MONTANA ADMINISTRATIVE REGISTER

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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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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NOTICE SECTION

BEFORE THE BOARD OF BARBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to barbers, barber shops and barber schools	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO BARBERS, BARBER SHOPS AND BARBER SCHOOLS

TO: All Interested Persons:

1. On June 28, 1996, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing conference room, Arcade Building, 111 N. Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to barbers, barber shops and barber schools.

2. The proposed amendment of ARM 8.10.403 and 8.10.405 will read as follows: (new matter underlined, deleted matter interlined)

"8.10.403 EXAMINATION ~~(1) Applications for examinations shall be received in the office of the department at least fifteen days prior to the date of examination and are subject to the final approval of the board.~~

~~(2) A score of 75% is required on written examinations, and 75% on each section of practical examinations to pass. An applicant who does not pass the examination shall only be required to retake the portions of the examination he failed if he takes the next scheduled examination.~~

~~(3) All vocational rehabilitation applicants shall be required to take an examination.~~

~~(4) Applicants licensed in a state other than Montana with less than 2000 hours of training in a barber school shall furnish affidavits from at least 2 persons stating that from their personal knowledge the applicant has practiced as a barber in another state or country for a period of at least one year.~~

(1) The barber licensing examination consists of a national written theory portion and a board-administered practical portion. Examination applicants shall provide photo identification to be admitted to the examination.

(2) Applicants must pass the written theory examination by an overall scaled score of 75 and each section of the practical examination by a score of 75%. An applicant who receives a failing score on any section of the practical examination will only be required to retake the failed section, provided the applicant applies for and takes the next scheduled examination and every examination thereafter until all sections are passed.

(3) The barber instructor examination consists of a national written theory portion and a board-administered practical portion. Examination applicants shall provide photo identification to be admitted to the examination. Applicants must pass the written theory examination by an overall scaled

score of 75 and pass each section of the practical examination by a score of 75%.

(4) The board shall notify applicants of examination results in writing. No score will be released over the telephone or via facsimile. Score-related matters will be discussed, in person, only with the applicant or the applicant's legal representative.

(5) Applicants who wish to contest the scoring of the examination shall do so in writing to the board within 10 days of the postmarked date of the mailing of the decision. The board shall review the examination and justification submitted by the applicant at its next regularly-scheduled meeting.

(6) Applicants who wish to contest the administration of the examination shall do so in writing and cause the writing to be received by the board within seven days after the examination."

Auth: Sec. 37-1-131, 37-30-203, MCA; IMP, Sec. 37-30-203, 37-30-303, 37-30-305, 37-30-311, MCA

REASON: Subsection (3) is proposed for deletion because it unnecessarily repeats statutory language. The substance of subsection (4) regarding reciprocity applications is set forth in new rule III and will no longer require affidavits showing active practice, but will require completion of a written and practical examination. Subsection (2) is rewritten to avoid ambiguity. The deadline for receipt of applications in subsection (1) is set forth in New Rule I. The remaining new language requires candidate identification upon admission to the examination and sets forth guidelines for contesting or review of examinations.

"8.10.405 FEE SCHEDULE

(1) * Examination	
(a) barber	$ ~~30.00~~ 75
(b) instructor	100
~~(2) Barber licenses~~	
~~(a) original~~	~~25.00~~
~~(b) renewal~~	~~25.00~~
~~(3) Reciprocity~~	~~100.00~~
~~(4) Shop license~~	
~~(a) original~~	~~35.00~~
~~(b) renewal~~	~~35.00~~
~~(5) Barber school license~~	
~~(a) original~~	~~50.00~~
~~(b) renewal~~	~~35.00~~
~~(6) Instructor license~~	
~~(a) original~~	~~50.00~~
~~(b) renewal~~	~~40.00~~
~~(c) instructor exam~~	~~50.00~~
~~(7) Penalty fee~~	~~10.00~~
~~(8) Inspection fee~~	~~35.00~~
~~(9) Duplicate license~~	~~10.00~~
~~(10) Fee for advanced barber training program~~	
~~(a) Yearly license~~	~~50.00~~
~~(b) 10 day license~~	~~25.00~~

~~(11) Temporary 10.00~~
~~*For those applications which are withdrawn or denied, $10 of this fee will be retained to cover administrative costs.~~

(2) Original Application License Fee	
(a) barber	30
(b) instructor	50
(c) shop	40
(d) barber school	75
(e) out-of-state application	150
(3) Inspection Fee for shops/schools	80
(4) License Renewal Fee	
(a) barber	25
(b) instructor	40
(c) shop	35
(d) barber school	45
(e) late renewal	50
(5) License Verification Fee	20
(6) Student Permit/Registration	20
(7) Temporary Practice Permit	20
(8) Duplicate License	10
(9) Advance Training Program	
(a) yearly	50
(b) ten-day	25

(10) All fees are non-refundable."

Auth: Sec. 37-1-134, 37-30-203, MCA; IMP, Sec. 37-1-134, 37-30-303, 37-30-307, 37-30-310, 37-30-402, 37-30-404, 37-30-423, MCA

REASON: In reviewing the board's projected financial condition, it is necessary to raise the following fees to maintain an appropriate cash balance sufficient to meet the expenses of the board. The examination fee will be increased for barbers from $30 to $75; for instructors from $50 to $100. The original application fee will increase for barbers from $25 to $30; shops will increase from $35 to $40; schools will increase from $50 to $75; and for out-of-state applicants from $100 to $150. The inspection fees are being raised from $35 to $80. Renewal fee for schools are being increased from $35 to $45. The late fee for late renewals is being increased from $10 to $50 to discourage the disproportionately large number of renewal applications received after the deadline to renew. A new fee for verifying licensure is set at $20. A new fee for registration of students and issuance of student permits is set at $20. Temporary practice permits are being increased from $10 to $20. The remaining fees remain the same. All charges are proposed to be consistent with the amount of administrative work involved in processing the application, conducting the inspection, and issuing the license.

3. The board proposes to repeal ARM 8.10.404, located at page 8-287, Administrative Rules of Montana, (authority section 37-30-203, MCA; implementing section 37-30-203, MCA) which purports to authorize board investigation of "shops and licenses." This authority is granted pursuant to 37-1-307, 37-

1-308, and throughout Title 37, chapter 30, MCA. Therefore, the rule as it exists, is unnecessary.

