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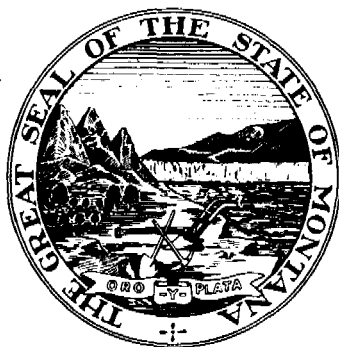
NOV 24 1995

OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

**DOES NOT  
CIRCULATE**

1995 ISSUE NO. 22  
NOVEMBER 22, 1995  
PAGES 2444-2543



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the repeal of	)	NOTICE OF PROPOSED
Sub-Chapter 29 of Chapter 6 of	)	REPEAL
Title 6 regarding the prelicensing	)	
education program.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1995, the State Auditor and Commissioner of Insurance proposes to repeal Sub-Chapter 29 of Chapter 6 of Title 6 regarding the prelicensing education program.

2. The rules proposed for repeal are ARM 6.6.2901 PURPOSE AND SCOPE; 6.6.2902 DEFINITIONS; 6.6.2903 QUALIFICATIONS FOR PROGRAM DIRECTORS AND INSTRUCTORS; 6.6.2904 EDUCATIONAL REQUIREMENTS FOR LIFE AND DISABILITY INSURANCE PRELICENSING EDUCATION COURSES; 6.6.2905 EDUCATIONAL REQUIREMENTS FOR PROPERTY AND CASUALTY INSURANCE PRELICENSING EDUCATION COURSES; 6.6.2906 REQUIREMENTS FOR COURSE COMPLETION CERTIFICATES; and 6.6.2907 SUBMISSIONS AND CERTIFICATES, and are located on pages 6-259 through 6-259.5 of the Administrative Rules of Montana. These rules are being repealed because the authority for these rules, 33-17-207 through 33-17-209, MCA, was repealed by the 1995 legislature. The authorizing and implemented statutes are as follows:

AUTH: 33-1-313, MCA

IMP: 33-17-207 through 33-17-209, MCA

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than December 20, 1995.

4. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than December 20, 1995.

5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

MARK O'KEEFE, State Auditor  
and Commissioner of Insurance

By G. Russell Harper

G. Russell Harper  
Deputy State Auditor

Gary L. Spæth  
Gary L. Spæth  
Rules Reviewer

Certified to the Secretary of State this 13th day of November, 1995.

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

In the matter of the repeal of	)	NOTICE OF PROPOSED
Sub-Chapter 32 of Chapter 6	)	REPEAL
Title 6 regarding the pricing of	)	
noncompetitive or volatile lines.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1995, the State Auditor and Commissioner of Insurance proposes to repeal Sub-Chapter 32 of Chapter 6 of Title 6 regarding the pricing of noncompetitive or volatile lines.

2. The rules proposed for repeal are ARM 6.6.3201 PURPOSE; 6.6.3202 DEFINITIONS; 6.6.3203 EVALUATION OF A LINE -NONCOMPETITIVE; 6.6.3204 EVALUATION OF A LINE - VOLATILE; 6.6.3205 DATA REPORTING REQUIREMENTS; and 6.6.3206 FILING REQUIREMENTS, and are located on pages 6-851 through 6-854 of the Administrative Rules of Montana. These rules are being repealed because the authority for these rules, the Ratemaking Act, was repealed by the 1995 legislature. The authorizing and implemented statutes are as follows:

AUTH: 33-1-313, MCA  
IMP: 33-16-231 through 33-16-236, MCA

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than December 20, 1995.

4. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than December 20, 1995.



5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

MARK O'KEEFE, State Auditor  
and Commissioner of Insurance

By *G. Russell Harper*  
G. Russell Harper  
Deputy State Auditor

*Gary J. Spaeth*  
Gary J. Spaeth  
Rules Reviewer

Certified to the Secretary of State this 13th day of November, 1995.

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

In the matter of the repeal of )	NOTICE OF PROPOSED
Sub-Chapter 23 of Chapter 6 of )	REPEAL
Title 6 regarding the Montana )	
Insurance Assistance Plan. )	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1995, the State Auditor and Commissioner of Insurance proposes to repeal Sub-Chapter 23 of Chapter 6 of Title 6 regarding the Montana Insurance Assistance Plan.

2. The rules proposed for repeal are ARM 6.6.2301 DEFINITIONS; 6.6.2302 AGENT COMMISSION; 6.6.2303 APPLICATIONS AND APPLICATION FEES; 6.6.2304 FISCAL ARRANGEMENT; 6.6.2305 UNAVAILABILITY; 6.6.2306 ELIGIBLE APPLICANTS; 6.6.2307 LINES OF INSURANCE; 6.6.2308 EFFECTIVE DATE OF POLICY; and 6.6.2309 SEVERABILITY, and are located on pages 6-237 through 6-239 of the Administrative Rules of Montana. These rules are being repealed because the authority for these rules was terminated pursuant to 33-8-205(2), MCA. The authorizing and implemented statutes are as follows:

AUTH: 33-8-205, MCA  
IMP: 33-8-205, MCA

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than December 20, 1995.

4. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than December 20, 1995.

5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

MARK O'KEEFE, State Auditor  
and Commissioner of Insurance

By G. Russell Harper  
G. Russell Harper  
Deputy State Auditor

Gary W. Spaeth  
Gary W. Spaeth  
Rules Reviewer

Certified to the Secretary of State this 13th day of November, 1995.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption of a new rule pertain-) OF NEW RULE I TEMPORARY  
ing to temporary practice ) PERMITS FOR GRADUATE ADVANCED  
permits for advanced practice ) PRACTICE REGISTERED NURSES  
registered nurses ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1995, the Board of Nursing proposes to adopt the above-stated rule.

2. The proposed new rule will read as follows:

"I TEMPORARY PERMITS FOR GRADUATE ADVANCED PRACTICE REGISTERED NURSES (APRN) (1) To qualify for a temporary permit, the graduate APRN must have applied for and been accepted for the first certifying exam following completion of an APRN program.

(a) Proof of acceptance to the certifying examination will be a copy of the examination registration sent to the applicant upon acceptance of the examination application by the national certifying body.

(2) If the graduate passes the certifying examination, the temporary permit shall remain valid until the Montana board of nursing grants full APRN recognition.

(3) The temporary permit holder shall immediately notify the board of the results of the certifying examination. Failure to notify the board constitutes unprofessional conduct and may be a basis for proposed disciplinary action or license denial.

(4) The graduate APRN working with a temporary APRN permit, must have a consultant. The consultant must be recognized as a Montana advanced practice registered nurse, or physician whose practice encompasses the scope of the graduate APRN and must be available to the graduate APRN at all times."

Auth: Sec. 37-1-305, 37-8-202, MCA; IME, Sec. 37-1-305, 37-1-319, 37-8-202, MCA

REASON: Section 37-8-430, MCA, was repealed by the 1995 Legislature in House Bill 518. The authorization to issue a temporary practice permit is now found at 37-1-305, MCA.

3. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Nursing, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 20, 1995.

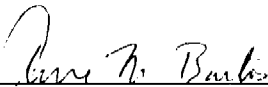
4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Nursing, Lower Level, Arcade Building, 111

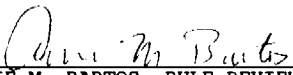
North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 20, 1995.

5. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 36 based on the 363 licensees in Montana.

BOARD OF NURSING  
JEAN BALLANTYNE, MN, RN,  
PRESIDENT

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 13, 1995.

BEFORE THE BOARD OF PSYCHOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption of a rule pertaining ) OF NEW RULE I LICENSURE AS A  
to licensure of senior ) SENIOR PSYCHOLOGIST  
psychologists ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1995, the Board of Psychologists  
proposes to adopt a new rule pertaining to licensure of senior  
psychologists.

2. The proposed new rule will read as follows:

"I LICENSURE AS A SENIOR PSYCHOLOGIST (1) A license as  
a senior psychologist in the state of Montana may be issued  
provided the senior applicant must meet all of the following  
requirements:

(a) submits a certified copy of a transcript sent  
directly from the school documenting graduation with a doctoral  
degree;

(b) submits verification of current licensure as a  
psychologist and at least 20 years of licensure as a  
psychologist in a United States or Canadian jurisdiction(s).  
Official written verification of such licensure status must be  
received by the board directly from the other state(s) or  
jurisdiction(s);

(c) provides documentation of at least 10 years of  
clinical experience in the last 15 years prior to filing the  
application. This verification shall be on forms prescribed by  
the board, including specific dates, and shall consist of an  
employer's statement; or verification by two licensed  
psychologists (if in private practice); or a combination of  
both;

(d) pays any fees required by another jurisdiction(s) to  
provide official written verification that the licensee has  
never been disciplined, which will be requested by the Montana  
board directly from the other state(s) or jurisdiction(s) and  
from the association of state and provincial psychology boards  
national psychologist data bank;

(e) submits a complete, notarized application form with  
the proper fees at least 90 days in advance of the April or  
October examination dates. Such application will include work  
samples and reference letters as described in ARM 8.52.604;

(f) passes the Montana oral examination."

Auth: Sec. 37-17-202, MCA; IMP, Sec. 37-17-307, 37-17-  
310, MCA

REASON: The proposed new rule will implement HB 184,  
allowing licensure of psychologists who have at least 20 years  
experience in another state or jurisdiction, but may not meet  
all other requirements to be licensed as an endorsement  
candidate in Montana, as mandated by the 1995 Legislature.


3. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Psychologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 20, 1995.

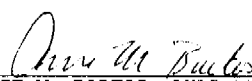
4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Psychologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 20 1995.

5. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on the 198 licensees in Montana.

BOARD OF PSYCHOLOGISTS  
PASTOR JEFF OLSGAARD, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 13, 1995.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of a new rule for the	)	THE PROPOSED ADOPTION OF NEW
administration of the 1996	)	RULE I INCORPORATION BY
Federal Community Development	)	REFERENCE OF RULES FOR
Block Grant Program; the	)	ADMINISTERING THE 1996 CDBG
adoption of a new rule pertain-	)	PROGRAM; THE ADOPTION OF A
ing to the 1996 Treasure State	)	NEW RULE PERTAINING TO THE
Endowment (TSEP) Program; and	)	1996 TREASURE STATE
repeal of rules pertaining to	)	ENDOWMENT (TSEP) PROGRAM;
the 1987 and 1988 Federal	)	AND THE REPEAL OF THE 1987
Community Development Block	)	AND 1988 FEDERAL COMMUNITY
Grant Programs	)	DEVELOPMENT BLOCK GRANT
	)	PROGRAM RULES

TO: All Interested Persons:

1. On December 20, 1995, at 1:30 p.m., a public hearing will be held in the upstairs conference room of the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the adoption by reference of rules governing the administration of the 1996 Federal Community Development Block Grant (CDBG) program; and the repeal of rules governing the administration of the 1987 and 1988 Federal Community Development Block Grant programs.

2. The proposed new rule will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1995 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1996 Application Guidelines for Housing & Public Facilities Projects, the Montana Community Development Block Grant Program 1996 Application Guidelines for Economic Development Projects, and the Montana Community Development Block Grant Program, 1996 Grant Administration Manual published by it as rules for the administration of the 1996 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

- (a) the policies governing the program,
- (b) requirements for applicants,
- (c) procedures for evaluating applications,
- (d) procedures for local project start up,
- (e) environmental review of project activities,
- (f) procurement of goods and services,
- (g) financial management,
- (h) protection of civil rights,
- (i) fair labor standards,
- (j) acquisition of property and relocation of persons displaced thereby,
- (k) administrative considerations specific to public facilities, housing rehabilitation and neighborhood



revitalization, and economic development projects,

- (l) project audits,
- (m) public relations, and
- (n) project monitoring.

(3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

**REASON:** This rule is necessary because the federal regulations governing the state's administration of the 1996 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

**"II INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1996 TREASURE STATE ENDOWMENT PROGRAM**

(1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program 1996 Application Guidelines and the Treasure State Endowment Program Project Administration Manual published by it as rules for the administration of the TSEP.

(2) The rules incorporated by reference in (1) above, relate to the following:

- (a) definitions of terms,
- (b) estimated amount of TSEP funds available in FY 1998 and 1999,
- (c) eligible applicants,
- (d) application scoring system and ranking criteria,
- (e) forms of financial assistance available under TSEP,
- (f) general requirements for TSEP applications,
- (g) application review process,
- (h) project start up,
- (i) environmental requirements,
- (j) procurement requirements,
- (k) financial management,
- (l) civil rights,
- (m) prevailing wage requirements,
- (n) property acquisition,
- (o) public facilities construction management, and
- (p) cash flow policy for distribution of TSEP grant funds.

(3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-6-710, MCA; IMP, Sec. 90-6-710, MCA

**REASON:** It is reasonably necessary to adopt the rule because section 90-6-710(4), MCA, requires the Department to adopt rules to implement the program.

3. The Division is proposing the repeal of ARM 8.94.3703 and 8.94.3704 which are located at pages 8-3429 and 8-3430, Administrative Rules of Montana. The authority section is 90-1-103, MCA and the implementing section is 90-1-103, MCA. The

reason for the proposed repeal is that all of the projects for those years have been completed and closed out.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, to be received no later than 5:00 p.m., December 20, 1995.

5. Richard M. Weddle, attorney, will preside over and conduct the hearing.

LOCAL GOVERNMENT ASSISTANCE  
DIVISION  
DEPARTMENT OF COMMERCE

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

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 13, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Teacher	)	PROPOSED AMENDMENT TO ARM
Certification	)	10.57.211 TEST FOR CERTIFICATION

To: All Interested Persons

1. On January 18, 1996, 1995 at 9:30 a.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education Offices, 2500 Broadway, Helena, in the matter of the proposed amendment to 10.57.211 Test for Certification.

2. The rule as proposed provides as follows:

10.57.211 TEST FOR CERTIFICATION

(i) through (i) will remain the same.

(ii) evidence of successful course completion must be presented to the office of public instruction, certification division, within 2 years of the effective date of this rule sixty days of the end of summer college sessions 1997;

(iii) through (iv) will remain the same.

(2) Effective July 1, 1996, all new applicants for initial class 1, 2 or 3 certification, except those currently holding at least one of these Montana certificates, must provide evidence of having passed either the communication skills and general knowledge tests of the praxis series (formerly national teacher examination core battery), or the praxis series pre-professional skills tests, (PPST), or the praxis I; computer based academic skills test (CBT), with at least the minimum scores established by the board. Applicants for initial certification may have these requirements waived who have achieved at least the state-established minimum passing score(s) on different but comparable test(s) assessing the basic skills of reading, writing and mathematics required as part of the state-mandated requirements for entry into or completion of a teacher preparation program from which the applicant graduated or was required for certification in that state.

(3) Effective July 1, 1997, the communication skills and general knowledge tests of the praxis series and formerly of the national teacher examination (NTE) will no longer be approved tests for certification in Montana, except that an applicant tested in any state where these tests were state-mandated and who provides evidence of meeting the required scores at the time of testing from that state, may use these tests for Montana certification.

~~++~~ (4) Individuals seeking to reinstate lapsed certificates will also be required to satisfactorily complete the testing requirement.

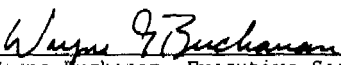
~~++~~ (5) All existing valid certificates will be renewed on the basis of the rules under which they were issued.

AUTH: Sec. 20-2-121(1) IMP: Sec. 20-4-102 (1)

3. The board proposes this amendment to the rule in order to correct language to assure that the preparation of future administrators will conform to higher standards as recommended by both professional organizations and the accrediting body.

4. Interested parties may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than December 22, 1995.

5. Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, has been designated to preside over and conduct the hearing.

  
Wayne Buchanan, Executive Secretary  
Board of Public Education

Certified to the Secretary of State on 11/03/95.

