Bank of Kalispell ("Banks") pursuant to 2-4-501, MCA. Petitioners' respective addresses are: First Interstate Bank of Commerce, 401 North 31st Street, PO Box 30918, Billings, MT 59116; First Security Bank of Bozeman, 208 East Main Street, PO Box 910, Bozeman, MT 59715; Valley Bank of Kalispell, 41 3rd Street, PO Box 48, Kalispell, MT 59903-0048.

3. Each Bank is a Montana-based and controlled commercial banking corporation which owns and operates automated teller machines ("ATMs") located on and off its premises. Each Bank is subject to the provisions and requirements of the Montana Electronic Funds Transfer Act. (32-6-101 through §32-6-402, MCA.)

4. The 1995 Montana Legislature enacted an amendment to the Montana Electronic Funds Transfer Act which provides that "The owner of an electronic terminal may impose a surcharge for the use of its electronic terminal". Sec. 14(3), Ch. 265, L. 1995. The amendment was signed by the Governor on March 27, 1995, and per the immediate effective date contained therein, (Sec. 18, CH.265, L.1995) the amendment has been the law of this state from and after that date.

5. CIRRUS System, Incorporated, is a membership corporation. The members of CIRRUS consist of financial institutions around the world, including petitioners herein. Under CIRRUS' worldwide operating rules, the members agree to allow consumers to use each other's ATMs to gain access to their accounts. In managing and operating a shared ATM network, CIRRUS provides banking customers access to their individual accounts at ATMs located throughout the United States and abroad.

6. In each contract between CIRRUS and the member financial institution, there is incorporated a worldwide operating rule (Section 11.8) which provides that no cardholder shall be assessed or otherwise required to pay a

surcharge or any fee which is imposed at the member financial institution's terminal in connection with an ATM transaction except as provided in 2.10 of said rules.[1] Section 2.10 of the worldwide rules provides that a surcharge may be assessed if the jurisdiction where the transaction occurs has an enforceable law which overrides the prohibition contained in Section 11.8. A true and correct copy of the pertinent parts of the CIRRUS worldwide operating rules were filed by the petitioners with the department.

7. Notwithstanding the fact that the Montana legislature has enacted and the Governor has signed Chapter 265 of the Laws of 1995, CIRRUS has informed petitioners through First Interstate of Bancsystem of Montana, Inc. Data Center and the undersigned, that Montana financial institutions, including petitioners, may not impose a surcharge on transactions at their ATMs because the 1995 legislative act does not, by CIRRUS' interpretation, provide that the Montana law overrides the CIRRUS worldwide operating rules.

8. It is the contention of petitioners that Section 14 of Chapter 265 of the Laws of 1995 authorizes petitioners to impose a surcharge if they so elect, pursuant to said Act notwithstanding any provisions to the contrary in the CIRRUS worldwide rules. Banks intend to impose a surcharge for ATM transactions. If petitioners elect to impose a surcharge and CIRRUS, per its every indication, refuses to allow such surcharges, petitioners could be denied access to the CIRRUS network, all to petitioners' loss of business and economic disadvantage.

9. The Division of Banking and Financial Institutions of the Department of Commerce has jurisdiction over this matter for the reason that it has general jurisdiction with respect to administration and enforcement of the Montana Electronic Funds Transfer Act and also has regulatory powers over all state-chartered banks and savings and loan associations.

10. Interested persons, other than petitioners and other Montana financial institutions would be CIRRUS System, Inc. Its address is:

CIRRUS System, Inc.
1 Westbrook Corporate Center, Suite 700
Westchester, IL 60154

11. Interested persons may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Division of Banking and Financial Institutions, 1520 E 6th Ave, Room 50, PO Box 200512, Helena, Montana 59620-0512, to be received no later than 5:00 p.m., July 21, 1995.

12. Petitioners pray that the division issues its declaratory ruling pursuant to Section 2-4-501, MCA, to the effect that Section 14 of Chapter 265, Laws of 1995, codified as Section 32-6-104(2), MCA is an enforceable law which

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[1]The actual reference in Section 11.8 is to Section 2.9. That section has nothing to do with surcharges. We assume that the correct reference is to 2.10 of the worldwide rules and as such, that is the reference used herein.

overrides the CIRRUS worldwide operating rules and allows the imposition of a surcharge if the owner of the ATM elects to impose one.

DIVISION OF BANKING AND FINANCIAL INSTITUTIONS
Donald Hutchinson, Commissioner

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 3, 1995.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 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.

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