The board proposes to repeal ARM 8.10.406, located at page 8-288, Administrative Rules of Montana, (authority section 37-1-101, MCA; implementing sections 37-30-307, 37-30-423, MCA) which sets forth an April 1 expiration of licenses. That date is now set forth at ARM 8.2.208. Other renewal requirements are set forth in Title 37, chapter 30, MCA.

The board proposes to repeal ARM 8.10.801, located at page 8-299, Administrative Rules of Montana, (authority section 37-30-411, MCA; implementing sections 37-30-304, 37-30-308, 37-30-401, 37-30-411, MCA). Subsection (1) of the rule is not necessary to effectuate the purpose of the statute and is necessarily implied in Title 37, chapter 30, MCA. Subsections (2) and (4) are not necessarily implied by Title 37, chapter 30, MCA, and may exceed statutory authority. The substance of subsection (3), prohibiting barber shops from being operated in mobile homes, et al., will be expressed in new rule VI referencing applicability of local building code jurisdiction.

The board proposes to repeal ARM 8.10.802, located at pages 8-299 and 8-300, Administrative Rules of Montana, (authority section 37-30-203, MCA; implementing section 37-30-403, 37-30-422, MCA). Its substance (except for subsections (1), (2), (3), (8), (10), and (13)) will be found under proposed new rules addressing safety and sanitation.

The board proposes to repeal ARM 8.10.1001, located at pages 8-305 and 8-306, Administrative Rules of Montana, (authority section 37-30-203, MCA; implementing section 37-30-403, 37-30-422, MCA). Subsections (2), (3), (4)(a) through (d), (5)(a) through (j), (6), and (9) will be incorporated under new sanitation and safety rules. Subsections (1) and (8) unnecessarily repeat 37-30-405, MCA; and subsection (7) exceeds statutory authority.

The board proposes to repeal ARM 8.10.1003, located at page 8-306, Administrative Rules of Montana, (authority section 37-30-203, MCA; implementing sections 37-30-203, 37-30-404, 37-30-406, 37-30-412, MCA). Subsection (1) will be defined as unprofessional conduct under new rule II. The requirement to furnish students a copy of the laws and rules will be found under new rule XVIII.

The board proposes to repeal ARM 8.10.1004, located at page 8-306, Administrative Rules of Montana, (authority section 37-30-203, MCA; implementing section 37-30-203, 37-30-406, MCA), because 37-30-406, MCA, in dictating the time period during which the required 2,000 hours must be completed, necessarily prohibits part time curriculum.

The board proposes to repeal ARM 8.10.1006, located at page 8-307, Administrative Rules of Montana, (authority section 37-30-203, MCA; implementing section 37-30-303, 37-30-406, MCA) because subsection (1) unnecessarily repeats the requirements of 37-30-406(3), MCA; and the intent in (2) will be found under new rule IV.

The board proposes to repeal ARM 8.10.1007, located at page 8-307, Administrative Rules of Montana, (authority section 37-30-203, MCA; implementing section 37-30-404, MCA) because

the review of the number patrons as a criteria to review school applications however may exceed statutory authority.

The board proposes to repeal 8.10.1009, located at page 8-307, Administrative Rules of Montana, (authority section 37-30-404, 37-30-422, MCA; implementing section 37-30-422, MCA) and move its substance under new rule XVIII.

4. The proposed new rules will read as follows:

"I APPLICATION REQUIREMENTS (1) An application for original license must be made on a form provided by the board and completed and signed by the applicant, with the signature acknowledged before a notary public.

(2) The application must be typed or written in ink, signed, and accompanied by the appropriate fee(s) and contain sufficient evidence that the applicant possesses the qualifications as set forth in Title 37, chapter 30, MCA, and rules promulgated thereunder.

(3) The board may require the applicant to submit original or certified documents in support of the application. The board may permit such documents to be withdrawn upon substitution of a true copy.

(4) The applicant shall submit a photocopy of the applicant's driver's license or other photographic identification with the application.

(5) Applicants licensed in other states, applying for Montana licensure, shall cause all states in which the applicant has been, or is currently licensed, to submit verification of licensure directly to the board office.

(6) Fully-completed applications will be reviewed for compliance with board laws and rules. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.

(7) Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions. Application fees are non-refundable.

(8) The applicant shall correct any deficiencies and re-submit the application. Failure to re-submit the application within 90 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal an applicant will be required to submit an entirely new application and fees to begin the process again.

(9) The board shall notify the applicant in writing of the results of the evaluation of the application within 15 days of the board's consideration of the application.

(10) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, as 42 U.S.C. 12101, et seq., in regard to a board-administered licensing examination must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.

(11) An application must be received in the board office at least 20 days in advance of the board's next regularly scheduled meeting. Applications received after this deadline will be held for consideration at the next following board meeting."

Auth: Sec. 37-30-203, MCA; IMP, Sec. 37-30-203, MCA.

REASON: The new rule is proposed to provide guidance to the applicant in the application process, to ensure that the proper individual is submitting the application and sitting for the examination, to provide reasonable accommodations, and to create uniformity among various licensing boards in the processing of applications.

"II UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as follows:

(1) impersonating any licensee or representing oneself as a licensee for which one has no current license;

(2) filing a complaint with, or providing information to the board which the licensee knows, or ought to know, is false or misleading (does not apply to any filing of complaint or providing information to the board when done in good faith);

(3) violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 30, MCA, or rule promulgated thereunder, or any order of the board;

(4) being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substance, or alcoholic beverage, or any combination of such substances;

(5) using any dangerous drug or controlled substance illegally while providing professional services;

(6) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

(7) maintaining an unsanitary or unsafe shop or school or practicing under unsanitary or unsafe conditions;

(8) performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure;

(9) failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensees or students practicing under the licensee's supervision or control, according to generally-accepted standards of practice;

(10) removing a student from theory class to perform barbering work on the public; and

(11) allowing a patron to be released from a chair after being served by a student without inspection and approval by a licensed instructor."

Auth: Sec. 37-1-319, 37-1-131, MCA; IMP, Sec. 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, MCA

REASON: The proposed new rule replaces an existing unprofessional conduct rule in favor of broader, more accurate and precise grounds of unprofessional conduct. The proposed new rule utilizes uniform language that will be applied to

other boards in the Professional & Occupational Licensing Bureau to promote uniformity and efficiency.

"III OUT-OF-STATE APPLICATION (1) For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" as 2,000 hours of formal training and successful completion of a written theory and practical examination by the passing score set forth by board rule. Applicants who do not possess 2,000 hours of formal training shall either take and successfully pass the written and practical examinations, or obtain additional hours as may be directed by the board to achieve the total 2,000 hours. Work experience obtained in the profession may not be considered as part of an applicant's qualifications."