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

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of ARM 12.6.901 )	AMENDMENT
creating a no wake speed zone )	
near Rock Creek Marina in Ft. )	No Public Hearing
Peck Reservoir )	is Contemplated

To: All Interested Persons.

1. On January 12, 1996, the Fish, Wildlife and Parks Commission (commission) proposes to amend ARM 12.6.901 creating a no wake speed zone for watercraft near the Rock Creek Marina in Ft. Peck Reservoir.

2. The proposed rule change is as follows:

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) through (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County through Lincoln County remain the same.

McCone County: (A) on Ft. Peck Reservoir: Rock Creek Marina as marked by signed buoys;

Madison County through (2) remain the same.

AUTH: 87-1-303, 23-1-106(1), MCA

IMP: 87-1-303, 23-1-106(1), MCA

3. The rationale for the rule is as follows: A no wake zone in the Rock Creek Marina area will protect the safety of the public and prevent damage to private property caused by excessive boat speeds. Boats congregate in the area of the marina and excessive speeds have caused accidents. This season a youngster was thrown into the water while standing on a dock in the marina because of the wake produced by a passing boat. In addition, docks and boats have been damaged by wakes caused by excessive speeds in the dock area. The commission is proposing this rule in response to a request for rulemaking received from the marina owner which included a petition from the marina residents which was signed by 46 persons.

4. Interested persons may present their data, views or arguments concerning the proposed amendments in writing no later than December 29, 1995, to Richard L. Furber, Department of Fish, Wildlife and Parks, Rural Route 1-4210, Glasgow, MT 59230.

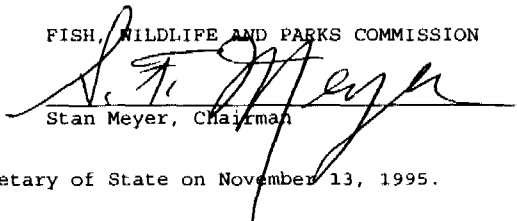
5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Richard L. Furber, Department of Fish, Wildlife and Parks, Rural Route 1-4210, Glasgow, MT 59230. A written request for hearing must be received no later than December 29, 1995.

6. If the commission receives requests for a public hearing on the proposed amendment from 25 or more persons who are directly affected by the proposed action, from the Administrative Code Committee 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 in excess of 25 based on the potential number of recreationists in the Rock Creek Marina area.

FISH, WILDLIFE AND PARKS COMMISSION



Robert N. Lane  
Rule Reviewer

  
Stan Meyer, Chairman

Certified to the Secretary of State on November 13, 1995.

BEFORE THE BOARD OF PARDONS AND PAROLE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED REVISION
revision of the Rules of the	)	OF RULES (ARM Title 20, Chapter 25)
Board of Pardons and Parole	)	NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. At its regular meeting on July 28, 1995, in Deer Lodge, Montana, the Board of Pardons and Parole proposed to revise its rules now published at pages 20-253 through 20-280 of the Administrative Rules of Montana.

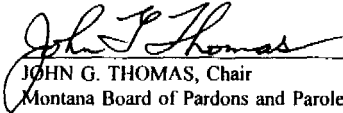
2. Since rule-making by the Board is exempted from the notice and comment or opportunity for hearing requirements of the Montana Administrative Procedure Act, this notice is published in the Administrative Register as a courtesy to those persons who may wish to offer comments and suggestions before the Board makes its final decision.


3. The text of the proposed major revision will be mailed to each Clerk of the District Court, the Montana Defender Project, UM School of Law, the Montana State Prison law library, Montana Attorney General, and the American Civil Liberties Union. This text will be mailed to any other person who requests a copy by writing to the Legal Counsel, Department of Corrections, 1539 11th Avenue, Helena, Montana 59620, or to the Montana Board of Pardons and Parole.


4. Many of the changes are proposed merely to arrange the rules more logically or to conform to amendments of the statutes enacted in legislative sessions and more clearly outline the activities of the Board.

5. Comments and suggestions concerning the proposed revision will be considered by the Board of Pardons and Parole if received prior to December 22, 1995, by: John G. Thomas, Chair, Board of Pardons and Parole, 300 Maryland Avenue, Deer Lodge, Montana 59722.

6. Authority to adopt the proposed changes is based upon Section 46-23-218, MCA. Imp. 46-23-218, MCA.

  
JOHN G. THOMAS, Chair  
Montana Board of Pardons and Parole

  
RICK DAY, Director  
Department of Corrections

  
Rule Reviewer

Certified to the Secretary of State this 13<sup>th</sup> day of November, 1995.

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

In the matter of the amendment       ) NOTICE OF PROPOSED  
of Rules 11.7.103, 11.7.105,       ) AMENDMENT AND  
11.7.106 and the repeal of rules    ) REPEAL OF RULES  
1.7.107, 11.7.108, 11.7.110 and    )  
11.7.111 pertaining to children     )  
in foster care                        )

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On January 12, 1996, the Department of Public Health and Human Services proposes to amend Rules 11.7.103, 11.7.105, 11.7.106 and repeal rules 11.7.107, 11.7.108, 11.7.110 and 11.7.111 pertaining to children in foster care.

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

11.7.103 DEFINITIONS ~~(1)~~ The following definitions apply to the rules contained in this subchapter.

~~(a)(1)~~ "Department" means the department of family services public health and human services.

(b) remains the same in text, but is renumbered (2).

~~(c) "Residential treatment" means treatment provided by a licensed youth care facility or child placing agency approved by the department to provide intensive treatment to children who are seriously mentally, emotionally or behaviorally disturbed.~~

(d) remains the same in text, but is renumbered (3).

(e) remains the same in text, but is renumbered (4).

~~(f)(5)~~ "Youth care facility (YCF)" ~~(YCF)~~ means a licensed facility in which foster care is provided and includes youth foster homes, youth group homes and child care agencies.

AUTH: Sec. 41-3-1103 and 52-1-103 MCA

IMP: Sec. 41-3-1103 and 52-1-103 MCA

11.7.105 GENERAL REQUIREMENTS ~~(1)~~ A child will be evaluated for placement in foster care by the department if he meets the following criteria:

~~(a) the child meets the legal definition of an abused, dependent or neglected child contained in section 41-3-102, MCA~~



~~and removal from the home is necessary for the youth's protection;~~

~~(b) the removal of the child from the home occurred pursuant to a voluntary placement agreement or was the result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and that reasonable efforts have been made to prevent the need for out of home placement (except that a child who is in imminent or apparent risk of harm main foster care pending such judicial determination);~~

~~(c) placement in foster care is in the best interests of the child; and~~

~~(d) the department, or a public agency having an appropriate agreement with the department, has the legal authority to place the child.~~

~~(2) Legal authority to place the child may be established as follows:~~

~~(a) the child is in imminent or apparent danger of harm and emergency placement is necessary to assure the child's protection. If emergency placement is used, the department must file a petition with the court within 48 hours (excluding weekends and holidays) seeking a court order to authorize the placement.~~

~~(b) A court order granting the department the right to place the child in a protective facility or granting temporary or permanent legal custody of the child.~~

~~(c) A written voluntary placement agreement signed by the custodial parent, or other person having legal custody and the department which grants the department the right to place the child in foster care, subject to the restrictions set forth in 11.5-106.~~

~~(1) The department may place a child in substitute care pursuant to:~~

~~(a) a court order;~~

~~(b) emergency protective services as authorized by 41-3-301, MCA;~~

~~(c) a voluntary placement agreement entered by the department and the parents or guardians of the child; or~~

~~(d) other lawful authority.~~

~~(3)(2) Children who meet the criteria set forth in subparagraph (1), will be evaluated by the department to determine the accessible, available and appropriate type of placement. The department will consider the individual behaviors of the child, the family's situation and the community.~~

AUTH: Sec. 41-3-1103 and 52-1-103 MCA

IMP: Sec. 41-3-1103 and 41-3-1122 and 52-1-103 MCA

11.7.106. VOLUNTARY PLACEMENT (1) Voluntary placements ~~agreements may~~ should not exceed ~~six~~ 6 months in duration.

(2) Voluntary placement agreements will generally not be accepted if:

(a) the child requests placement to avoid being held responsible for the child's behavior or because of conflicts with the parents or guardians; or

(b) the parents or guardians request placement because of behavior problems of the child or conflict with the child.

(c) In cases where requests for voluntary placement agreements are denied, the department will make appropriate referrals for services for the family to address these problems.

(3) The department will generally accept voluntary placement agreements only if:

(a) if the child is in danger of being abused or neglected or dependent; and

(b) the parents or guardians, as a result of unavoidable circumstances, are temporarily absent from the home, and no other placement alternatives are available;

(c) the parents or guardians are unable to provide adequate care for the child because of extreme temporary stress; or

(d) the parents or guardians are worried about their hostile, abusive or neglectful feelings toward their child and are willing to voluntarily seek the assistance or services necessary to assure the child can be returned to them as soon as possible.

(4) If any of the following conditions exist, voluntary placement agreements will generally not be accepted. In such cases, the department will take be substituted for appropriate legal action to protect the child.

(a) the child has suffered severe abuse or neglect the parents or guardians have severely abused or neglected the child;

(b) the child has suffered repeated abuse after services have been offered to the family the parents or guardians have abused or neglected the child and department services have been offered and previously refused or were previously accepted but have been unsuccessful;

(c) the parents' or guardians' behavior is dangerous to the child; or

(d) the parents refuse treatment or services which seek to

~~reunify the family;~~

~~(c)(d) the child is completely rejected or unwanted by the parents; the parents or guardians by their words or actions have indicated a desire to relinquish their parental rights or abandon the child, or~~

~~(f) the child requires treatment in a residential treatment facility.~~

~~(4) Voluntary placement agreements will not be accepted if:~~

~~(a) the youth requests placement to avoid being held responsible for his behavior or because of personality conflicts with the parents.~~

~~(b) the parent requests placement because of behavior problems of the youth or personality conflict with the youth. In such cases, the department will make appropriate referrals for services for the family to address these problems.~~

AUTH: Sec. 41-3-1103 and 52-1-103 MCA

IMP: Sec. 41-3-1103 and 41-3-1122 and 52-1-103 MCA

3. The rules to be repealed are:

11.7.107 CRITERIA FOR PLACEMENT, found on page 11-302 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 52-1-103 MCA

IMP: Sec. 41-3-1103 and 52-1-103 MCA

11.7.108 PLACEMENT IN RESIDENTIAL TREATMENT, found on pages 11-302 and 11-303 of the Administrative Rules of Montana.

AUTH: 41-3-1103 and 52-1-103, MCA; IMP: 41-3-1103 and 52-1-103, MCA

11.7.110 INVESTIGATION OF FINANCIAL STATUS, found on pages 11-303 and 11-304 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 52-1-103 MCA

IMP: Sec. 41-3-1103 and 52-1-103 MCA

11.7.111 PARENTAL CONTRIBUTION COMPUTATION, found on page 11-304 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 52-1-103 MCA

IMP: Sec. 41-3-1103 and 52-1-103 MCA

3. The rationale for the proposed changes and repeal of rules is as follows:

ARM 11.7.103: Because the rule on residential treatment and other references to residential treatment are proposed to be deleted, the definition should be deleted.

ARM 11.7.105: (1) is changed to clarify that generally, legal authority to place a child may not be established by administrative rules. The authority is statutory or pursuant to agreement with the parents or guardians who are empowered by law to delegate parental duties. (2) is changed by adding "accessible," and "available," in determining where a child may be placed. The requirement that the department consider the behaviors of the child, the family's situation and the community is deleted. The department intends that all relevant factors be considered in determining whether the placement is accessible, available and appropriate.

ARM 11.7.106: The rule is proposed to be re-arranged. The existing (4) becomes (2). The new (2) is the same as the old (4) except that "personality" is deleted in regard to the types of conflicts which will not support a placement pursuant to a voluntary placement agreement. There is no need to confine the subsection to conflicts arising from "personality," as opposed to other conflicts.

The new (3) is the old (2). Each part of (2) should be separated only by a semi-colon, until the last independent option, which must be preceded by an "or." See, e.g., Bill Drafting Manual, Montana Legislative Council, § 4-16, page 49 (1992). (b) has added language to clarify that the circumstances resulting in parental absence are unavoidable to the parents.

The old (3) is proposed to be (4), and the language of the parts of the new (4) is changed to clarify several points. First, "generally" is added to indicate that the provisions which follow do not prohibit placement agreements in all circumstances covered by (a) through (e). There may be exceptional circumstances calling for a placement agreement rather than court action. Second, (a), (b), and (e) are proposed to start with the terms "parents" and "guardians" so that the provisions more clearly set out that placement

agreements are not a substitute for court action where parents or guardians have perpetrated or allowed for severe abuse or neglect, or where proper grounds for abandonment exist. The change to (d) is for a preferred grammatical construction.

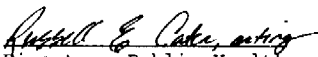
The rules to be repealed are repetitive of existing requirements imposed by state law or policy, or federal law and regulations. Repeal of these rules is pursuant to the mandate of the 1995 Montana Legislature in House Joint Resolution No. 5.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing 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 December 20, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to 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 December 20, 1995.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the number of individuals affected by rules covering permanency planning for children in foster care.

  
Rule Reviewer

  
Director, Public Health  
and Human Services

Certified to the Secretary of State November 13, 1995.

22-11/22/95

MAR Notice No. 37-5

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

In the matter of the	)	CORRECTED NOTICE OF ADOPTION OF
adoption of new rules I	)	NEW RULES PERTAINING TO THE
(ARM 6.6.5701) through	)	SUPERVISION, REHABILITATION
rule VIII (6.6.5708)	)	AND LIQUIDATION OF SELF-FUNDED
	)	MULTIPLE EMPLOYER WELFARE
	)	ARRANGEMENTS

1. On October 12, 1995, the State Auditor and Commissioner of Insurance published a notice at page 2134 of the Montana Administrative Register, Issue No. 19, of the adoption of the above-captioned rules pertaining to the supervision, rehabilitation and liquidation of self-funded multiple employer welfare arrangements.

2. The notice of adoption inadvertently assigned incorrect permanent rule numbers to Rules I through VIII. The correct permanent rule numbers read as follows:

RULE I (6.6.5701) SUPERVISION, REHABILITATION, AND LIQUIDATION

RULE II (6.6.5702) AUTHORITY IS LIMITED TO INSOLVENCY

RULE III (6.6.5703) INAPPLICABILITY OF THE LIFE AND HEALTH GUARANTY PROVISIONS

RULE IV (6.6.5704) APPLICATION OF THESE RULES ARE TO BE CONSISTENT WITH ERISA

RULE V (6.6.5705) DEFINITIONS

RULE VI (6.6.5706) COMMISSIONER'S SUMMARY ORDERS AND SUPERVISION PROCEEDINGS

RULE VII (6.6.5707) TERMINATION OF POLICY COVERAGE

RULE VIII (6.6.5708) PRIORITY OF DISTRIBUTION

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on December 31, 1995.

MARK O'KEEFE  
STATE AUDITOR AND COMMISSIONER OF INSURANCE

By:

  
Mark O'Keefe

  
Gary L. Spaeth, Rules Reviewer

Certified to the Secretary of State this 3rd day of November, 1995.

BEFORE THE BOARD OF DENTISTRY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT, REPEAL
of rules pertaining to applica- )	AND ADOPTION OF RULES
tions to convert inactive status) )	PERTAINING TO DENTISTS,
licenses, dental hygienists, and) )	DENTAL HYGIENISTS AND DENTAL
definitions; repeal of a rule )	AUXILIARIES
pertaining to use of auxiliary )	
personnel and dental hygienists;) )	
and adoption of a new rule )	
pertaining to dental auxiliaries)	

TO: All Interested Persons:

1. On July 27, 1995, the Board of Dentistry published a notice of proposed amendment, repeal and adoption of rules pertaining to dentists, dental hygienists and dental auxiliaries at page 1380, 1995 Montana Administrative Register, issue number 14.