Auth: Sec. 37-1-131, 37-30-203, MCA; IMP, Sec. 37-1-303, 37-1-304, MCA

REASON: This rule is necessary to provide the board with a standard in reviewing applications from applicants licensed in other jurisdictions, and to minimize the difficulty in reviewing each jurisdiction for substantial equivalency. Work experience will no longer be considered in lieu of hours of formal training, as it is difficult to verify and may not be an accurate measure of competency.

"IV TEMPORARY PRACTICE PERMIT (1) Out-of-state applicants who do not qualify for a license under 37-1-304, MCA, and who have chosen to take the license examination in lieu of additional education, may apply for a temporary practice permit. A temporary practice permit is not available for applicants taking additional training.

(2) A graduate of a barber school may work under a temporary practice permit pursuant to 37-1-305, MCA.

(3) Any person holding a temporary practice permit must practice under the direct, on-premises supervision of a licensed barber. Supervision must be evidenced by the signature of the supervising barber on the application for temporary permit."

Auth: Sec. 37-1-319, MCA; IMP, Sec. 37-1-305, 37-1-319,MCA.

REASON: The rule is necessary to ensure adequate supervision of the temporary permit holder until he or she successfully passes the licensing examination.

"V REPLACEMENT LICENSES (1) Licensees shall immediately notify the board of lost, damaged, or destroyed licenses and obtain a duplicate license, by written request, to the board stating the reason for issuance of a duplicate and by paying the appropriate fee. Licensees who have lawfully changed their names may, in their discretion, obtain a replacement license.

Auth: Sec. 37-30-203 MCA; IMP, Sec. 37-20-203, MCA

REASON: This rule is being proposed to provide direction to licensees and staff.

"VI COMPLIANCE WITH APPLICABLE REGULATIONS (1) In addition to the requirements found at 37-30-403, MCA, all shops and schools shall adhere to the minimum safety and sanitation requirements set forth in this subchapter.

(2) All practitioners shall comply with all applicable federal, state, and local regulations pertaining to public health and safety, including, but not limited to air quality, water quality, fire, plumbing, and electrical regulations. Licensure by the board does not constitute approval for compliance with other federal, state, or local regulations.

(3) The board shall enforce ARM 8.70.505 prohibiting the use of mobile homes for commercial or business purposes in accordance with applicable building codes."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: This rule is necessary to advise licensees of the applicability of other public health and safety regulations distinct from the board of barbers, particularly in subsection (3) as a preventative measure for persons who may be interested in opening a barber shop but are unaware of the prohibition by some building codes against operating a commercial enterprise in a mobile home.

"VII GENERAL REQUIREMENTS (1) All shops and schools shall be designed and equipped with practitioner and client health and safety in mind.

(2) All shops and schools must be equipped with mechanical ventilation that provides for at least four air changes per hour to provide free flow of air to each room to prevent the buildup of emissions and particulate, to keep odors and diffusions from chemicals and solutions at a safe level, and to provide sufficient air circulation and oxygen.

(3) All work areas shall be lighted with at least 20 foot-candles of illumination.

(4) All shops and schools must maintain a separate outside entrance for the following purposes:

(a) ventilation,

(b) emergency exit from the building, and

(c) in residential shops, to segregate the residential from the commercial uses.

(5) No rooms used for residential purposes may be used as part of a shop except for toilet facilities.

(6) Floors, walls, fixtures, storage cabinets, work stations, and equipment must be clean, in good repair, and regularly maintained.

(7) Floor surfaces in the working area of a shop or school must be of a washable, non-absorbent material. Wooden floors may be acceptable if they have a water-proof finish.

(8) Animals shall not be permitted on the premises at any time except for animals trained to assist individuals with special physical, visual, or hearing needs.

(9) All licenses are nontransferable. Any change in ownership or location of any shop or school must be preceded by a new application and payment of fees."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: Revision of the sanitation and safety rules are necessary to delete those provisions which may have engrafted additional requirements to the enabling statute, provisions which may have conflicted with the enabling statute, and provisions that were not necessary to effectuate the purposes of the enabling statute. Revision is necessary to provide clarity and understanding in the rules and to provide board inspectors unambiguous standards to apply and to further reflect current safety and sanitation needs and developments in preventative safety measures.

"VIII POSTING OF LICENSES (1) All shop and school licensees must prominently display their current practitioner and shop or school licenses within public view on the premises.

(2) Practitioners must post their licenses at their work stations in clear view of clients. A current photograph of the practitioner must be attached to the license. Any residential address shown on a license may be blocked from public view."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: This rule is necessary to provide notice to the public of the practitioner's or facility's licensure status and to ensure that the individual performing the services is the same individual to whom the license is issued.

"IX TOILET FACILITIES (1) All shops and schools licensed after January 1, 1975, must have toilet facilities located on the premises or in adjoining premises that are reasonably accessible.

(2) Toilet facilities must be clean, sanitary, and in proper working order at all times and contain an adequate supply of toilet paper.

(3) Toilet facilities shall not be used for storing materials other than toilet supplies. Any supplies including toilet supplies shall be stored in a locked cabinet.

(4) Doors accessing toilet facilities must be self-closing.

(5) A sink dedicated solely for washing hands must be located within or immediately adjacent to the toilet facility and be equipped with liquid soap and paper towels. The use of community towels and multiple-use bar soap is prohibited in all instances.

(6) Hand washing instructions must be posted above the sink as follows:

(a) You shall clean your hands and exposed portions of your arms with a cleaning compound in a lavatory by vigorously rubbing together the surfaces of your lathered hands and arms for at least 20 seconds and thoroughly rinsing with warm clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers.

(b) After contact with blood or other body fluids wash your hands twice, using the cleaning procedure specified in (a), and by using a nailbrush during the first washing to clean your fingertips, under your fingernails, and between your fingers.

(c) You shall clean your hands:

(i) before each client,

(ii) after using the toilet,

(iii) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking,

(iv) after handling soiled equipment or implements, or

(v) after engaging in other activities that contaminate your hands."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"X SINK AND BASIN REQUIREMENTS (1) In addition to the hand washing sink required in [new rule IX,(5)], all shops and schools must be equipped with at least one shampoo basin or sink for every four work stations. Additional basins may be required to address greater volume and usage requirements.

(2) Liquid soap and paper towels shall be available immediately adjacent to the shampoo basins or sink under (1).

(3) Hand washing sinks dedicated for the toilet facility do not qualify as a shampoo basin or sink under (1).

(4) All sinks, basins, and drains shall be maintained in clean and working condition."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"XI TOWELS AND LINENS (1) All towels or linens provided to a client must be clean and laundered after every use.

(2) Clean towels and linens must be stored in closed cabinets or containers with tight-fitting doors or lids and remain closed to provide protection from air-borne contaminants.

(3) Soiled towels and linens must be kept in ventilated closed containers."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"XII ARTICLES AND SUBSTANCES IN CONTACT WITH A CLIENT

(1) Clients shall be protected from direct contact with headrests, capes, etc., by the use of clean towels and/or protective paper strips.

(2) Items making direct contact with the client's skin or hair shall be clean and, if required, disinfected.

(3) Items making direct contact with the client's skin that cannot be cleaned or disinfected (cotton pads or strips, eye shields, neck strips, etc.) shall not be reused on clients

and shall be disposed of in a waste container immediately after use.

(4) All substances used in the practice must be dispensed from containers in a manner to prevent contamination of the unused portion, either by use of pumps or single-service spatulas.

(5) All materials and supplies used to provide client services shall be stored above the floor and handled and applied to protect against contamination.

(6) All bottles and containers used in a shop or school shall be distinctly labeled to disclose contents. All poisonous substances shall be additionally labeled with the following:

(a) E.P.A. registration number,
(b) ingredient statement,
(c) directions for use,
(d) adequate safety and precautionary information,
(e) name and address of manufacturers or distributor, and
(f) effectiveness claims."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"XIII WASTE MATERIAL (1) No shop or school shall permit an accumulation of litter or waste. Hair clippings shall be swept after each client and disposed of in a proper waste disposal container.

(2) All waste disposal containers must have plastic liners, remain covered at all times, and be kept clean.

(3) Plastic liners must be tightly secured and double-wrapped if necessary upon removal from the premises to prevent spillage of waste contents.

(4) Any disposable material coming into contact with blood or other body fluids shall be disposed of in a sealable plastic bag, separate from sealable trash or garbage liners or in a manner that protects anyone who may come into contact with the materials.

(5) Any disposable sharp objects that come in contact with blood or other body fluids shall be disposed of in a sealable, puncture-proof container designed to protect from accidental cuts or puncture wounds that could occur during the disposal process. Such container(s) must be available on the premises at all times.

(6) All chemical waste material must be disposed of in accordance with manufacturer's directions and/or federal, state, and local regulations."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"XIV CHEMICAL USE, STORAGE, AND DISPOSAL (1) When administering services to a client that involve the use of chemicals or chemical compounds, practitioners shall follow

safety procedures to prevent injury to the client's person or clothing.

(2) All chemicals must be labeled, stored, used, and disposed of in accordance with the manufacturer's directions and applicable federal, state, and local regulations.

(3) Flammable chemicals must be stored away from potential sources of ignition.

(4) Chemicals which could interact in a hazardous manner such as oxidizers, catalysts, and solvents must be segregated in storage.

(5) Stored chemicals must be inspected regularly. Containers showing signs of corrosion must be disposed of immediately.

(6) Hazardous chemicals and flammable liquid signs must be posted in the dispensary, storage room, and any other location these materials may be located.

(7) Fire extinguishers must be readily accessible to the dispensary, storage room, and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"XV SERVING CLIENTS (1) Practitioners shall wash their hands with soap and water after each toilet use and prior to serving each client.

(2) Practitioners shall wear unused, fluid-proof, protective gloves while performing any client or practice-related activity if any bodily discharge is present or if any discharge is likely to occur because of services being performed. Protective gloves used for this purpose shall be bagged and disposed of after use on a client.

(3) Head lice shall not be treated in a shop or school.

(4) No practitioner who is a carrier or affected with a communicable disease shall work in any shop or school unless the person takes medically-approved measures to prevent transmission of the disease."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"XVI DISINFECTING REQUIREMENTS AND STANDARDS (1) All tools and implements used in the practice of barbering must be disinfected before use on each client.

(2) All non-electrical tools and implements should be cleaned by removing all hair and foreign material and by washing with detergent and warm water and rinsed with clean water prior to immersion.

(3) All tools and implements which come in contact with blood or body fluids must be disinfected by complete immersion in an EPA-registered, hospital grade, tuberculocidal

disinfectant that is mixed and used according to the manufacturer's directions.

(4) All other tools and implements not coming in contact with blood or body fluids must be disinfected by complete immersion in an EPA-registered, hospital grade, bactericidal, virucidal, and fungicidal disinfectant that is mixed and used according to the manufacturer's directions.

(5) The contact points of all non-immersible equipment shall be wiped or sprayed with an appropriate disinfectant solution.

(6) Appropriate disinfecting solutions shall be available for immediate use at all times a shop or school is in operation. Disinfecting solutions shall be kept at adequate strengths and be free of foreign material.

(7) Sterilization equipment used in lieu of disinfectants must be checked annually to ensure it reaches the temperature required by manufacturer's instructions.

(8) Disinfected implements must be stored in a disinfected, dry, and covered containers or drawers, segregated from used or soiled implements."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: See reason for new rule VI.

"XVII VARIANCES (1) Upon application, the board may grant a variance from requirements of its safety and sanitation rules as follows:

(a) where it is demonstrated to the satisfaction of the board that strict compliance with the rules would be highly burdensome or impractical due to special conditions or cause;

(b) where the board finds that the public or private interest in the granting of a variance clearly outweighs the interest of the application of uniform rules; and

(c) where, in the opinion of the board, alternative measures will provide adequate public health and safety protection."

Auth: Sec. 37-30-203, 37-30-422, MCA; IMP, Sec. 37-30-422, MCA

REASON: This proposed rule is not intended to circumvent the board's safety and sanitation rules. The board foresees granting few, if any, variances from these rules. However, the board's disciplinary authority is discretionary and if presented with the circumstances cited above, the rule would provide guidelines for the board to exercise its discretion.

"XVIII SCHOOL REQUIREMENTS (1) To implement the provisions found at 37-30-404 through 37-30-407, MCA, the following rules are necessary:

(a) On forms provided by the board, all persons wishing to operate a barber school shall make application and pay the appropriate fee. The application shall indicate the number of students for which the applicant is seeking approval, whether the school intends to offer barber instructor training, and indicate hours the school will be open.