2. The Board has amended ARM 8.16.408, 8.16.607 and 8.16.609, and repealed ARM 8.16.707 exactly as proposed. The board has amended ARM 8.16.602 and adopted new rule I (8.16.707A) as proposed, but with the following changes:

"8.16.602 FUNCTIONS FOR DENTAL HYGIENISTS (1) Allowable functions for the dental hygienist practicing under the supervision of a licensed dentist shall include all reversible dental procedures as allowed by the Montana Dental Practice Act Title 37, Chapter 4, MCA, and board rule, and subject to (3) below, in which:

(a) through (d) will remain the same as proposed.

~~(2) A dental hygienist will not be allowed to perform any nonreversible dental procedures except:~~

~~(a) making radiograph exposures;~~

~~(b) root planing and soft tissue curettage;~~

~~(c) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist; and~~

~~(d) administration of local anesthesia under the direct supervision of a licensed dentist, for which a board issued permit will be required.~~

(3) will remain the same as proposed, but will be renumbered (2).

(a) will remain the same as proposed.

(b) cutting hard or soft tissue (except root planing and soft tissue curettage) or extracting teeth;

(c) will remain the same as proposed.

(d) administering or dispensing any drugs, without the prior authorization and direct supervision of the supervising dentist;

(e) and (f) will remain the same as proposed.

(g) bonding or cementing orthodontic brackets, or orthodontic appliances that would provide activation upon cementation; ~~or,~~

~~(h) activating or adjusting any orthodontic appliance.~~

(4) through (6) will remain the same as proposed, but will

be renumbered (3) through (5).

(7) (6) It shall be the sole responsibility of the employing dentist to verify that a dental hygienist's qualifications are in compliance with the statutes and rules of the board of dentistry.

(8) (7) A practitioner dentist licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the practitioner's dentist's jurisdiction is used only by individuals competent to use it, as per ARM 16.40.603."

Auth: Sec. 37-1-131, 37-4-205, MCA; IMP, Sec. 37-4-401, 37-4-405, MCA

"8.28.707A FUNCTIONS FOR DENTAL AUXILIARIES

(1) Allowable functions for a dental auxiliary practicing under the supervision of a licensed dentist shall include all reversible dental procedures as allowed by the Montana Dental Practice Act board rule and subject to (4) below, in which:

(a) the auxiliary was instructed and qualified to perform in an accredited dental assisting program accredited by the commission on dental accreditation or its successor; or

(b) and (c) will remain the same as proposed.

(2) A dental auxiliary will not be allowed to perform any nonreversible dental procedure except the following dental procedures including, but not limited to:

(a) will remain the same as proposed.

(b) initiating, adjusting and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist.

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

(c) applying topical and anesthetic agents,

(d) through (4)(d) will remain the same as proposed.

(e) administering intravenous and intramuscular injections, nitrous oxide, or local anesthetic;

(f) through (j) will remain the same as proposed.

(k) using intraoral sonic/ultrasonic devices and abrasive air polishing devices (i.e. prophyljet);

(l) and (m) will remain the same as proposed, but will be renumbered (k) and (l).

(5) through (7) will remain the same as proposed.

(8) It shall be the sole responsibility of the employing dentist to verify that a dental auxiliary's qualifications are in compliance with the statutes and rules of the board of dentistry.

(9) A practitioner dentist licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the practitioner's dentist's jurisdiction is used only by individuals competent to use it, as per ARM 16.40.603. The allowable auxiliary expanded duty function of making radiographic exposures must be performed under the direct supervision of a licensed dentist. Only a licensed dentist is allowed to prescribe radiation dosage and exposure. The auxiliary shall have either graduated from an accredited program of dental assisting, dental hygiene, or dentistry accredited by the commission on dental accreditation or its successor, or have successfully completed a board-approved



course in radiology with a written and practical examination approved by the board, or have been certified in radiology in another state or ~~be a CDA have passed the CDA radiology component~~. A list of board-approved courses and examinations is on file in the board office. No dentist shall allow a dental auxiliary in the dentist's employ to expose radiographs without having first completed the didactic and clinical portions or the board-approved course. (A six-month grace period after November 23, 1995, the effective date of the amendment, will be allowed before the certificate will be required to allow the certificate to be obtained.)"

Auth: Sec. 37-4-205, 37-4-408, MCA; IMP, Sec. 37-4-408, MCA

3. Written comment was accepted through August 24, 1995. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Six comments were received stating ARM 8.16.408 conflicts with 37-4-307 (4) (b) which provides that a nonresident dentist or dental hygienist must be licensed in an inactive status, and the rule should not therefore be adopted to accommodate Federal employees who require an active license for employment.

RESPONSE: The Board noted that the statutory section referred to in the comments (37-4-307 (4) (b)) was repealed by the 1995 Legislature under HB 518, and therefore does not conflict with the proposed rule allowing Federal employees to maintain an active license, while not a resident of this state.

COMMENT NO. 2: Two comments were received stating ARM 8.16.602 (1) and new Rule I (1) should not refer to the "Montana Dental Practice Act," as that name is not given in the statute, but should instead refer to "Title 37, Chapter 4, MCA."

RESPONSE: The Board concurs with the comment and will amend the rules as shown to change the reference to "Title 37, Chapter 4, MCA."

COMMENT NO. 3: Two comments were received stating ARM 8.16.602 (3) should not unnecessarily repeat statutory language.

RESPONSE: The Board noted that inclusion of the language regarding prohibited functions of dental hygienists is necessary to avoid constant argument and misunderstanding among the various groups who do not always understand that both statute and rule must be consulted. The Board wishes to ensure that all correct information is conveyed to licensees in one rule, without requiring cross-reference to the statute and the possibility of prohibitions being overlooked.

COMMENT NO. 4: Five comments were received stating ARM 8.16.602 should not use the word "sole" in (7), nor should new Rule I use it in (8), as it is actually the Board's responsibility to assure that persons are properly licensed in

each profession. The word "sole" should be deleted in both places.

**RESPONSE:** The Board concurs with the comment and will amend the rules as shown to delete the word "sole" from each subsection.

**COMMENT NO. 5:** One comment was received stating the Board should not continue to allow dental assistants to perform a coronal polishing, as this is a component part of a prophylaxis, and since 37-4-408, MCA, does not allow a dental assistant to do a prophylaxis, they cannot do any part of a prophylaxis.

**RESPONSE:** The Board noted that the analogies to nursing performing part of surgery and unlicensed persons wiring a building are not correct. There are certain functions that are not part of the bigger functions. The rationale behind the comment is flawed, in that coronal polishing is not a prophylaxis, and this type of reasoning would also cut out many procedures in a dental office under the contention that all were part of dentistry restricted to licensed dentists. Finally, this state does define "prophylaxis" through rule, and the procedure is not therefore as ambiguous as in other states, to which the comment referred.

**COMMENT NO. 6:** One comment was received stating new Rule I (1) should not refer to the "Montana Dental Practice Act," or "Title 37, chapter 4, MCA," as no assistant functions are listed therein.

**RESPONSE:** The Board noted that 37-4-408, MCA, does refer to dental auxiliaries, and allow the Board to adopt rules defining the qualifications and outlining the tasks of any unlicensed auxiliary personnel, so the reference is appropriate, as amended, to read "Title 37, Chapter 4, MCA."

**COMMENT NO. 7:** One comment was received stating new Rule I (1) (a) should specifically state who accredits the dental assisting program.

**RESPONSE:** The Board concurs with the comment and will amend the rule as shown to add the language "accredited by the commission on dental accreditation or its successor."

**COMMENT NO. 8:** Seven comments were received stating new Rule I (9) should include a reference to qualifications for a dental assistant to make radiographic exposures in keeping with 37-14-301(1)(a)(iii), which requires the dental assistant to be certified by the Board of Dentistry as having passed an examination testing proficiency to administer x-rays.

**RESPONSE:** The Board noted that the proposed rule language already covers the necessity to pass a course and an examination. The Board does not see the need to change the existing language, as it already complies with the statute cited.

**COMMENT NO. 9:** One comment was received stating new Rule I (9) should state who accredits the program for dental auxiliaries.

**RESPONSE:** The Board concurs with the comment and will amend the rule as shown to include language stating "accredited by the commission on dental accreditation or its successor."

**COMMENT NO. 10:** One comment was received stating the proposed amendments and new rule should clearly state that a dental assistant cannot do a task that by statute or board rule is within the definition of dental hygiene.

**RESPONSE:** The Board notes that 37-4-402(2), MCA, already states that dental hygiene cannot be practiced without a dental hygienist license, and the Board does not see this as necessary statutory language to be repeated in Board rule.

**COMMENT NO. 11:** Seven comments were received stating new Rule I (4)(k) prohibiting the use of abrasive air polishing devices such as a prophyjet from use by dental auxiliaries should be allowed under the direct supervision of a licensed dentist. This procedure can be viewed as no more damaging to the periodontium than a rubber cup used in conjunction with abrasives.

**RESPONSE:** The Board concurs with the comments and will amend the rule as shown to delete that prohibition on dental auxiliaries, and allow use of the prophyjet under direct supervision of a licensed dentist.

**COMMENT NO. 12:** Eight comments were received stating ARM 8.16.609(2) on the definition of "prophylaxis" should not include any reference to sub-gingival. The definition should instead use the American Dental Association (ADA) and insurance industry definition of prophylaxis found in the CDT-2, copyright 1994 by the ADA, which defines the term as preventative treatment to prevent occurrence of disease, not the treatment of disease.

**RESPONSE:** The Board noted that certain other states are required by statute to use the ADA definition of "prophylaxis," but Montana statutes contain no such requirement. In addition, insurance code definitions are matched to procedures performed, rather than the other way around by attempting to match procedures to definitions. Different insurance companies use different definitions in any event, and the Board is not willing to rely on any one insurance definition. Finally, an insurance code description is not necessarily usable for Board rule or general use. No change to the proposed rule amendment is necessary.

**COMMENT NO. 13:** Five comments were received stating ARM 8.16.602(1) should not use the terms reversible and non-reversible at all, as there are no adequate definitions for either term, thus creating more confusion for the licensees and the public.

**RESPONSE:** The Board concurs with the comments and will amend the 8.16.602 and new Rule I as shown to delete the terms "reversible" and "non-reversible," and re-draft other language to retain the substance of the rule subsections without use of those terms. The Board noted that the language in 8.16.602(2)

is not necessary at all, as this language is contained in statute at 37-4-401(1) through (4), MCA.

COMMENT NO. 14: Seven comments were received stating the Board should list all functions allowable to dental hygienists, instead of "not allowed" as stated in ARM 8.16.602, as this would automatically restrict these duties to hygienists as opposed to auxiliaries.

RESPONSE: The Board is concerned that any list of allowable functions will be interpreted as conclusive, and will be read by licensees and the public to automatically restrict the functions listed from being performed by anyone else. The Board feels this system and the present proposed rule language includes a clear definition of functions prohibited, and those allowed elsewhere in the statutes and rules, while not excluding other persons authorized to perform dental work.

COMMENT NO. 15: Four comments were received stating ARM 8.16.602(3) root planing and curettage are considered to be cutting of hard and soft tissue, and this portion of the rule should be clarified so as not to conflict with the statute.

RESPONSE: The Board does not feel the rule language conflicts with the statute, but will amend the language as shown to clarify its intent by use of the statutory language.

COMMENT NO. 16: Four comments were received stating ARM 8.16.602(4) appears to be a list of employment responsibilities of a dentist, and should not therefore be listed under dental hygienist rules.

RESPONSE: The Board does not agree with the comment, and notes that the intent was to group all language dealing with dental hygienists in one place, so no other restrictions or requirements are missed, and the licensees later claim they were unaware of requirements contained elsewhere.

COMMENT NO. 17: Three comments were received stating new Rule I should contain a complete list of allowable dental assisting duties, such as the ADA list outlining duties, education, training and certification.

RESPONSE: The Board noted it is not possible to create a completely comprehensive list; something is always left off such attempts. These lists also seem as excluding others from performing these duties, when their license may actually allow them to do so. The Board additionally noted that the ADA information referenced in the comment was actually a survey which simply outlined which states have such a list. This survey was a guideline on which states require education, not an ADA requirement.

COMMENT NO. 18: Three comments were received stating new Rule I (3) should not allow dental assistants to perform topical anesthetic, remove sutures, polish amalgams, coronal polish and administer or dispense drugs with the dentist's authorization, unless the assistant has been formally educated and trained in the procedures.

**RESPONSE:** The Board does not agree with the comment and notes the licensed dentists are capable of taking the time and making the effort to educate dental assistants in these areas.

**COMMENT NO. 19:** One comment was received stating ARM 8.16.602(3) should read "duties prohibited to dental hygienists as per 37-4-401, MCA." The proposed language in new Rule I should reflect this as well.

**RESPONSE:** The Board intended to make the dental hygiene and dental auxiliary rules parallel in structure, and it is therefore more clear to list the duties as proposed. No change is therefore necessary.

**COMMENT NO. 20:** Two comments were received stating ARM 8.16.602(8) should state the "practitioner" is a dentist, so as not to be confused with the hygienist.

**RESPONSE:** The Board concurs with the comment and will amend the rule as shown to change the word "practitioner" to "dentist."

**COMMENT NO. 21:** Three comments were received stating new Rule I should not use the phrase "instructed and trained by a licensed dentist," as that opens the door to allow just about anything the dentist chooses to delegate.

**RESPONSE:** The Board notes the phrase as used in the rule is restricted by the addition of language stating "subject to (4) below," which was purposefully done to add some restriction to the dentist training discretion. The phrase is also useful in that it allows flexibility in each dental practice to identify what areas are used often enough to need instruction and training by the dentist as pertains to his/her practice alone.

**COMMENT NO. 22:** Three comments were received stating new Rule I shouldn't allow auxiliaries to perform duties learned in continuing education (CE) courses approved for dentists and hygienists, as the Board does not approve CE courses for auxiliaries.

**RESPONSE:** See response to comment number 21 above.

**COMMENT NO. 23:** Three comments were received stating new Rule I should not allow a dental assistant to apply anesthetic agents, especially as the rule language appears to include general and local, both injectable and inhalants.

**RESPONSE:** The Board noted a typographical error occurred in the rule notice, and will amend the rule as shown above to delete the word "and" in the sentence. Additionally, the Board noted topical anesthetics are available over-the-counter, and are thus deemed safe for the public to use.

**COMMENT NO. 24:** One comment was received stating new Rule I should not allow dental assistants to use high speed handpieces.

**RESPONSE:** The Board noted that the intent of the rule as proposed was not to address specific devices used in certain offices, as use of specific equipment differs widely from

office to office, and new technology is constantly adding to equipment available. Instead, the Board discussed allowing flexibility in the rules to meet each office's needs, and decided the potential for problems in this area is small, and the Board has determined it is the dentist's responsibility to ensure adequate training is provided with all equipment.

COMMENT NO. 25: One comment was received stating new Rule I (4)(e) prohibiting the administration of local anesthetic conflicts with (3)(c) which allows auxiliaries to apply topical anesthetics.

RESPONSE: See response to Comment No. 23 above.

COMMENT NO. 26: One comment was received stating new Rule I (4)(1) should prohibit periodontal assessments from being performed by dental auxiliaries, as they have no educational preparation and testing in this area.

RESPONSE: The Board does not agree with the comment because an assistant cannot do probing, and no probing is possible without an assessment, so the inclusion of "periodontal assessments" is not necessary.

COMMENT NO. 27: Four comments were received in support of new Rule I and specific sections of the rule.

RESPONSE: The Board acknowledges receipt of the comments in support.