(b) The application must be accompanied by a detailed floor plan identifying the purpose, measurements, and square foot calculations of each room. The floor plan must allow for a minimum space of seven feet from the center of the base of each chair.

(c) The school operator shall not register or admit students until the board approves the school application and issues a license.

(d) The board office shall receive notice of student enrollment on a form provided by the board and submitted by the school operator within five days of the student's enrollment. Failure to submit notice within the time allowed will result in the student's inability to earn hours in excess of what may be earned in the five days. To receive credit for hours obtained after five days, the school operator and the student must petition the board.

(e) School operators shall submit the appropriate student registration fee with the notice of enrollment. Upon receipt of a completed enrollment notice and fee, the board shall issue a student permit to be displayed at the school work station. The board shall mail the student's permit and a copy of the board's law and rules to the student's home address.

(f) On forms provided by the board, school operators shall maintain a daily attendance record and a monthly total of hours earned for each student and submit such records to the board by the 15th of each following month. Attendance records shall be updated daily and shall be made available for inspection upon request.

(g) The school operator shall immediately notify the board of any changes in ownership, location, or instructors.

(h) School operators shall notify the board within 5 days of a student withdrawing his or her enrollment and provide a statement of total hours earned by the student.

(i) Schools shall not allow any transfer student from another school to practice on the public until a verified transcript of the student's hours has been received and verified by the board.

(j) A school operator shall send notice to the board of a student's having completed 2,000 hours of training within five days of the student's completion of the training.

(k) Students who have completed 2,000 hours of training and remain at the school shall not be permitted to work on the public.

(l) Schools shall provide sufficient educational aids, including, but not limited to the following:

(i) charts of skin, hair, muscles, bones, nerves, and blood supplies of the head, face and neck;

(ii) current textbooks and medical and standard dictionary;

(iii) current barbering and beauty magazines; and

(iv) current copies of the board law and rules.

(m) A sign that reads "Student Work Only" shall be posted on the school premises within public view.

(n) The toilet facilities required by 37-30-405, MCA, shall include one restroom for males and one restroom for females."

Auth: Sec. 37-1-131, 37-30-203, MCA; IMP, Sec. 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, MCA

REASON: This rule is necessary to clarify the type of information and timeliness of the receipt information necessary for the board's regulation of schools and students.

"XIX INSTRUCTOR TRAINING REQUIREMENTS (1) Each school approved by the board to offer an instructor training program must have at least one full-time, licensed instructor on the premises of the school at all times while the school is open.

(2) Student instructors shall wear badges or insignia indicating that they are student instructors.

(3) Student instructors shall be under the direct, on-site supervision of the full-time licensed instructor while practice teaching and shall not be allowed to work on the public during their practice teacher-training.

(4) On forms provided by the board, student instructors shall make application and submit the appropriate fees prior to commencing training. The board shall issue a student instructor permit. Credit will not be given for hours earned prior to issuance of the permit by the board."

Auth: Sec. 37-1-131, 37-30-203, MCA; IMP, Sec. 37-30-311, MCA

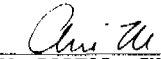
REASON: This rule is necessary to provide guidance regarding the role of student instructors and to make clear that a student instructor does not replace a licensed instructor; rather that it is appropriate for the student instructor to instruct barber students only in the presence of a licensed instructor.

5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., June 14, 1996, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Barbers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406)444-4288; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Jeannie Worsech.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Barbers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406)444-1667 to be received no later than 5:00 p.m., July 5, 1996.

7. A staff attorney for the bureau has been designated to preside over and conduct this hearing.

BOARD OF BARBERS
MAX DEMARS, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 28, 1996.

BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to the practice of occupational therapy	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF OCCUPATIONAL THERAPY

TO: All Interested Persons:

1. On June 27, 1996, at 10:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment of rules pertaining to the practice of occupational therapy.

2. The proposed amendment of ARM 8.35.401, 8.35.402, 8.35.403, 8.35.404, 8.35.407, 8.35.408, 8.35.411, 8.35.412, 8.35.503 will read as follows: (new matter underlined, deleted matter interlined)

"8.35.401 BOARD FILING PRACTICES (1) All submissions to ~~the board~~, or requests of the board, must be made in writing and addressed to the board office ~~or the board~~ before they will be acted on by the board. ~~Correspondence from the board of any specific nature shall be signed by the chairman.~~ Routine matters will be handled by the administrative assistant."

Auth: Sec. 37-24-201, 37-24-202, MCA; IMP, Sec. 37-24-202, MCA

REASON: The amendment is necessary to allow correspondence to be sent from the board office without the signature of the board chairman. Other changes are stylistic only.

"8.35.402 DEFINITIONS As used in Title 37, chapter 24, MCA, and these rules, unless the context requires otherwise, the following definitions apply:

~~(1) "In association with" means the ongoing direction and instruction to establish and maintain an occupational therapy program service combined with observations and evaluation of performances of the occupational therapist and occupational therapist assistant services provided, but without the necessity of a licensed occupational therapist being actually physically present at the times when services are being provided.~~

(2) through (4)(b) will remain the same, but will be renumbered (1) through (3)(b)."

Auth: Sec. 37-1-131, 37-24-201, 37-24-202, MCA; IMP, Sec. 37-24-103, 37-24-104, 37-24-105, 37-24-106, 37-24-202, ~~37-24-307,~~ MCA

REASON: The deletion of (1) is necessary to reflect the repeal of 37-24-307, MCA, which authorized the issuance of limited permits, by the 1995 Legislature. Temporary practice permits issued under the authority of 37-1-305, MCA, take the place of the former limited permit category. Language setting forth the supervision requirements of temporary permit holders is now located in ARM 8.35.404 and under new rules I and II.

"8.35.403 APPLICATIONS FOR LICENSURE ~~(1) An application for a license to practice as an occupational therapist and/or occupational therapist assistant shall be submitted to the board office in Helena on forms provided by the board.~~

~~(2) Every application shall be typed or written in ink, signed and accompanied by the appropriate application fee and by such evidence, statements or documents as therein required.~~

~~(3) Applicant shall be notified, in writing, of the results of the evaluation of their respective applications for licensure.~~

~~(4) Approved applications and all documents filed in support thereof shall be retained by the board, provided that the board may permit such documents to be withdrawn upon substitution of true copies.~~

~~(5) The board may request that such additional information or clarification of information be provided with the application as it deems reasonably necessary.~~

~~(6) An applicant will be deemed to have abandoned his or her application if he or she does not complete the application requirements for licensure within one year from the date on which the application was filed.~~

~~(7) An application submitted subsequent to an abandoned application shall be treated as a new application.~~

(1) Applications for an original license or temporary practice permit must be made on forms provided by the board and completed and signed by the applicant, with the signature acknowledged before a notary public.