COMMENT NO. 28: Four comments were received stating new Rule I (3) shouldn't allow dental assistants to place pit and fissure sealants, as they have no formal training in this area.

RESPONSE: The Board does not concur with the comment. See response to Comment No. 24 above.

COMMENT NO. 29: Seventeen comments were received stating ARM 8.16.602 (3)(h) should not prohibit the adjusting of an orthodontic appliance by a dental hygienist, as this would prohibit procedures that have been done successfully for years.

RESPONSE: The Board concurs with the comments and will amend the rule as shown to delete this subsection from the list of prohibited tasks.

COMMENT NO. 30: One comment was received stating ARM 8.16.602 should define the "Montana Dental Practice Act," and list the scope of practice for dental hygiene.

RESPONSE: See response to Comment No. 14 above; also, the Board has compiled a list of duties in stating the duties are those for which a dental hygienist has been trained.

COMMENT NO. 31: One comment was received stating ARM 8.16.602 should not include (1)(b) - (d), on allowable functions for hygienists including those for which she is trained.

RESPONSE: The Board noted the rule is phrased as it is specifically to allow for flexibility among different dental offices in the state. Training for hygienists differs from

school to school, so the rule will allow for expansion as needed and proper with further training.

COMMENT NO. 32: One comment was received stating ARM 8.16.602(5) on a dentist's responsibilities to supervise hygienists should be a "given," and is not necessary in the rule.

RESPONSE: The Board feels the subsection is necessary for informing the dentist and other licensees of their responsibilities, and breach of which could be grounds for disciplinary action. Knowledge of these responsibilities is not always a "given."

COMMENT NO. 33: One comment was received stating new Rule I should add the word "direct" to (1) before the word "supervision."

RESPONSE: The Board does not agree with the comment, feeling it is not necessary, as 37-4-404, MCA, already states this requirement.

COMMENT NO. 34: Three comments were received stating new Rule I should expand on dental assisting certification (CDA) to meet national guidelines in this area.

RESPONSE: The Board concurs with the comments and will amend new Rule I (9) as shown to expand on the training and record-keeping required in this area.

COMMENT NO. 35: Two comments were received stating new Rule I should not include making radiographic exposures as an expanded function of dental auxiliaries.

RESPONSE: The Board does not agree with the comment and has already amended the rule to expand on the training and certification needed for auxiliaries to undertake this procedure. See response to Comment No. 9 above.

COMMENT NO. 36: One comment was received stating new Rule I (2)(j-m) on placing sulcular materials, periodontal probing and prophylaxis should require training beyond on-the-job training, as these procedures require skill and knowledge, so the public knows these services are performed by qualified personnel.

RESPONSE: See response to Comment No. 18 above.

COMMENT NO. 37: Two comments were received stating new Rule I (4)(d) should delete the word "administer" under administering any drug, as an auxiliary would not be expected to administer a drug.

RESPONSE: The Board does not agree and feel the proposed language is appropriate to allow for the many scenarios which may occur in a variety of dental offices.

COMMENT NO. 38: One comment was received stating the renewal fee for dental hygienists should not stay at \$100.00, but should be returned to \$50.00.

RESPONSE: The Board acknowledged receipt of the comment, but noted this proposed rule notice did not address the issue

of fees, and no response to the comment was therefore appropriate.

COMMENT NO. 39: Six comments were received stating new Rule I should allow assistants to place the masks on patients, and turn on or adjust the machines. It would be inconvenient and unnecessary to require the operator to apply the mask and break scrub to adjust the nitrous oxide and oxygen flow rates.

RESPONSE: The Board concurs with the comments and will amend the rule as shown to state the auxiliary may initiate (place the mask), adjust and monitor the patient, after the nitrous oxide has been prescribed and administered by a licensed dentist.

COMMENT NO. 40: One comment was received stating a list of procedures taught in dental hygiene schools should be provided to all dentists who will be responsible for delegation of tasks, and should be provided to the consumer as well. The procedures could also be listed in the rules.

RESPONSE: The Board does not agree with the comment, and noted that no such list is available. See response to Comment No. 31 above.

COMMENT NO. 41: One comment was received stating ARM 8.16.602 (3)(d) on hygienists administering or dispensing drugs is confusing, as it contains a double negative creating doubt as to whether the hygienist may administer nitrous oxide.

RESPONSE: The Board does not agree that the language is confusing, but will amend the rule as shown to include the phrase "and direct supervision" to address this concern.

COMMENT NO. 42: Four comments were received stating new Rule I should not allow coronal polishing by a dental assistant, without an evaluation of the patient at some time by a dentist or hygienist.

RESPONSE: The Board noted that coronal polishing, and all dental auxiliaries tasks, may only be performed under the direct supervision of a dentist. Therefore, the necessary evaluation will already be in place.

COMMENT NO. 43: Two comments were received stating the proposed rules should not attempt to tie the number of staff members a dentist can adequately supervise to a number alone, as there are many other variables involved. The individual dentist should be free to determine the number of auxiliaries they can supervise without compromising patient care.


RESPONSE: The Board noted that the latitude to determine an appropriate number of staff persons is already granted in ARM 8.16.602(6), as currently proposed.

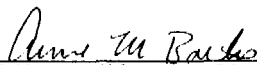
COMMENT NO. 44: One comment was received stating new Rule I (9) which requires a test by auxiliaries before making radiographic exposures should allow a 90 day grace period for all dental offices to come into compliance, since many existing offices already have auxiliaries in this practice.



**RESPONSE:** The Board concurs with the comment and will allow a six month training in the office before the exam must be completed and the certification obtained.

BOARD OF DENTISTRY  
CAROL SCRANTON, DDS, CHAIRMAN

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

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 13, 1995.

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

In the matter of the amendment,	)	NOTICE OF AMENDMENT, REPEAL
repeal and adoption of rules	)	AND ADOPTION OF RULES
pertaining to physician,	)	PERTAINING TO PHYSICIANS,
acupuncturist, emergency medical	)	ACUPUNCTURISTS, EMERGENCY
technician, physician assistant-	)	MEDICAL TECHNICIANS,
certified, podiatrist, and	)	PHYSICIAN ASSISTANTS-
nutritionist licensure	)	CERTIFIED, PODIATRISTS AND
	)	NUTRITIONISTS

TO: All Interested Persons:

1. On September 14, 1995, the Board of Medical Examiners published a notice of public hearing on the proposed amendment, repeal and adoption of rules at page 1736, 1995 Montana Administrative Register, issue number 17. The hearing was held on October 5, 1995, at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

2. The Board has amended, repealed and adopted the rules exactly as proposed. The new rules will be numbered as follows: I (8.28.422), II (8.28.510), III (8.28.910), IV (8.28.1521), V (8.28.1703), VI (8.28.1808), VII (8.28.423), VIII (8.28.911), IX (8.28.1522), X (8.28.1704) and XI (8.28.1705).

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

Comments regarding 8.28.508 and new rules VII, VIII, IX and X

**COMMENT:** The Montana Legislative Council commented that the provision "Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct" in the definitions of unprofessional conduct proposed for all the professions regulated by the Board of Medical Examiners (1) creates a whole category of undefined unprofessional conduct for which a licensee may be disciplined, contrary to the language of 37-1-319(5), which allows a board to adopt rules defining unprofessional conduct, in addition to the statutory definitions contained in 37-1-316, MCA; and (2) may be unconstitutionally vague, and therefore a denial of due process.

**RESPONSE:** In 1885, the Montana Legislature granted the Board of Medical Examiners authority to discipline licensed physicians: "The Board, with the concurrence of four members thereof, may revoke a certificate for unprofessional, dishonorable or immoral conduct." 1885 Montana Political Code, Part III, Title I, Section 603, at page 81. This language was retained, without statutory definition of the phrase "unprofessional conduct," until 1969. 1907 Montana Political Code, Page III, Title VII, Section 1588; 1921 Montana Political Code, Vol. 1, Section 3120, at page 1160; 1947 Revised Codes of Montana, Vol. 4, Sections 66-1004(3) at page 233.

In 1969, the Montana Legislature defined "unprofessional  
Montana Administrative Register 22-11/22/95

conduct" in statute (Section 66-1037, RCM), identifying sixteen specific kinds of prohibited conduct, and one general definition: "Any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct." 66-1037(q), RCM. Apparently the Legislature intended not to paint itself (or the public the Board was obligated to protect) into a corner of overly specific definitions. Sufficient leeway was built into the 1969 definitions to allow the Board to respond to the unusual with public-protecting discipline. In any action based on this general definition, the Board would have to establish by expert witness that the conduct at issue was unprofessional conduct "in fact."

This general definition of unprofessional conduct in fact has been retained by the Legislature, word for word, for twenty-seven years, through twelve legislative sessions, one constitutional convention and numerous amendments to the Medical Practice Act, now Title 37, Chapter 3, MCA; Section 37-3-322(31), MCA. It was repealed by the 1995 Legislature, not because it was "void for vagueness," but only as part of the wholesale repeal of all "unprofessional conduct" statutes governing the thirty-nine professions administered by the Professional and Occupational Licensing Bureau, in connection with the Uniform Professional Licensing and Regulations Procedures Act (House Bill 518).

To the best of the Board's knowledge, this general definition has never been criticized or overturned by a Montana court on the ground that it was unconstitutionally vague, that it failed to put the licensee on notice of what conduct was required of him in the exercise of his professional privileges, or thereby denied the licensee due process. The general definition remains useful for its original purpose: it protects the public against conduct which does not fall neatly into one of the more specific categories, but which nonetheless (a) is well known to all members of the profession and public alike, for example, failing to keep adequate medical records, failing to respond to the emergency room when the physician is "on call," et cetera, and (b) can readily be established in any proceeding by expert testimony.

For the same reasons recognized by the 1969 Legislature and all those since then, the Board finds that the public is better protected by continuing to retain in law the general definition, "unprofessional conduct in fact."

#### Comments regarding 8.28.1806

**COMMENT:** The Montana Podiatric Medical Association, and one podiatrist commented that there should be an "inactive" or "retired" license for podiatrists, with a renewal fee of \$60.00, comparable to the renewal fee charged physicians for such status. The person commented that the \$150.00 renewal fee was discriminatory.

**RESPONSE:** Section 37-6-304, MCA, provides for only two license categories, a "registered podiatrist's license" or a "temporary podiatrist's license." Since the statute does not provide for the suggested license categories, it has not been within the Board's authority to establish such "inactive" or

"retired" categories or impose renewal fees therefor. The Board believes amending legislation would be required.

Comments regarding new rule XI

COMMENT: The Montana Podiatric Medical Association commented that the term "ankle surgeries" as used in Proposed New Rule XI(1)(c)(ii) be amended to "reconstructive rearfoot/ankle surgeries," as the term is used by the American Board of Podiatric Surgery.

RESPONSE: The 1995 Legislature amended the scope of practice of podiatrists (Section 37-6-102(MCA)) to include the ankle, and provided that the Board establish criteria for certification to perform "ankle surgery." Inasmuch as the statutes use the term "ankle surgery," rather than "rearfoot/ankle surgery," the Board believes that adhering to the Legislature's phraseology avoids confusion over precisely what is allowed.

COMMENT: The Montana Podiatric Medical Association commented that the number of cases to be submitted for review by the Board in establishing qualification for ankle surgery certification should be 15, rather than 25.

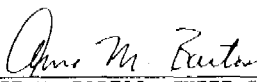
RESPONSE: Various numbers were proposed to the Board, and after deliberation the Board determined that requiring 25 ankle surgeries was not unduly onerous, and requiring fewer would not serve to protect the public so well.

COMMENT: The Montana Podiatric Medical Association commented that the Board should adopt an additional subsection to Proposed New Rule XI, reading: "submits proof satisfactory to the board of being qualified by other education, training, and experience."

RESPONSE: While such a rule might very well serve to protect the public, and enhance availability of podiatric medical services, the proposed amendment was not published in the Notice of Public Hearing, etc., herein, MAR Notice No. 8-28-43. Accordingly, the public has not had the statutorily required opportunity to comment on that proposal, and adoption at this time might be in violation of Title 2, Chapter 4, Part 3. Accordingly, the Board declines to adopt the suggested amendment at this time, but upon receipt of a timely petition, pursuant to 2-4-315, MCA, will reconsider the proposal.

BOARD OF MEDICAL EXAMINERS  
JAMES BONNET, JR., M.D.  
PRESIDENT

  
ANNIE M. BARTOS  
RULE REVIEWER

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

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF RULES  
of rules pertaining to examina- ) PERTAINING TO THE PRACTICE  
tions, fees, renewals, tempor- ) OF PHYSICAL THERAPY  
ary licenses, licensure by )  
endorsement, exemptions, )  
foreign-trained applicants, )  
unprofessional conduct and )  
disciplinary actions )

TO: All Interested Persons:

1. On September 28, 1995, the Board of Physical Therapy Examiners published a notice of proposed amendment of rules pertaining to the practice of physical therapy at page 1837, 1995 Montana Administrative Register, issue number 18.

2. The Board has amended ARM 8.42.402 through 8.42.404, 8.42.406 and 8.42.409 through 8.42.413 exactly as proposed. The Board has amended ARM 8.42.405 as proposed, but with the following changes:

"8.42.405 TEMPORARY LICENSES (1) will remain the same as proposed.

(2) Applicants for licensure by examination may be issued a temporary license. The temporary license shall identify the licensed physical therapist ~~or physical therapist assistant~~ who shall be responsible for providing direct supervision. After issuance of the temporary license, the applicant must sit for the next scheduled examination. The temporary license shall be valid until the board makes its final determination on licensure. Only one temporary license will be issued per applicant.

(3) If the applicant fails the NPTE ~~or NPTAB~~, the applicant may sit for the next scheduled examination. Temporary licenses will not be extended while the applicant is waiting to retake the NPTE ~~or NPTAB~~ examination.

(4) Temporary licenses will not be issued to applicants for a physical therapist assistant license."

Auth: Sec. 37-1-131, 37-11-201, MCA; ~~IMP~~, Sec. 37-11-309, MCA

3. Written comment was accepted through October 26, 1995. The Board has thoroughly considered all comments received. Those comments, and the Board's responses thereto are as follows:

COMMENT NO. 1: One comment was received stating the proposed rules should allow a person with college credits and experience working in the physical therapy field for a specified number of years to "challenge" the Board and not have to have attended a Board-approved accredited school.

RESPONSE: The Board noted that the statutes passed by the Legislature did not give the Board authority to allow licensure of physical therapist assistants who had obtained college

credits and experience. Instead, the Legislature specifically passed statutes that require graduation from an accredited physical therapist assistant curriculum. The "grandfathering" method was considered by both the Montana Physical Therapy Association and the Board in many discussions prior to the legislation being brought, and both decided grandfathering was inappropriate. The Legislature has determined that graduation is required, and the Board may not deviate from that authority or waive it in any way.

COMMENT NO. 2: Three comments were received stating the proposed amendment to ARM 8.52.405 which authorizes a temporary license for physical therapist assistants should not be allowed, as this is a problem area which will not assure the public that physical therapist assistants are properly educated and performing their proper roles. Additionally, one comment stated this proposal was outside the Board's rulemaking authority.

RESPONSE: The Board concurs with the comments and will amend the rule as shown to delete the reference to temporary licenses for physical therapist assistants, and will instead insert a subsection specifically stating temporaries are not available to physical therapist assistant applicants. The Board did not concur with the comment that this was beyond the Board's rulemaking authority, however, as §37-1-305, MCA, passed by the 1995 Legislature clearly grants authority to issue temporary practice permits to all licensing boards. The Board has chosen not to exercise this authority in the matter of physical therapist assistant applicants.

COMMENT NO. 3: One comment was received stating ARM 8.42.402 (6) regarding the strikeout of language on when the exam candidates would be given the jurisprudence exam was not clear, and may be interpreted as not requiring a jurisprudence exam for exam candidates.