(2) The application must be typed or legibly written in ink, accompanied by the appropriate fee(s), and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 24, MCA, and rules promulgated thereunder.

(3) The board shall require the applicant to submit original or certified documents in support of the application. The board shall permit such documents to be withdrawn upon substitution of a true copy.

(4) The board shall require the applicant to submit a photocopy of the applicant's driver license or other form of signed, photographic identification.

(5) Fully-completed applications will be reviewed for compliance with board laws and rules. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions.

(6) The applicant shall correct any deficiencies and re-submit the application. Failure to re-submit the application within 60 days shall be treated as a voluntary withdrawal of

the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

(7) The board shall notify the applicant, in writing, of the results of the evaluation of a completed application.

(8) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101, et seq., must be made on forms provided by the board and submitted in advance of the requested accommodation."

Auth: Sec. 37-24-201, 37-24-202, MCA; IMP, Sec. 37-24-302, MCA

REASON: The board proposes the amendments to set forth the application procedure and necessary information for applicants and to make the rule uniform with other licensing boards in the bureau. The requirement to submit photographs is intended to prevent fraud and provide identification of licensure applicants and licensees. The rule, as proposed, makes reference to the board's commitment to ensuring access under the American's with Disabilities Act. The substance of all current subsections are maintained in the proposed rule with minor changes in style.

"8.35.404 ~~APPLICATIONS FOR LIMITED~~ TEMPORARY PRACTICE PERMIT (1) ~~An application for a limited permit may be submitted to the board office in Helena on forms provided by the board. The applications must be typed or written in ink, signed and accompanied by the appropriate application fee and by such evidence, statements or documents as required by the board.~~ All temporary permit holders shall work under the supervision of a licensed occupational therapy practitioner in accordance with [new rules I and II].

(2) ~~The applicant must submit a statement signed by a person who will be his or her responsible licensee and the applicant, outlining the supervision or training to be provided.~~ Applicants under 37-1-305(2), MCA, who have previously taken the national examination and failed, are not eligible for a temporary practice permit."

Auth: Sec. 37-1-305, 37-24-201, 37-24-202, MCA; IMP, Sec. ~~37-24-307~~ 37-1-319, MCA

REASON: The changes are necessary to conform with House Bill 518 (the Uniform Professional Licensing and Regulation Procedures Act) enacted by the 1995 Legislature, including changes in terminology from "limited permit" to "temporary practice permit," and board determination of the type of supervision required under a temporary permit. Other changes are proposed to reduce repetitiveness in the rules.

"8.35.407 FEES (1) Fees adopted by the board under 37-24-310, MCA, are as follows:

(a)	Applications for licensure	$ ~~80.00~~	20
(b)	Initial license issuance	~~80.00~~	20
(c)	License renewal	~~60.00~~	20
(d)	Late license renewal	~~60.00~~	20

(e)	~~Limited permit~~ Temporary practice permit	~~80.00~~	10
(f)	Inactive fee renewal	~~15.00~~	10
(g)	Duplicate license fee	~~10.00~~	10
(h)	License verification fee		10

~~(h) If a new applicant for licensure successfully applies on or after March 15, his license will be valid for the remainder of the license year and for the following license year. An inactive license renewal granted on or after March 15 will apply for the remainder of the license year and for the following year. Any new therapist in Montana who wishes to practice as a registered occupational therapist, or an occupational therapist student, or under a limited permit must apply for licensure within 10 working days after arrival in this state.~~

~~(i) The application fee of $80 for the limited permit holder will be applied toward the fee for a permanent license issued within six months of permit issuance.~~

(2) will remain the same."

Auth: Sec. 37-1-131, 37-1-134, 37-24-201, 37-24-202, MCA; IMP, Sec. 37-24-310, MCA

REASON: The proposed amendments reflect changes in terminology from "limited permit" to "temporary practice permit" and propose a new license verification fee to be paid by applicants who request a verification of licensure to be sent to another state in which the applicant is applying for licensure. The first two sentences of (h) conflict with the department rule requiring annual expiration and renewal of licenses. The last sentence of (h) purports to require a new applicant to apply for licensure within 10 working days after arriving in the state, implying that the applicant may practice without a license for a negligible period of time. However, this is in conflict with 37-24-301, MCA, which prohibits practice without a license. Subsection (i) is proposed for deletion in accordance with 37-1-134, MCA, which requires the Board to set fees commensurate with program area costs. The fee charged reflects the amount of work it takes to process an application and would be the same regardless of when the applicant applied during the license year.

"8.35.408 UNPROFESSIONAL CONDUCT RULES For the purpose of implementing ~~37-24-309(1)(b)~~ Title 37, chapter 1, MCA, and in addition to the provisions at 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

~~(1) Performing procedures beyond the authorized scope or level of care or treatment for which the practitioner is licensed.~~

~~(2) Malpractice.~~

~~(3) Guaranteeing the results of any occupational therapy or consultative or therapeutic procedures.~~

~~(4)~~ (1) Diagnosing or treating individual disorders by correspondence.~~;~~

~~(5) Reveal to unauthorized persons any confidential information obtained from any individual served or consulted with professionally without that individual's permission.~~

~~(6) Exploit the clients or patients by accepting them for treatment where benefits cannot reasonably be expected to accrue, by continuing treatment unnecessarily.~~

~~(7) Failure to refer patients or clients to other specialists as needed, to effect as great improvement as possible in the client or patient.~~

~~(8) Failure to take every precaution to avoid injury to the persons he serves professionally.~~

~~(9)~~ (2) Discriminating against a client ~~or patient~~ on the basis of race, religion, sex, or age~~, in his professional relationships~~.;

~~(10) Obtaining or attempting to obtain compensation by fraud or deceit.~~

~~(11) Engaging in assault and battery of patients or others with whom the practitioner has a professional relationship.~~

~~(12) Engaging in sexual misconduct or abuse involving patients or others with whom the practitioner has a professional relationship.~~

~~(13) Being convicted of a crime, the circumstances of which substantially relate to the practice of occupational therapy or indicate an inability to engage in the practice of occupational therapy safely, proficiently and or competently.~~