RESPONSE: The Board is not deleting the requirement that all applicants (both exam and endorsement) take and pass the Montana jurisprudence exam, as that requirement is contained elsewhere in the rules. Instead, the Board is deleting the requirement that the jurisprudence exam be given at the same time as the NPTE exam, as the jurisprudence exam is an open-book exam, and can be sent to candidates for completion at their convenience. Candidates taking the jurisprudence at the same time as the NPTE exam sometimes created an unnecessary disturbance by rattling papers, etc. while others were trying to concentrate on the NPTE.

COMMENT NO. 4: One comment was received stating 8.42.406 (1) on scoring of the NPTE did not clarify the scoring system that would be used.

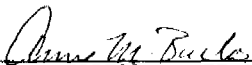
RESPONSE: The Board noted that the NPTE scoring system is the same as for the NPTE, and is conducted by the same examination service. The NPTE differs in the total number of questions, and other specifics, but the scoring formula remains the same for both exams. No change to the rule language is therefore necessary.

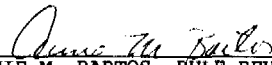
COMMENT NO. 5: One comment was received stating 8.42.405 on temporary licenses should not allow a physical therapist assistant to be supervising another assistant who is applying for a license and is operating under a temporary license.

RESPONSE: See response to Comment No. 2, above, where the Board has amended the rule to not allow the temporary license for physical therapist assistants. Therefore, no physical therapist assistant with a temporary license will be supervising anyone. The Board further noted that strict language on the appropriate types and amounts of supervision is already contained in 37-11-105, MCA, and was not therefore repeated in the rules. This statutory language mandates that a physical therapist assistant may only work under the supervision of a licensed physical therapist, and the assistant may only supervise one full-time aide.

BOARD OF PHYSICAL THERAPY  
EXAMINERS  
CHARLOTTE FANNON, P.T., CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 13, 1995.

BEFORE THE WEIGHTS AND MEASURES BUREAU  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rules pertaining to fees, ) 8.77.107 LICENSE FEE  
commodities, random inspection ) SCHEDULE FOR WEIGHING AND  
of packages and petroleum ) MEASURING DEVICES, 8.77.  
products, and the repeal of a ) 201 NIST HANDBOOK 130 -  
rule pertaining to metric pack- ) UNIFORM LAWS AND REGULA-  
aging of fluid milk products ) TIONS, 8.77.203 RANDOM  
 ) INSPECTION OF PACKAGES  
 ) AND 8.77.302 NIST HANDBOOK  
 ) 130 - UNIFORM LAWS AND  
 ) REGULATIONS, AND THE REPEAL  
 ) OF 8.77.202 METRIC PACKAGING  
 ) OF FLUID MILK PRODUCTS

TO: All Interested Persons:

1. On September 28, 1995, the Weights and Measures Bureau published a notice of proposed amendment and repeal of the above-stated rules at page 1845, 1995 Montana Administrative Register, issue number 18.

2. The Bureau has amended ARM 8.77.107 and 8.77.203, and repealed ARM 8.77.202 exactly as proposed. The Bureau has amended 8.77.201 and 8.77.302 as proposed, but with the following changes:

"8.77.201 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS (1) The bureau of weights and measures with the advice and counsel of the national institute of standards and technology hereby adopts the regulations to provide accurate and adequate information on packages as to the identity and quantity of contents so that purchasers can make price and quantity comparison. The regulations are published in the National Institute of Standards and Technology Handbook 130, Part IV, A. Uniform Packaging and Labeling Regulation, B. Uniform Regulation for the Method of Sale of Commodities, C. Uniform Unit Pricing Regulation, 1995 Edition and ~~supplements thereto, or in any publication revising or superseding this edition of Handbook 130.~~ A copy of Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001."

(2) will remain the same as proposed."

Auth: Sec. 30-12-202, MCA; ~~IME~~, Sec. 30-12-202, MCA

"8.77.302 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS (1) The weights and measures bureau with the advice and counsel of the national institute of standards and technology hereby adopts the regulations concerning fuel specifications and gasoline-oxygenate blends. The regulations are published in the National Institute of Standards and Technology Handbook 130 Part IV, G. Uniform Regulation of Engine Fuels, Petroleum Products, and Automotive Lubricants,



1996 Edition and supplements thereto, or in any publication revising or superseding this edition of Handbook 130. A copy of Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001."

Auth: Sec. 82-15-102, MCA; IMP, Sec. 82-15-103, MCA

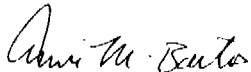
3. The Bureau has thoroughly considered all comments and testimony received. Those comments and the Bureau's responses thereto follow:

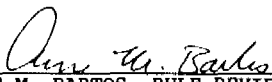
COMMENT: Staff of the Administrative Code Committee suggested that the language "supplements thereto, or in any publication revising or superseding this edition of Handbook 130" be deleted from ARM 8.77.201 and 8.77.302, as it violates 2-4-307(3), MCA. Staff of the ACC suggested that if future changes are made to the handbook, those changes should be adopted and circulated in a notice of adoption.

RESPONSE: The Bureau concurred with the suggestions and has amended the rules as shown above.

BUREAU OF WEIGHTS AND MEASURES  
JACK KANE, BUREAU CHIEF

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 13, 1995.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
rule 16.45.402 and new rule I	)	OF RULE AND ADOPTION
establishing minimum standards	)	OF NEW RULE I
for underground piping	)	

(Underground Storage Tanks)

To: All Interested Persons

1. On June 29, 1995, the department published notice of the proposed amendment and adoption of the above-captioned rules at page 1081 of the Montana Administrative Register, Issue No. 12.

2. The rules were amended and adopted as proposed, with the following changes (new material is underlined; material to be deleted is interlined):

16.45.402 (17.56.402) REQUIREMENTS FOR PETROLEUM UST SYSTEMS Same as proposed.

RULE I (17.56.203) ADDITIONAL PERFORMANCE STANDARDS FOR NEW UNDERGROUND PIPING CONNECTED TO ABOVEGROUND TANKS OR TO UNDERGROUND TANKS NOT LOCATED AT A FARM OR RESIDENCE WITH A CAPACITY OF 1100 GALLONS OR LESS USED TO STORE HEATING OIL Remains the same.

3. The department has thoroughly considered all comments received. Those comments and department responses follow:

**COMMENT:** William R. Uffelman, Divisional Vice-President, Government Affairs, of Browning-Ferris Industries supported the promulgation of the proposed rule. Gail Abercrombie, Executive Director of the Montana Petroleum Association noted that she distributed copies of the proposed amendment and new rule to members but had not received any comments as of the hearing date.

**RESPONSE:** After consideration of the comments received on the proposed amendments and new rule I, the Department has amended ARM 16.45.402 as proposed and has adopted new rule I (ARM 17.56.203) as proposed except that the word "NOT" located in the title of new rule I was deleted because this word was inadvertently included in the title.

Reviewed by:

*John F. Ritz*

*Mark A. Simonich*  
MARK A. SIMONICH, Director

Certified to the Secretary of State November 13, 1995.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
rule 16.45.1101 and adoption of ) AND ADOPTION OF RULE  
new rule I establishing )  
minimum standards for double- )  
walled UST systems. )  
  
(Underground Storage  
Tanks)

To: All Interested Persons

1. On June 29, 1995, the department published notice of the proposed amendment and adoption of the above-captioned rules at page 1084 of the 1995 Montana Administrative Register, Issue No. 12.

2. The rules were amended and adopted as proposed, with the following changes (new material is underlined; material to be deleted is interlined):

16.45.1101 (17.56.1101) DEFINITIONS In addition to the definitions contained in 75-11-302, MCA, for the purposes of this subchapter, the following terms have the meanings given in this section:

(1)-(9) Same as proposed.

(10) "Liner" means an impervious material used as a method of secondary containment to prevent a release of any petroleum or petroleum products from a petroleum storage tank system. The defined term does not include interior tank linings or exterior tank coatings.

(11)-(18) Same as proposed.

RULE I (17.56.1104) DESIGN, CONSTRUCTION, AND INSTALLATION STANDARDS FOR ALL DOUBLE-WALLED PETROLEUM STORAGE TANK SYSTEMS Same as proposed.

3. The department thoroughly considered all comments received. Those comments and department responses follow:

**COMMENT:** Gregory A. Van Horssen, attorney for the Petroleum Tank Release Compensation Board, commented upon the difference between the definitions of "compatible", "liner", and "secondary containment" contained in the proposed amendment and those contained in the proposed rules for aboveground storage tanks. Mr. Van Horssen indicated the Petroleum Tank Release Compensation Board's desire, to the extent possible, to have these definitions identical.

**RESPONSE:** The comment about making the definitions of "compatible" and "liner" identical is well received. The definition of "compatible" will remain unchanged in the amendment of ARM 16.45.1101, but will be changed in the definitions associated with the proposed rules for aboveground storage tanks to mirror

that definition.

The definition of "liner" in the amendment of ARM 16.45.1101 will be changed to make it identical with the definition of "liner" in the proposed rules for aboveground storage tanks.

The definition of "secondary containment" will remain unchanged in the amendment of ARM 16.45.1101 and in the proposed rules for aboveground storage tanks. The physical differences of the two types of tanks and the additional legal requirements of the Uniform Fire Code mandate that underground storage tanks and aboveground storage tanks have different definitions of "secondary containment".

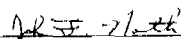
**COMMENT:** William R. Uffelman, Divisional Vice-President, Government Affairs, of Browning-Ferris Industries supported the promulgation of the proposed rule. Gail Abercrombie, Executive Director of the Montana Petroleum Association noted that she distributed copies of the proposed amendment and new rule to members but had not received any comments as of the hearing date.

**RESPONSE:** After consideration of the comments received on the proposed amendments and new rule I, the Department has amended ARM 16.45.1101 as proposed except for the change to the definition of "liner", and has adopted new rule I (ARM 17.56.1104) as proposed.

  
MARK/A. SIMONICH, Director

Certified to the Secretary of State November 13, 1995.

Reviewed by:

  
John F. North, Rule Reviewer

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION
new rules I-VII establishing	)	OF NEW RULES I-VII
minimum standards for aboveground	)	
double-walled petroleum	)	
storage tank systems.	)	

(Aboveground Tanks)

To: All Interested Persons

1. On June 29, 1995, the department published notice of the proposed adoption of the above-captioned rules at page 1087 of the Montana Administrative Register, Issue No. 12.

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

RULE I (17.57.101) PURPOSE Same as proposed.

AUTH: 75-11-319, MCA; IMP: 75-11-308, 75-11-319, MCA

RULE II (17.57.102) APPLICABILITY Same as proposed.

AUTH: 75-11-319, MCA IMP: 75-11-308, 75-11-319, MCA

RULE III (17.57.103) DEFINITIONS In addition to the definitions contained in 75-11-302, MCA, the following words, phrases, or terms shall have the following meaning in this chapter, unless the context indicates otherwise:

(1) "Aboveground storage tank system" or "AST" means any one or a combination of tanks used to contain an accumulation of petroleum or petroleum product that is 90% or more above the soil surface. AST includes integral piping located aboveground and petroleum storage tanks located in an enclosed liquid-tight and vapor-tight vault or special enclosure designed and constructed in accordance with the uniform fire code liquid/vapor-tight vault or "special enclosure" designed and constructed in accordance with section 5202.3.6 of the Uniform Fire Code or a "listed" fire protected aboveground storage tank assembly which complies with Uniform Fire Code Appendix II-F.

(2) Same as proposed.

(3) ~~"Compatible", in the case of a substance in a petroleum storage tank system, means capable of maintaining that substance's physical and chemical properties upon contact with one or more other substances for the design life of the petroleum storage tank system under conditions likely to be encountered by the petroleum storage tank system~~ means certified as adequate and safe for the storage and delivery of petroleum products by a nationally recognized independent laboratory or organization competent to provide such certification.

(4)-(10) Same as proposed.

(11) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum product and that is:

(a) Same as proposed.  
(b) an aboveground storage tank situated inside a vault or special enclosure as set forth in section ~~79-902(e)~~ 5202.3.6 and Appendix II-F of the Uniform Fire Code;

(c)-(d) Same as proposed.

(12) "Pipe" means any hollow cylindrical or tubular conveyance constructed of approved non-earthen materials (e.g., cathodically protected metal, plastic or fiberglass) through which petroleum and petroleum product is designed to flow. No nonmetallic pipe shall be installed aboveground unless provided with 2 hours of fire protection.

(13)-(15) Same as proposed.

(16) "Shop-fabricated storage tank" means a listed storage tank constructed at the tank manufacturer's plant according to approved standards and accepted engineering principles and transported to the facility for installation.

(17)-(18) Same as proposed.

AUTH: 75-11-319, MCA; IMP: 75-11-308, 75-11-319, MCA

RULE IV (17.57.104) STANDARDS INCORPORATED BY REFERENCE

(1) Same as proposed.

(2)(a)-(e) Same as proposed.

(f) Uniform fire code (UFC), ~~1991~~ the most recent edition, adopted by the fire prevention and investigation bureau.

(g) Same as proposed.

(h) Uniform mechanical code, ~~1991~~ the most recent edition, adopted by the department of commerce, building codes bureau.

(3) Same as proposed.

AUTH: 75-11-319, MCA IMP: 75-11-308, 75-11-319, MCA

RULE V (17.57.105) DESIGN, CONSTRUCTION AND INSTALLATION STANDARDS FOR ALL ABOVEGROUND DOUBLE-WALLED PETROLEUM STORAGE TANK SYSTEMS

(1) All aboveground double-walled petroleum storage tank systems owned or operated by persons that want to qualify for a reduced deductible allowed by the statutes and rules governing the Montana petroleum tank release cleanup fund must be designed and constructed in accordance with the following standards:

(a) Aboveground petroleum storage tank systems shall consist of either shop-fabricated double-walled storage tanks or petroleum storage tanks installed in a vault or special enclosure as required by UFC Sec. ~~79-902(e)~~ 5202.3.6 and Appendix II-F (these assemblies may be referred to in this rule as "protected systems"), and any integral double-walled piping shall meet the requirements of this section at the time of construction and installation.

(b) Same as proposed.

(c) In addition to secondary containment as required by (1)(i) of this rule, petroleum storage tanks must be designed and constructed to meet any of the following standards:

(i) Same as proposed.

(ii) aboveground storage tanks constructed of materials other than steel ~~may~~ must not be installed unless such materi-

als have received the written approval of the department of justice fire prevention and investigation bureau. Where required (e.g., "Motor Vehicle Fuel-Dispensing Stations"), protected systems must be listed in UL 2085, UFC Standard 79-7, the southwest research institute (SwRI), or any other testing agency approved by the state fire marshal.

(d) Tanks must be located and supported in accordance with the requirements of uniform fire code Articles 52, 79 and Appendix II-F.

(e)-(f) Same as proposed.

(g) All integral piping, including bulk product piping and hydrant piping, must be constructed with secondary containment as provided in (1)(i) of this rule. All integral piping systems must be constructed in accordance with accepted engineering principles and uniform fire code Articles 52, 79 and Appendix II-F, division VII. Integral piping must be constructed of one or more of the following materials and in accordance with the following standards:

(i) Same as proposed.

(ii) non-metallic pipe (e.g., approved PVC and/or fiberglass) must not be installed as primary aboveground piping unless it satisfies the 2-hour fire protection requirement for tank assemblies in accordance with uniform fire code Articles 52, 79 and Appendix II-F.

(h) Storage tank systems with a capacity of 660 gallons or less used to store heating oil for consumptive use on the premises where stored must be designed, constructed, and installed in accordance with the secondary containment requirements of UFC Sec. ~~79-115(d)~~ 7901.8, the uniform mechanical code, NFPA 31, and (1)(i) of this rule. In addition, installation of such storage tank systems must be completed in accordance with the requirements of all local fire code and building code ordinances.

(i) For the purposes of this chapter, secondary containment of petroleum storage tank systems must be designed and constructed as follows:

(i)-(ii) Same as proposed.

(iii) Vaults and special enclosures must be designed and constructed in accordance with UFC Sec. ~~79-902(e)~~ 5202.3.6 and or Appendix II-F, and the owner or operator must ~~receive written approval of the design and construction from~~ submit plans for approval to the department of justice fire prevention and investigation bureau prior to installation; and

(iv) Same as proposed.

(2)-(4) Same as proposed.

AUTH: 75-11-319, MCA; IMP: 75-11-308, 75-11-319, MCA

RULE VI (17.57.106) INSTALLATION OF ABOVEGROUND DOUBLE-WALLED PETROLEUM STORAGE SYSTEMS (1) All aboveground double-walled petroleum storage tank systems must be properly installed in accordance with:

(a)-(b) Same as proposed.

(c) uniform fire code Articles 52, 79 and Appendix II-F, or when applicable, the uniform mechanical code and NFPA 31,

and all local fire code and building code ordinances.

(2) Vaults and special enclosures must be installed in accordance with uniform fire code Articles 52, 79 and Appendix II-F, and the conditions set forth in the written approval provided by the department of justice fire prevention and investigation bureau or the local fire official with uniform fire code jurisdiction.

AUTH: 75-11-319, MCA; IMP: 75-11-308, 75-11-319, MCA

RULE VII (17.57.107) GENERAL RELEASE DETECTION STANDARDS

Same as proposed.

AUTH: 75-11-319, MCA; IMP: 75-11-308, 75-11-319, MCA

3. The department thoroughly considered all comments received. Those comments and department responses follow:

**COMMENT:** Gregory A. Van Horssen, attorney for the Petroleum Tank Release Compensation Board, commented upon the difference between the definitions of "compatible", "liner", and "secondary containment" contained in the proposed amendment of ARM 16.45.1101 and those contained in the proposed rules concerning aboveground storage tanks. Mr. Van Horssen indicated the Petroleum Tank Release Compensation Board's desire, to the extent possible, to have these definitions identical.

**RESPONSE:** The comment about making the definitions of "compatible" and "liner" identical is well received. The definition of "compatible" set forth in the proposed rules for aboveground storage tanks will be changed to the definition of "compatible" set forth in the amendment of ARM 16.45.1101.

The definition of "liner" will remain unchanged in the proposed rules for aboveground storage tanks but will be changed in the amendment of ARM 16.45.1101 to mirror that definition.

The definition of "secondary containment" will remain unchanged in the proposed rules for aboveground storage tanks and in the amendment of ARM 16.45.1101. The physical differences of the two types of tanks and the additional legal requirements of the Uniform Fire Code mandate that underground storage tanks and aboveground storage tanks have different definitions of "secondary containment".

**COMMENT:** Mr. Van Horssen also commented that notice to aboveground storage tank owners regarding standards of design, construction and installation incorporated by reference herein is essential.

**RESPONSE:** The comment is well received by the department and owners of aboveground storage tanks will be provided with notice of these standards so they can obtain additional information if desired.

**COMMENT:** Rich Levandowski, Deputy State Fire Marshal, commented that the definition of "aboveground storage tank system" or



"AST" needed to be refined so that it clarifies the fact that there are two distinct types of systems contemplated under the definition.

**RESPONSE:** The comment regarding the definition of "aboveground storage tank system" or "AST" is well received. This definition will be changed to reflect the comments of the Fire Marshal.

**COMMENT:** Comment was received from the Fire Marshal that the reference to section 79.902(c) in the definition of "Petroleum storage tank" should be section 5202.3.6 because the 1994 edition of the Uniform Fire Code is in the process of being adopted.

**RESPONSE:** This comment is well received and the citation will be changed to reflect the latest version of the Uniform Fire Code.

**COMMENT:** Comment was received from the Fire Marshal that the definition of "pipe" should include the restriction that "nonmetallic pipe shall not be installed aboveground unless provided with 2 hours fire protection".

**RESPONSE:** This comment is well received and the definition of pipe will include this restriction.

**COMMENT:** Comment was received from the Fire Marshal that section 5202.2.3 of the Uniform Fire Code requires that shop-fabricated storage tanks shall be listed.

**RESPONSE:** This comment is well received and the definition of "shop-fabricated storage tank" will be changed to reflect that such tanks must be "listed".

**COMMENT:** Comment was received from the Fire Marshal that Rule IV (2)(f) and (h) should be changed from the 1991 editions of the Uniform Fire Code and the Uniform Mechanical Code to the most recent edition adopted by the respective agencies.

**RESPONSE:** This comment is well received and the references to the Uniform Fire Code and the Uniform Mechanical Code will be changed to the most recent edition adopted by the relevant state agency.

**COMMENT:** Comment was received from the Fire Marshal that the reference to section 79.902(c) in the proposed Rule V(1)(a) should be section 5202.3.6 because the 1994 edition of the Uniform Fire Code is in the process of being adopted.

**RESPONSE:** This comment is well received and the citation will be changed to reflect the latest version of the Uniform Fire Code in Rule V(1)(a).

**COMMENT:** Comment was received from the Fire Marshal that "may" should be changed to "shall" in Rule V(1)(c)(ii).

**RESPONSE:** This comment is well received and the corresponding change will be made to Rule V(1)(c)(ii). However, in keeping with the Legislative Council's bill drafting manual, the term must has been used.

**COMMENT:** Comment was received from the Fire Marshal that the Uniform Fire Code references in Rule V(1)(d) and (g) should be to Articles 52, 79 and Appendix II-F.

**RESPONSE:** This comment is well received and the corresponding changes will be made to Rule V(1)(d) and (g).

**COMMENT:** Comment was received from the Fire Marshal that the Uniform Fire Code references in Rule V(1)(g)(ii) should be to Articles 52, 79 and Appendix II-F.

**RESPONSE:** This comment is well received and the corresponding changes will be made to Rule V(1)(g)(ii).

**COMMENT:** Comment was received from the Fire Marshal that the Uniform Fire Code references in Rule V(1)(h) should be to Section 7901.8.

**RESPONSE:** This comment is well received and the corresponding change will be made to Rule V(1)(h).

**COMMENT:** Comment was received from the Fire Marshal that the Uniform Fire Code references in Rule V(1)(i)(iii) should be to Section 5202.3.6 and that this subsection should require the submission of plans to the Department of Justice Fire Prevention and Investigation Bureau prior to installation.

**RESPONSE:** This comment is well received and the corresponding changes will be made to Rule V(1)(i)(iii).

**COMMENT:** Comment was received from the Fire Marshal that the Uniform Fire Code references in Rule VI(1)(c) should be to Articles 52, 79 and Appendix II-F.

**RESPONSE:** This comment is well received and the corresponding changes will be made to Rule VI(1)(c).

**COMMENT:** Comment was received from the Fire Marshal that the Uniform Fire Code references in Rule VI(2) should be to Articles 52, 79 and Appendix II-F.

**RESPONSE:** This comment is well received and the corresponding changes will be made to Rule VI(2).

**COMMENT:** A staff attorney for the Administrative Code Committee commented that cites given in the proposal notice were

incomplete as to statutory implementation.

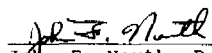
**RESPONSE:** The Department agrees and all new rules will, in addition to referencing the implementation of 75-11-319, MCA, reference the implementation of 75-11-308, MCA.

**COMMENT:** William R. Uffelman, Divisional Vice-President, Government Affairs, of Browning-Ferris Industries supported the promulgation of the proposed rules. Gail Abercrombie, Executive Director of the Montana Petroleum Association noted that she distributed copies of the proposed new rules to members but had not received any comments as of the hearing date.

**RESPONSE:** After consideration of the comments received on the proposed rules, the Department has adopted new rules I through VII (ARM 17.57.101 through 17.57.107) as proposed except as hereinabove noted.

  
MARK A. SIMONICH, Director

Reviewed by:

  
John F. North, Rule Reviewer

Certified to the Secretary of State November 13, 1995 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 26.4.161, to require an )  
operating permit for hard rock )  
mills that are not located at a )  
mine site and that use cyanide. )

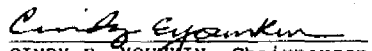
To: All Interested Persons

1. On June 29, 1995, the Board of Land Commissioners, legal predecessor to the Board of Environmental Review, filed notice of proposed amendment of ARM 26.4.161 at page 1102 of the Montana Administrative Register, Issue No. 12.

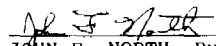
2. The board adopted the amendment as proposed with no changes.

3. The board received no comments on the proposed amendment.

BOARD OF ENVIRONMENTAL REVIEW

  
CINDY E. YOUNGLIN, Chairperson

Reviewed by:

  
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 13, 1995.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules	)	RULES 46.10.108, 46.10.207,
46.10.108, 46.10.207,	)	46.10.403, 46.10.513 AND
46.10.403, 46.10.513 and	)	46.10.708 PERTAINING TO
46.10.708 pertaining to AFDC	)	AFDC MONTHLY REPORTING AND
monthly reporting and	)	BUDGETING METHODS
budgeting methods	)	

TO: All Interested Persons

1. On September 28, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.10.108, 46.10.207, 46.10.403, 46.10.513 and 46.10.708 pertaining to AFDC monthly reporting and budgeting methods at page 1898 of the 1995 Montana Administrative Register, issue number 18.

2. The Department has amended rules 46.10.108, 46.10.207, 46.10.403, 46.10.513 and 46.10.708 as proposed.

3. No written comments or testimony were received.

Dawn Oliver  
Rule Reviewer

Russell E. Carter acting  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 13, 1995.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules 46.11.112	)	RULES 46.11.112 AND
and 46.11.125 and the repeal	)	46.11.125 AND THE REPEAL OF
of rule 46.11.120 pertaining	)	RULE 46.11.120 PERTAINING
to the food stamp budgeting	)	TO THE FOOD STAMP BUDGETING
methods and monthly	)	METHODS AND MONTHLY
reporting requirements	)	REPORTING REQUIREMENTS

TO: All Interested Persons

1. On September 28, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.11.112 and 46.11.125 and the repeal of rule 46.11.120 pertaining to the food stamp budgeting methods and monthly reporting requirements at page 1895 of the 1995 Montana Administrative Register, issue number 18.

2. The Department has amended rules 46.11.112 and 46.11.125 and repealed 46.11.120 as proposed.

3. No written comments or testimony were received.

  
Rule Reviewer

  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 13, 1995.

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

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

TO: All Interested Persons.

1. On July 13, 1995, the Department of Public Health and Human Services published notice of 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 at page 1302 of the 1995 Montana Administrative Register, issue number 13.

2. The Department has amended rules 46.12.514, 46.12.515, 46.12.516 and 46.12.517 as proposed.

3. The Department has adopted rules [RULE I] 11.13.201, THERAPEUTIC FAMILY CARE, COMPLIANCE WITH APPLICABLE REQUIREMENTS; [RULE III] 11.13.205, THERAPEUTIC FAMILY CARE, LEVELS OF SERVICE; [RULE IV] 11.13.207, THERAPEUTIC FAMILY CARE, STAFF; [RULE V] 11.13.209, THERAPEUTIC FAMILY CARE, TREATMENT PARENTS; [RULE VII] 11.13.213, THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY CERTIFICATION-CRITERIA; [RULE VIII] 11.13.215, THERAPEUTIC FAMILY CARE, WELL-CHILD SCREENING AND CHEMOTHERAPY; [RULE IX] 11.13.217, THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL SERVICES; and [RULE X] 11.13.219, THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL CASE RECORDS as proposed.

4. The Department has adopted the following rules as proposed with the following changes:

11.13.203 [RULE II] THERAPEUTIC FAMILY CARE, DEFINITIONS

(1) through (7) (a) remain as proposed.

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

(c) ~~(b)~~ specialized support services.

(8) through (10) remain as proposed.

(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~~ four or more of the medical necessity criteria set forth in [Rule VII] (11.13.213). 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) through (15) remain as proposed but they are renumbered (12) through (14).

~~(16)~~(15) "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 parents. 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) through (19) remain as proposed but are renumbered (16) through (18).

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

11.13.211 [RULE VI] THERAPEUTIC FAMILY CARE, INDIVIDUAL TREATMENT PLAN (1) through (3)(f) remain as proposed.

(g) include the initial medical necessity statement and any subsequent certifications as required in [Rule VII] (11.13.213); and

(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

11.13.221 [RULE XI] THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL TRAINING REQUIREMENTS (1) and (2) remain as proposed.

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



5. The department has thoroughly considered all commentary received:

**COMMENT:** What are the approved methods of passive physical restraint and behavioral modification under Rule XI (11.13.221).

**RESPONSE:** The department has decided to drop requirements and authorization of passive physical restraint and behavioral modification in these rules. There needs to be more discussion and/or input prior to authorizing approved passive physical restraint or behavioral modification in these facilities. Treatment families will continue to provide supervision and discipline according to licensing requirements and placement agreements.

**COMMENT:** Does the definition of SED as referenced in the proposed rule include youth with the diagnosis of conduct disorder?

**RESPONSE:** A conduct disordered youth may be considered to be seriously emotional disturbed under the definition.

**COMMENT:** Can treatment families provide respite for other therapeutic family care children or for children in regular foster care?

**RESPONSE:** Therapeutic family care children in need of a respite placement may be served in another therapeutic family care home, so long as the total number of such youths receiving services in the home of the treatment family does not exceed the limits as described in Rule III (11.13.205). The department does not intend to authorize treatment families to provide respite care for children in regular foster care placements. Children in regular foster care should not be cared for in a therapeutic family care home unless their care falls under one of the exceptions in Rule III (11.13.205), even where the placement is only a respite care placement.

**COMMENT:** Please add the following to Rule III (11.13.205):

(a) Respite may be provided for another child in the home where two therapeutic children reside under the following conditions:

(i) There is treatment team agreement by the teams of all children involved on the appropriateness of having respite in that home.

(ii) Respite in these homes cannot exceed seventy-two hours (72) or three days.

(b) Respite may be provided by this family if one of the two children is not in the home during the respite period. Under this condition there would not need to be

documentation of treatment team agreement.

**RESPONSE:** The department declines to amend the rule as proposed in the above comment as explained in the previous response referencing Rule III's (11.13.205) restrictions on the number of children in the home.

**COMMENT:** Are the total number of training hours required of therapeutic foster parents in addition to the training hours required for licensing?

**RESPONSE:** No

**COMMENT:** Is the definition of "Treatment Manager" as described in Rule II(16) (11.13.203) correct?

**RESPONSE:** No. The definition has been changed in this notice to correct a typographical error. The proposed Rule II(16) (11.13.203) had the treatment manager providing guidance to the treatment supervisor. The department intended that the rule require the treatment manager to provide guidance to the treatment parents. The provision is amended to correct the error in this notice.

**COMMENT:** The definition of "Moderate Level" as described in Rule II (11) (11.13.203) requires youth to meet three or more of the medical necessity criteria described in Rule VII (11.13.213). Rule VII (11.13.213), however, requires four Medicaid necessity criteria to be met. Which is correct?

**RESPONSE:** The requirements as described in Rule VII (11.13.213) are correct. The language in Rule II(11) (11.13.203) has been changed in this notice.

**COMMENT:** In order to bill for an intensive youth must the mental health assistant already be in place? Is it possible to have 30 days to develop and implement this wraparound?

**RESPONSE:** The daily rate for intensive level includes the provision of the services of a mental health assistant for 10 hours each week. This service must be available to youth at the time the youth enters the intensive level therapeutic family care program. If a mental health assistant is not necessary, then the youth should be served at the moderate level.