~~(14)~~ (3) Inaccurately recording, falsifying ~~or otherwise~~ altering, or failing to make essential entries of any record of a ~~patient~~ client or health care provider~~.~~;

~~(15) Failing to maintain proper records including but not limited to falsifying patient's records or intentionally charting incorrectly; charging the patient for services or equipment not rendered and misrepresentation of services to third party payers.~~

~~(16)~~ (4) Intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such report~~.~~;

~~(17)~~ (5) Improper use of evaluation or treatment modalities resulting in physical injury to the ~~patient or~~ client~~.~~;

~~(18) Failure to cooperate with an investigation authorized by the board by refusing to respond to a complaint filed by a patient or refusing to comply with an administrative subpoena obtained by the board.~~

~~(19) Promotion for personal gain of any unnecessary or inefficacious device, treatment, procedure or service.~~

(6) Using a firm name, letterhead, publication, term, title, designation, or document which states or implies an ability, relationship, or qualification that does not exist;

(7) Practicing the profession under a false name or name other than the name under which the license is held;

(8) Impersonating any licensee or representing oneself as a licensee for which one has no current license;

(9) Charging a client or a third party payor for a service not performed;

(10) Submitting an account or charge for services that are false or misleading. This does not apply to charging for an unkept appointment;

(11) Filing a complaint with, or providing information to the board which the licensee knows, or ought to know, is false or misleading. This provision does not apply to any filing of complaint or providing information to the board when done in good faith;

(12) Violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 24, MCA, or rule promulgated thereunder, or any order of the board;

(13) Violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;

(14) Being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substance, or alcoholic beverage, or any combination of such substances;

(15) Using any dangerous drug or controlled substance illegally while providing professional services;

(16) Acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

(17) Maintaining an unsanitary or unsafe office or practicing under unsanitary or unsafe conditions;

(18) Performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure;

(19) Failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience, or competence;

(20) Maintaining a relationship with a client that is likely to impair the licensee's professional judgment or increase the risk of client exploitation including providing services to employees, supervisees, close colleagues or relatives;

(21) Exercising influence on or control over a client, including the promotion or the sale of services, goods, property, or drugs for the financial gain of the licensee or a third party;

(22) Promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;

(23) Charging a fee that is clearly excessive in relation to the service or product for which it is charged;

(24) Failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensees practicing under the licensee's supervision or control according to generally accepted standards of practice;

(25) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services;

(26) Delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license, or certification to perform the delegated task;

(27) Accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation, or who is not licensed or authorized to operate a professional practice or business;

(28) Failing to cooperate with a board inspection or investigation in any material respect;

(29) Failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;

(30) Failing to obtain informed consent from client or client's representative prior to providing any therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related care;

(31) Employing a nontraditional or experimental treatment or diagnostic process without informed consent from client or client's representative prior to such diagnostic procedure or treatment, or research, or which is inconsistent with the health or safety of the client or public;

(32) Guaranteeing that a cure will result from the performance of medical services;

(33) Ordering, performing, or administering, without clinical justification, tests, studies, x-rays, treatments or services;

(34) Failing to provide to a client, client's representative, or an authorized health care practitioner, upon a written request, the medical record or a copy of the medical record relating to the client which is in the possession or under the control of the professional. Prior payment for professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;

(35) Sexual, verbal, or mental abuse of a client;

(36) Failing to safeguard the client's dignity or right to privacy;

(37) Engaging in sexual contact, sexual intrusion, or sexual penetration, as defined in Title 45, chapter 2, Montana Code Annotated with a client during a period of time in which a professional relationship exists, or for up to six months after the relationship has terminated;

(38) Failing to account for funds received in connection with any services rendered or to be rendered."

Auth: Sec. 37-1-131, 37-1-307, 37-1-316, 37-1-319, 37-24-201, 37-24-202, ~~37-24-309~~, MCA; IMP, Sec. ~~37-24-309~~, 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, MCA

REASON: The proposed new rule replaces an existing unprofessional conduct rule in favor of broader, more accurate and precise grounds of unprofessional conduct. All of the subsections proposed for deletion are contained under 37-1-316, MCA. In addition, the proposed new rule utilizes uniform language that will be applied to other boards in the

Professional & Occupational Licensing Bureau to promote uniformity and efficiency.

"8.35.412 INACTIVE STATUS (1) ~~A licensee may place his or her license on inactive status provided that, prior to the expiration of his license, he makes written application to the board for such status. Thereafter, he may obtain his license upon payment of the current license renewal fee for that year. It is the licensee's responsibility to keep the board office informed of their current address.~~ A licensee who wishes to retain a license, but who will not be practicing occupational therapy, may obtain an inactive status by indicating this intention on the annual renewal form or by submission of an application and payment of the appropriate fee. An individual licensed on inactive status may not practice occupational therapy during the period in which he or she remains on inactive status.

(2) An individual licensed on inactive status may convert his or her license to active status by submission of an appropriate application and payment of the renewal fee for the year in question. The application must contain evidence of one or more of the following, in the board's discretion:

(a) full-time practice of occupational therapy in another state and completion of continuing education for each year of inactive status, substantially equivalent, in the opinion of the board, to that required under these rules, or

(b) completion of a minimum of six contact hours of continuing education within the six months prior to application for reinstatement, or

(c) repassage of the NBCOT examination."

Auth: Sec. 37-1-319, 37-1-131, 37-24-201, 37-24-202, MCA; IMP, Sec. 37-1-319, 37-24-308, MCA

REASON: The proposed amendments are necessary to inform licensees of the procedure for seeking inactive status and the reactivation of an inactive license. The amendments propose continuing competency requirements by requiring a licensee to receive continuing education or to retake the licensing examination, prior to reactivation of the license.

"8.35.503 ~~QUALIFIED CONTINUING~~ QUALIFYING EDUCATION PROGRAMS (1) In accordance with 37-24-105 and 37-24-106, MCA, ~~E~~educational programs that would satisfy ~~continuing~~ education requirements for use of superficial physical agent modalities or sound and electrical physical agent modalities must be approved or recognized either by the American occupational therapy association or the American society of hand therapists or be approved by the board."

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

REASON: The proposed amendments are necessary to distinguish qualifying education required for persons wishing to use sound and electrical physical agent modalities and superficial physical agent modalities from continuing education that the

board proposes, under new rule III, to be required of all licensees.