**COMMENT:** Is it possible to use the mental health assistant funds to support services if the treatment team agrees that a mental health assistant is not needed or may be detrimental to treatment.

**RESPONSE:** No. If the Mental Health Assistant is unnecessary or potentially detrimental to treatment, the more appropriate service is probably that of moderate level.

**COMMENT:** In Rule IV(4) (11.13.213), it states that a treatment

manager is responsible for only 10 youths at any time. May the treatment manager be responsible for less than 10 youths?

**RESPONSE:** Yes.

**COMMENT:** Rule V(3)(11.13.209), provides that one parent must be available 24 hours a day for supervision, and must be available to provide therapeutic services as needed. Is this requirement designed to prohibit employment.

**RESPONSE:** The rule does not necessarily prohibit employment.

**COMMENT:** The provision in Rule VIII(1)(b) (11.13.215) providing for quarterly evaluation of chemotherapy should be changed to allow the prescribing physician to decide periods for evaluation.

**RESPONSE:** The department disagrees. A quarterly evaluation/examination recorded in the child's chart is an appropriate and important component of this program.

**COMMENT:** Rule X(1)(d) (11.13.219) requires a monthly individual treatment session based on the treatment plan. Is it possible for a session involving a review of the treatment plan to qualify as an individual treatment session.

**RESPONSE:** Yes.

**COMMENT:** In regard to children currently served in homes that qualify as therapeutic family care homes, will existing placements be subject to the 90-day review requirement of Rule VII (11.13.213)?

**RESPONSE:** Re-certification will be required 90 days after the first certification.

**COMMENT:** ARM 46.12.516(1)(f)(iii), indicates that Medicaid will not reimburse for room, board, maintenance or other non-therapeutic component of therapeutic family care treatment. How will the other expenses be covered?

**RESPONSE:** Other funding sources must cover such expenses. For example, the department will make arrangements for funding these expenses for children placed by the department. Similarly, parents making the placement may be required by the provider to reimburse for non-therapeutic expenses.

**COMMENT:** Is there a requirement for denial by Indian Health Services prior to payment under this program?

**RESPONSE:** No.

6. As explained in the notice published on July 13, 1995, the changes regarding coverage and reimbursement of therapeutic family care shall be applied retroactively, to therapeutic family

care provided on or after July 1, 1995.

  
Rule Reviewer

  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 13, 1995.

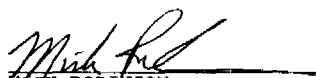
BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE AMENDMENT  
of ARM 42.15.316 relating to ) of ARM 42.15.316  
Extensions and Late Pay )  
Penalty )

TO: All Interested Persons:

1. On September 28, 1995, the Department published notice of the proposed amendment of ARM 42.15.316 relating to Extensions and Late Pay Penalty at pages 1927-1930 of the 1995 Montana Administrative Register, issue no. 18.
2. No public comments were received regarding these rules.
3. The Department has amended the rule as proposed.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue


Certified to Secretary of State November 13, 1995


BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE AMENDMENT of  
of ARM 42.22.1311 relating to ) ARM 42.22.1311 relating to  
Industrial Machinery and ) Industrial Machinery and  
Equipment Trend Factors ) Equipment Trend Factors

TO: All Interested Persons:

1. On September 28, 1995, the Department published notice of the proposed amendment of ARM 42.22.1311 relating to industrial machinery and equipment trend factors at page 1921 of the 1995 Montana Administrative Register, issue no. 18.
2. No public comments were received regarding these rules.
3. The Department has amended the rule as proposed.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State November 13, 1995.

VOLUME NO. 46

OPINION NO. 9

CONTRACTS - Application of competitive bid requirements to health maintenance organization contracts;  
HEALTH - Application of competitive bid requirements to health maintenance organization contracts;  
INSURANCE - Application of competitive bid requirements to health maintenance organization contracts;  
STATUTORY CONSTRUCTION - Application of competitive bid requirements to health maintenance organization contracts;  
MONTANA CODE ANNOTATED - Title 33, chapter 22, part 17; title 33, chapter 31; sections 33-22-1702 to -1704, 33-31-102, -111, -201, -221;  
MONTANA LAWS OF 1987 - Chapter 638;  
OPINIONS OF THE ATTORNEY GENERAL - 46 Op. Att'y Gen. No. 8 (July 21, 1995), 46 Op. Att'y Gen. No. 6 (July 6, 1995), 45 Op. Att'y Gen. No. 25 (June 21, 1994).

HELD: Health maintenance organizations operating under the provisions of Mont. Code Ann. title 33, chapter 31, are not bound by the competitive bidding requirements of Mont. Code Ann. § 33-22-1704(3) in contracting with health care providers, except when entering into a preferred provider agreement as authorized by that section.

November 6, 1995

The Honorable Bob Brown  
President, Montana State Senate  
333 Cougar Trail  
Whitefish, MT 59937

Dear President Brown:

You have requested my opinion on an issue I have phrased as follows:

Do the competitive bidding requirements of Mont. Code Ann. § 33-22-1704(3) apply to the contractual arrangements of health maintenance organizations governed by Mont. Code Ann. title 33, chapter 31?

The issue arises from an opinion of the state insurance commissioner, concluding that health maintenance organizations [HMOs] are subject to the Preferred Provider Agreements Act, Mont. Code Ann. tit. 33, ch. 22, pt. 17 [PPA Act], and accordingly "must seek bids for the provision of health care services." Letter from Ins. Comm'r Mark O'Keefe to Mark A. Burzynski (Apr. 24, 1995). The commissioner's conclusion was based primarily on the inclusion of HMOs in the PPA Act's definition of "health care insurer," Mont. Code Ann.

Montana Administrative Register

22-11/22/95

§ 33-22-1703(3), and the broad terms in which "preferred provider agreement" is defined, Mont. Code Ann. § 33-22-1703(7). Citing a contrary opinion from the Montana Legislative Council, the sponsor of the 1993 competitive bidding amendments to the PPA Act requested that you seek an opinion from this office.

Some understanding of HMOs and preferred provider agreements is helpful to resolution of your inquiry. Both the Montana HMO Act and the PPA Act were passed in 1987 in an effort to promote cost containment and efficiencies in the health care system. See 50th Mont. Leg., Sen. Pub. Health, Welfare & Safety Comm., Feb. 20, 1987, at 5 (statement of Sen. Regan, sponsor of S.B. 371); House Bus. & Labor Comm., Mar. 20, 1987, at 3 (statement of Sen. Meyer, sponsor of S.B. 353). HMOs and preferred provider arrangements are both examples of alternative health care delivery systems "because they offer an alternative to traditional fee-for-service healthcare." Dellinger, A., Healthcare Facilities Law § 16.3, at 1060 (1991). "An HMO is basically a method of pricing medical services. Instead of having the patient pay separately for each medical procedure, the patient pays a fixed annual fee for all the services he needs and the HMO undertakes to provide those services with the physicians with whom it has contracts." Blue Cross and Blue Shield United of Wisconsin v. Marshfield Clinic, 65 F.3d 1406, 1409 (7th Cir. 1995).

The Montana HMO Act, which is patterned after the Model HMO Act adopted by the National Association of Insurance Commissioners, defines HMO as "a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers." Mont. Code Ann. § 33-31-103(7). This definition reflects the integrated nature of an HMO, "combining the functions of healthcare insurer and provider of healthcare services." Dellinger, § 16.4 at 1062. The typical components of an HMO include:

- an organized health care delivery system capable of providing or arranging for ambulatory, inpatient, emergency and preventive medical services;
- voluntarily enrolled families and individuals who have chosen to contract individually or as members of a group with the HMO for health services;
- a financial plan that guarantees delivery of services on a prenegotiated and prepaid basis;
- an identifiable administrative organization that ensures legal, fiscal, public and professional accountability; [and]



- arrangements by which the organization significantly bears the risk of providing health services and in some instances requires providers to share the risk.

Id. at 1061-62.

A preferred provider arrangement is a "hybrid of an HMO and traditional insurance," under which participating providers are paid on a predetermined fee-for-service basis at or below their usual rates. Dellinger, § 16.5 at 1067-68. Unlike HMO enrollees, "[t]he consumers are free to use non-PPO [Preferred Provider Organization] providers, but there are strong financial incentives (in the form of reduced or eliminated copayments and deductibles) to use preferred physicians and hospitals." Id. at 1068. See also Marshfield, 65 F.3d at 1410 (describing preferred provider organization as a health care pricing system "under which the insurer offers more generous reimbursement if the insured patronizes physicians who have contracts with the insurer to provide service at low cost to its insureds").

Montana law recognizes both the HMO and the preferred provider arrangement as valid alternative health care delivery systems, and sets forth a distinct statutory framework for each. The purpose of the PPA Act is contained in Mont. Code Ann. § 33-22-1702:

The purpose of this part is to allow a health care insurer providing disability insurance benefits to negotiate and contract with health care providers to:

- (1) provide health care services to its insureds or subscribers at a reduction in the fees customarily charged by the provider; or
- (2) enter into agreements in which the participating providers accept negotiated fees as payment in full for health care services the health care insurer is obligated to provide or pay for under the health benefit plan.

(Emphasis added.) The PPA Act is voluntary; no insurer is required to enter into preferred provider agreements. Mont. Code Ann. § 33-22-1704(1). However, under 1993 amendments to the Act, if an insurer intends to offer a preferred provider arrangement, it "must provide each health care provider [in the geographic area covered by the proposal] with the opportunity to participate on the basis of a competitive bid or offer." Mont. Code Ann. § 33-22-1704(3). The insurer must issue a request for proposals and is required to select the lowest cost bid or offer unless it reserves the right in its request for proposals to reject a low bid. Mont. Code Ann. § 33-22-1704(5).

HMOs are governed by chapter 31 of the Montana insurance code and may be established upon approval of the state insurance

commissioner. Mont. Code Ann. § 33-31-201. Among the statutory powers of HMOs is "the furnishing of health care services through a provider who is under contract with or employed by the health maintenance organization[.]" Mont. Code Ann. § 33-31-221(c). Except to the extent provided in title 33, chapter 31, HMOs are exempt from state "insurance or health service corporation laws[.]" Mont. Code Ann. § 33-31-111(1).

The PPA Act and the HMO Act each contain a set of definitions applicable to the provisions of the respective Acts. Mont. Code Ann. §§ 33-22-1703 (PPA Act definitions); 33-31-102 (HMO Act definitions). Each Act provides its own definition of "health care services" (§§ 33-22-1703(4) and 33-31-102(5)) and of "provider" (§§ 33-22-1703(8) and 33-31-102(11)). The definitions are not identical. In addition, the HMO Act includes a definition of "basic health care services" (§ 33-31-102(1)). The HMO Act also defines "plan" (§ 33-31-102(10)) and "health care services agreement" (§ 33-31-102(6)), while the PPA Act defines "health benefit plan" (§ 33-22-1703(2)). The HMO Act uses the term "enrollee" for the person receiving health care services under the "plan" (§ 33-31-102(3)), while the PPA Act uses the term "insured" to define the person entitled to reimbursement for expenses of health care services (§ 33-22-1703(5)). Finally, the HMO Act authorizes and sets forth provisions regarding "contracts" between the HMO and health care providers. Mont. Code Ann. §§ 33-31-201(3)(d)(iv), (x); 33-31-221(1)(c). The PPA Act, on the other hand, speaks in terms of "agreements" with providers. Mont. Code Ann. §§ 33-22-1702(2), -1704, -1705.

These definitional differences have more than semantic significance. They reflect the distinct methods by which health services are contracted for in a preferred provider context and the method used in a traditional HMO context. In the former, the patient, or "insured," has two contractual relationships--one with the health care provider and a second with the health care insurer. There is, as well, a third contractual relationship between the insurer and the provider which limits the former's liability to a prescribed set of rates. The definition of "insured," as stated above, thus means a person who is "entitled to **reimbursement**" for expenses attendant to a provider's services. Mont. Code Ann. § 33-22-1703(5). In the ordinary HMO environment, however, the enrollee has only one contractual relationship--that with the HMO to provide appropriate health care services. No independent contractual relationship is established between the enrollee and the provider for which "reimbursement" occurs. While the definition of "health benefit insurer" in the PPA Act includes HMOs and thereby recognizes the theoretical possibility that an HMO may elect to enter into a preferred provider agreement, that statute is concerned with fee-for-service relationships between patients and medical personnel, not with relationships established by HMOs to provide health care services to enrollees where no reimbursement for fees paid to providers is contemplated.

I accordingly disagree with the insurance commissioner's conclusion that the PPA Act applies to a contract entered into by an HMO with a provider for the purpose of discharging its obligation to provide medical services to enrollees. Although the commissioner has administrative responsibility for adopting rules to implement the PPA and HMO Acts, the issue here is one of law, and the commissioner's view would not be entitled to deference. Rather, the standard of review of an administrative agency's conclusions of law is "whether the agency's interpretation of the law was correct." E.g., Baldrige v. Board of Trustees, 264 Mont. 199, 205, 870 P.2d 711, 714 (1994).

The statutes in question are not subject to a single obvious construction. Unlike the commissioner, however, I find no irreconcilable conflict between the PPA Act's definition of "health care insurer" and the exception for HMOs from application of insurance laws in § 33-21-111. Such conflicts may not be found unless no other reasonable construction is possible (Continental Oil Co. v. Board of Labor Appeals, 178 Mont. 143, 151, 582 P.2d 1236, 1241 (1978); 46 Op. Att'y Gen. No. 6 (July 6, 1995)), and here the statutes readily are harmonized. The PPA Act constitutes a grant of authority to "health care insurers," including HMOs, to enter into preferred provider agreements, but those agreements do not include contracts between HMOs and providers that entitle HMO enrollees to receipt of medical services rather than reimbursement of medical expenses.

Finally, the legislature is presumed to act with full knowledge of existing laws. Thiel v. Taurus Drilling Ltd., 1980-II, 218 Mont. 201, 207, 710 P.2d 33, 36 (1985); 46 Op. Att'y Gen. No. 6, at 6; 45 Op. Att'y Gen. No. 25, at 3 (July 21, 1994). The competitive bid requirements in the PPA Act were enacted as an amendment six years after the original adoption of that law and the HMO Act. The HMO Act provisions existing at the time of the Act's original adoption and passage of the 1993 amendment contained no restriction on the procedures used by HMOs to enter into provider contracts for the rendition of medical services to plan enrollees. I am unable to conclude that the legislature sub silentio intended the 1993 amendment to constrict the ability of HMOs to contract with providers as they had in the past. Rather, I find that the PPA Act applies to a limited class of provider agreements not including those typically entered into by HMOs.

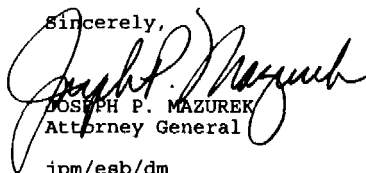
By its passage of the HMO Act and the PPA Act, the legislature intended to provide for two alternative health care delivery systems that would maximize options for health care cost savings. The independence of those two Acts is clear from their separate requirements, uses of distinct terminology, and autonomous definitions. I find nothing in the statutes to support mandatory application to HMO provider contracts of an

otherwise voluntary competitive bidding process under the PPA Act.

THEREFORE, IT IS MY OPINION:

Health maintenance organizations operating under the provisions of Mont. Code Ann. Title 33, chapter 31, are not bound by the competitive bidding requirements of Mont. Code Ann. § 33-22-1704(3) in contracting with health care providers, except when entering into a preferred provider agreement as authorized by that section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph P. Mazurek", is written over the typed name and title.

JOSEPH P. MAZUREK  
Attorney General

jpm/esb/dm

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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>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 September 30, 1995. This table includes those rules adopted during the period September 1, 1995 through December 31, 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 September 30, 1995, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 and 1995 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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#### BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 1995, appear. Vacancies scheduled to appear from December 1, 1995, through February 29, 1996, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

#### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 3, 1995.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Board of Cosmetologists (Commerce)</b>			
Ms. Verna Dupuis	Governor	Holyk	10/20/1995
Bozeman			7/1/1997
Qualifications (if required): cosmetologist			
<b>Board of Outfitters (Commerce)</b>			
Mr. Max Barker	Governor	Madsen	10/1/1995
Augusta			10/1/1998
Qualifications (if required): representing District 3			
Mr. Roy Ereaux	Governor	Billingsley	10/1/1995
Malta			10/1/1998
Qualifications (if required): representing District 4			
<b>Flathead Basin Commission (Governor)</b>			
Mr. Glenn Marx	Governor	reappointed	10/10/1995
Helena			10/1/1999
Qualifications (if required): representing the Governor's Office			
<b>Game Farm Advisory Council (Fish, Wildlife and Parks and Livestock)</b>			
Mr. Bill Nyby	Governor	Swanser	10/18/1995
Antelope			7/19/1997
Qualifications (if required): representative of the game farm industry			
<b>Historical Preservation Review Board (Education)</b>			
Mr. David Johns	Governor	reappointed	10/1/1995
Butte			10/1/1999
Qualifications (if required): public member			
Mr. Chris King	Governor	Herbort	10/1/1995
Winnett			10/1/1999
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Historical Preservation Review Board</b> (Education) cont.			
Mr. Don Wetzel	Governor	reappointed	10/1/1995
Billings			10/1/1999
Qualifications (if required):	public member		
<b>Postsecondary Education Policy and Budget Committee</b> (Legislative Fiscal Analyst)			
Mr. Tobin Morris	Governor	Hazelbaker	10/6/1995
Bozeman			6/30/1997
Qualifications (if required):	student representative		
<b>Water and Wastewater Operators' Advisory Council</b> (Environmental Quality)			
Mr. Scott Anderson	Governor	Pilcher	10/16/1995
Helena			10/16/2001
Qualifications (if required):	ex-officio representative of the Department of Environmental Quality		
<b>Mr. Steven Ruhd</b>	Governor	reappointed	10/16/1995
Conrad			10/16/2001
Qualifications (if required):	water treatment plant operator		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

Board/current position holder	Appointed by	Term end
<b>Alfalfa Seed Committee</b> (Agriculture) Mr. Durl Heiken, Billings Qualifications (if required): public member	Governor	12/21/1995
Mr. Keith Reynolds, Winnett Qualifications (if required): public member	Governor	12/21/1995
<b>Appellate Defender Commission</b> (Administration) Mr. Daniel Donovan, Great Falls Qualifications (if required): public defender	Governor	1/1/1996
Ms. Randi Hood, Helena Qualifications (if required): public defender	Governor	1/1/1996
Mr. Michael J. Reardon, Victor Qualifications (if required): public defender	Governor	1/1/1996
<b>Board of Chiropractors</b> (Commerce) Dr. Christopher Buzan, Missoula Qualifications (if required): chiropractor	Governor	1/1/1996
<b>Board of Horse Racing</b> (Commerce) Dr. Sheldon John "Skip" Score, Helena Qualifications (if required): resides in the fourth district	Governor	1/20/1996
<b>Board of Occupational Therapy Practice</b> (Commerce) Ms. Diana Margaret Leonard, Great Falls Qualifications (if required): occupational therapist	Governor	12/31/1995
<b>Board of Passenger Tramway Safety</b> (Commerce) Mr. Bill Flechsenhar, Cascade Qualifications (if required): skiing member of the public	Governor	1/1/1996

# VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Passenger Tramway Safety</b> (Commerce) cont.		
Mr. Helen Nelson, Kalispell	Governor	1/1/1996
Qualifications (if required): represents skiing public		
 Mr. Kevin Taylor, Marysville	Governor	1/1/1996
Qualifications (if required): ski area operator		
 <b>Board of Public Education</b> (Education)		
Mr. Storrs Bishop, Ennis	Governor	2/1/1996
Qualifications (if required): represents southwest quadrant of the state		
 <b>Board of Regents of Higher Education</b> (Education)		
Mr. Cordell Johnson, Helena	Governor	2/1/1996
Qualifications (if required): Republican from Western Congressional District		
 <b>Board of Respiratory Care Practitioners</b> (Commerce)		
Dr. Richard Dyer Blevins, Great Falls	Governor	1/1/1996
Qualifications (if required): doctor member		
 <b>Board of Speech Pathologists and Audiologists</b> (Commerce)		
Ms. Cynthia Yost Barnes, Dillon	Governor	12/31/1995
Qualifications (if required): public member		
 <b>Capitol Restoration Commission</b> (Administration)		
Ms. Jeanne Michael, Billings	Lieutenant Governor	12/3/1995
Qualifications (if required): member appointed by Lieutenant Governor		
 Mr. Walter (Howdie) S. Murfitt, Helena	Governor	12/3/1995
Qualifications (if required): public member		
 Mr. E.V. "Sonny" Onholt, Helena	Governor	12/3/1995
Qualifications (if required): public member		



VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

Board/current position holder	Appointed by	Term end
<b>Capitol Restoration Commission</b> (Administration) cont.		
Mr. Loren Smith, Great Falls	Lieutenant Governor	12/3/1995
Qualifications (if required): member appointed by Lieutenant Governor		
<b>Developmental Disabilities Planning and Advisory Council</b> (Social and Rehabilitation Services)		
Ms. Kris Bakula, Helena	Governor	1/1/1996
Qualifications (if required): Director of the Montana Advocacy Program		
Dr. Frank Clark, Missoula	Governor	1/1/1996
Qualifications (if required): representative of social work		
Sen. Ethel Harding, Polson	Governor	1/1/1996
Qualifications (if required): Senator		
Mr. J. Cort Harrington, Jr., Helena	Governor	1/1/1996
Qualifications (if required): attorney representative		
Dr. Allen Hartman, Billings	Governor	1/1/1996
Qualifications (if required): physician representative		
Rep. Betty Lou Kasten, Brockway	Governor	1/1/1996
Qualifications (if required): Representative		
Ms. Lavonne "Vonnice" Koenig, Kalispell	Governor	1/1/1996
Qualifications (if required): consumer representative		
Mr. Harold Lorenz, Sidney	Governor	1/1/1996
Qualifications (if required): consumer		
Mr. Wallace Melcher, Helena	Governor	1/1/1996
Qualifications (if required): consumer		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Developmental Disabilities Planning and Advisory Council</b> (Social and Rehabilitation Services) cont.		
Ms. Darcy Miller, Helena	Governor	1/1/1996
Qualifications (if required): special education representative		
Ms. Judy Rolfe, Helena	Governor	1/1/1996
Qualifications (if required): consumer		
Mr. Robert Tallon, Bozeman	Governor	1/1/1996
Qualifications (if required): service provider representative		
Dr. Timm Vogelsberg, Missoula	Governor	1/1/1996
Qualifications (if required): represents university program		
<b>Human Rights Advisory Council</b> (Commerce)		
Ms. Jean Bearcrane, Browning	Governor	1/12/1996
Qualifications (if required): represents ethnic and business groups		
Reverend Phillip Caldwell, Great Falls	Governor	1/12/1996
Qualifications (if required): represents ethnic and religious groups		
Mr. Gary Conti, Bozeman	Governor	1/12/1996
Qualifications (if required): represents education groups		
Ms. Angelina Vallejo Cormier, Billings	Governor	1/12/1996
Qualifications (if required): represents ethnic and business groups		
Ms. Bonnie Craig, Missoula	Governor	1/12/1996
Qualifications (if required): represents ethnic groups and education groups		
Ms. Kathleen Fleury, Helena	Governor	1/12/1996
Qualifications (if required): represents elected officials		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Human Rights Advisory Council</b> (Commerce) cont.		
Mr. Bob Fourstar, Poplar Qualifications (if required): represents ethnic groups	Governor	1/12/1996
Reverend Bob Freeman, Billings Qualifications (if required): represents ethnic and religious groups	Governor	1/12/1996
Dr. Frederick Gilliard, Great Falls Qualifications (if required): represents education groups	Governor	1/12/1996
Mr. Bill Jones, Great Falls Qualifications (if required): represents human rights groups	Governor	1/12/1996
Ms. Kay Maloney, Great Falls Qualifications (if required): represents human rights groups	Governor	1/12/1996
Ms. Christina Medina, Helena Qualifications (if required): represents ethnic and human rights groups	Governor	1/12/1996
Mr. Harold Monteau, Great Falls Qualifications (if required): represents ethnic and human rights groups	Governor	1/12/1996
Ms. Gretchen Naomi Rohr, Billings Qualifications (if required): represents ethnic and youth groups	Governor	1/12/1996
Ms. Donna Ruff, Fairview Qualifications (if required): represents labor and ethnic groups	Governor	1/12/1996
Rep. Angela Russell, Lodge Grass Qualifications (if required): represents ethnic groups and elected officials	Governor	1/12/1996
Mr. Brian Schnitzer, Billings Qualifications (if required): represents religious and business groups	Governor	1/12/1996

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

Board/current position holder	Appointed by	Term end
<b>Human Rights Advisory Council (Commerce) cont.</b>		
Ms. Michelle Wilkerson, Great Falls	Governor	1/12/1996
Qualifications (if required): represents religious and business groups		
<b>Judicial Nomination Commission (Justice)</b>		
Mr. Carl M. Davis, Dillon	Supreme Court	12/31/1995
Qualifications (if required): none specified		
Mr. Jim Mockler, Helena	Governor	1/1/1996
Qualifications (if required): lay member		
<b>Mental Health Planning and Advisory Council (Corrections and Human Services)</b>		
Mr. Ed Amberg, Warm Springs	Director	12/31/1995
Qualifications (if required): none specified		
Ms. Shirley Brown, Helena	Director	12/31/1995
Qualifications (if required): none specified		
Sen. B.F. Chris Christisens, Great Falls	Director	12/31/1995
Qualifications (if required): none specified		
Ms. Mary Dalton, Helena	Director	12/31/1995
Qualifications (if required): none specified		
Ms. Liza Dyrdahl, Bozeman	Director	12/31/1995
Qualifications (if required): none specified		
Mr. Brian Febach, Missoula	Director	12/31/1995
Qualifications (if required): none specified		
Ms. Barb Harris, Helena	Director	12/31/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

Board/current position holder	Appointed by	Term end
<b>Mental Health Planning and Advisory Council</b> (Corrections and Human Services) cont.		
Ms. Toni Jensen, Helena Qualifications (if required): none specified	Director	12/31/1995
Ms. Kayleen Jones, Billings Qualifications (if required): none specified	Director	12/31/1995
Mr. John Lynn, Missoula Qualifications (if required): none specified	Director	12/31/1995
Dr. Nathan Munn, Helena Qualifications (if required): none specified	Director	12/31/1995
Ms. Margaret Murphy, Billings Qualifications (if required): none specified	Director	12/31/1995
Mr. Roger Pedersen, Helena Qualifications (if required): none specified	Director	12/31/1995
Ms. Barbara Sample, Billings Qualifications (if required): none specified	Director	12/31/1995
Ms. Helen Sampsel, Miles City Qualifications (if required): none specified	Director	12/31/1995
Ms. Dorothy Sowa, Great Falls Qualifications (if required): none specified	Director	12/31/1995
Ms. Kathy Standard, Helena Qualifications (if required): none specified	Director	12/31/1995
Mr. Michael Waldo, Bozeman Qualifications (if required): none specified	Director	12/31/1995

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

Board/current position holder	Appointed by	Term end
<b>Mental Health Planning and Advisory Council</b> (Corrections and Human Services) cont.		12/31/1995
Mr. Don Wetzel, Billings	Director	
Qualifications (if required): none specified		
Ms. Peggy Williams, Helena	Director	12/31/1995
Qualifications (if required): none specified		
<b>Montana Consensus Council</b> (Governor)		
Mr. Larry Anderson, Chester	Governor	1/22/1996
Qualifications (if required): none specified		
Mr. Tad Dale, Basin	Governor	1/22/1996
Qualifications (if required): none specified		
Ms. Janet Ellis, Helena	Governor	1/22/1996
Qualifications (if required): none specified		
Ms. Molly M. Hobgood, Whitefish	Governor	1/22/1996
Qualifications (if required): none specified		
Mr. Ted Kober, Billings	Governor	1/22/1996
Qualifications (if required): none specified		
Ms. Lisa Lewis Pearce, Roundup	Governor	1/22/1996
Qualifications (if required): none specified		
Governor Marc Racicot, Helena	Governor	1/22/1996
Qualifications (if required): none specified		
Lt. Governor Dennis Rehberg, Helena	Governor	1/22/1996
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Consensus Council</b> (Governor) cont.		
Mr. James R. Scott, Billings Qualifications (if required): none specified	Governor	1/22/1996
Mr. Caleb Shields, Poplar Qualifications (if required): none specified	Governor	1/22/1996
Mr. Donald Snow, Missoula Qualifications (if required): none specified	Governor	1/22/1996
Dr. Lawrence Suskind, Cambridge Qualifications (if required): none specified	Governor	1/22/1996
Ms. Monica Switzer, Richey Qualifications (if required): none specified	Governor	1/22/1996
Mr. Mike Zimmerman, Butte Qualifications (if required): none specified	Governor	1/22/1996
<b>Montana Health Facility Authority Board</b> (Commerce)		
Mr. Sidney K. Brubaker, Terry Qualifications (if required): public member	Governor	1/1/1996
Ms. Dallyce K. Flynn, Townsend Qualifications (if required): public member	Governor	1/1/1996
Mr. Greg Hanson, Missoula Qualifications (if required): attorney	Governor	1/1/1996
<b>Peace Officers Standards and Training Advisory Council</b> (Justice)		
Mr. Thomas Bivins, Helena Qualifications (if required): represents Department of Fish, Wildlife and Parks	Governor	12/31/1995

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) cont.	Governor	12/31/1995
Mr. Gary Boyer, Great Falls Qualifications (if required): educator		
Sheriff Lee Edmisten, Virginia City Qualifications (if required): represents Montana Sheriffs	Governor	12/31/1995
Sen. Delwyn Gage, Cut Bank Qualifications (if required): represents Board of Crime Control	Governor	12/31/1995
Ms. Donna Heggem, Winifred Qualifications (if required): represents Montana Board of Crime Control	Governor	12/31/1995
Mr. Donald R. Houghton, Bozeman Qualifications (if required): represents Montana Deputy Sheriffs	Governor	12/31/1995
Chief Robert Jones, Great Falls Qualifications (if required): represents Montana Association of Chiefs of Police	Governor	12/31/1995
Ms. Surry Latham, Missoula Qualifications (if required): dispatcher	Governor	12/31/1995
Mr. Jack Lynch, Butte Qualifications (if required): fills mayor position	Governor	12/31/1995
Commissioner Mike Mathew, Billings Qualifications (if required): represents Montana Association of Counties	Governor	12/31/1995
Mr. Dennis McCave, Billings Qualifications (if required): represents Montana Detention Officers	Governor	12/31/1995
Mr. Troy W. McGee, Sr., Helena Qualifications (if required): represents Montana Police Protective Association	Governor	12/31/1995



VACANCIES ON BOARDS AND COUNCILS -- December 1, 1995 through February 29, 1996

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Mr. Christopher Miller, Deer Lodge	Governor	12/31/1995
Qualifications (if required): represents Montana County Attorneys Association		
Mr. Greg Noose, Bozeman	Governor	12/31/1995
Qualifications (if required): represents Montana Law Enforcement Academy		
Ms. Marilyn Zimmerman, Poplar	Governor	12/31/1995
Qualifications (if required): public member		
Whirling Disease Task Force (Fish, Wildlife and Parks)		
Mr. Roger Nelson, Livingston	Governor	1/1/1996
Qualifications (if required): public member		