3. The Board is proposing to repeal ARM 8.35.409 because the board's authorized sanctions are now found at 37-1-312, MCA; ARM 8.35.411 is being proposed for repeal because it is not necessary to effectuate the purpose of the statute and is repetitive of 37-24-308, MCA. ARM 8.35.413 is being proposed for repeal because the statute it implemented, 37-24-307, MCA, was repealed. However, the substance of granting a temporary practice permit is retained in ARM 8.35.404, as proposed. The text of these rules can be located at pages 8-1059 and 8-1059.1, Administrative Rules of Montana. The authority sections are 37-1-131, 37-24-201 and 37-24-202, MCA, and the implementing sections are 37-1-136, 37-24-202, 37-24-307 (repealed 1995 legislative session) and 37-24-309, MCA.

4. The proposed new rules will read as follows:

"I SUPERVISION - GENERAL STATEMENT (1) (Adapted from the American Occupational Therapy Association Position Statement on Supervision, 1993). The supervisor shall determine the degree of supervision to administer to the supervisee based on the supervisor's estimation of the supervisee's clinical experience, responsibilities, and competence at a minimum.

(2) A fully-licensed occupational therapist shall not require supervision.

(3) A certified occupational therapist assistant, in accordance with 37-24-103(2), MCA, shall work under the general supervision of a licensed occupational therapist.

(4) Temporary practice permit holders under 37-1-305(2), MCA, shall work under the routine supervision of a certified occupational therapist assistant or a licensed occupational therapist.

(5) Entry-level practitioners shall be defined as practitioners having less than six months' experience in the specific practice setting and may on a case by case basis, require supervision as determined by the board.

(6) Occupational therapy aides under 37-24-103(6), MCA, shall work under the direct supervision of a licensed occupational therapist or a certified occupational therapist assistant. Occupational therapy aides shall have no supervisory capacity."

Auth: Sec. 37-1-319, 37-24-202, IMP: Sec. 37-1-305, 37-24-103, MCA

REASON: The rules on supervision are necessary to update supervision requirements to remain current with the American Occupational Therapy Association and to provide clear standards to licensees.

"II SUPERVISION - METHODS (1) Direct supervision shall require the supervisor to be physically present in the direct treatment area of the client-related activity being performed by the supervisee. Direct supervision requires face-to-face

communication, direction, observation, and evaluation on a daily basis.

(2) Routine supervision requires direct contact at least daily at the site of work, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication.

(3) General supervision requires face-to-face communication, direction, observation, and evaluation by the supervisor of the supervisee's delivery of client services at least monthly at the site of client-related activity, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication."

Auth: Sec. 37-1-319, 37-24-202, IMP: Sec. 37-1-305, 37-24-103, MCA

REASON: See reason for new rule I.

"III CONTINUING EDUCATION (1) On a form provided by the board, all applicants for renewal of licenses shall affirm that they have completed 10 hours of continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until the licensee's first full year of licensure.

(2) The licensee shall maintain records and documentation of completion of continuing education activities such as verification of participation forms, conference brochures, certificates, college or university transcripts or grade reports, articles, book reviews, and apprenticeship evaluations.

(3) All licensees shall annually attach copies of their documentation of completion for continuing education activities to the renewal form.

(4) Up to 10 hours earned in excess of the 10 hours required in a licensing year may be carried over into the following year. Credit may be received for a course previously submitted on a biannual basis only.

(5) All continuing education credits must be germane to the profession and must contribute to the professional competence of an occupational therapist as determined by the board in its sole discretion.

(6) The board shall accept any continuing education offered or approved by the Montana occupational therapy association, the American occupational therapy association, the American society of hand therapists, or the American journal of occupational therapy.

(7) Subject to approval by the board, continuing education credits may be earned through college course work, according to the following limitations:

(a) the licensee must pass the course,

(b) one semester credit shall equal 15 hours of continuing education, and

(c) one quarter credit shall equal 10 hours of continuing education.

(8) Subject to approval by the board, continuing education credits may be earned by teaching courses or making professional presentations, according to the following limitations:

(a) two hours shall be awarded for every hour of presentation,

(b) documentation must be submitted in the form of an agenda or outline listing the licensee as the instructor or presenter of the course,

(c) the course must be addressed to health professionals or a community service organization,

(d) credit for instruction of any course or topic of presentation may be submitted for continuing education only once, and

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

(9) Subject to approval by the board, continuing education credits may be earned for apprenticeships involving supervised clinical experience aimed at return to practice or developing specialized skills in occupational therapy, according to the following limitations:

(a) ten hours shall be credited for each forty hour week,

(b) there is no limit to the amount of hours that can be earned under this category,

(c) documentation must be submitted in the form of a signed letter from the clinical supervisor describing the length and type of educational experiences, and an evaluation of the practitioner's performance, and

(d) apprenticeships must be served under the supervision of a licensed occupational therapist whose license is in good standing.

(10) Subject to approval by the board, continuing education credits may be earned for reading books germane to the profession, according to the following limitations:

(a) one hour shall be credited for each book or article up to a maximum of four hours per year, and

(b) documentation must be maintained in the form of a book review written by the licensee noting the author, title, publisher, and publishing date of the book or article."

Auth: Sec. 37-1-319 37-24-202, MCA; IMP, Sec. 37-1-319 37-1-306, MCA

REASON: The board, after conducting a survey of its licensees, determined that continuing education would be in the best interest of the public and licensees who serve the public. In requiring continuing education, the board has attempted to allow flexible, cost-efficient, and geographically accessible means for licensees to meet the requirements.

"IV CONTINUING EDUCATION--WAIVER (1) The board may grant waivers or extensions of time within which to fulfill continuing education requirements in cases involving physical disability or undue hardship. To be considered for a waiver,

an applicant shall submit a written application on forms provided by the board. Waivers may be granted for a period not to exceed two calendar years. In the event the physical disability or undue hardship for which the waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver."

Auth: Sec. 37-1-319, 37-24-202, MCA; IMP, Sec. 37-1-319, 37-24-105, 37-24-106, MCA

REASON: See reason for new rule III.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Occupational Therapists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., June 20, 1996.

6. A staff attorney for the Professional & Occupational Licensing Bureau will be designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPISTS
LYNN BENSON, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 28, 1996.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to examinations, out-of-state candidates for examination, education requirements and fees	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF PUBLIC ACCOUNTING

TO: All Interested Persons:

1. On July 8, 1996, at 9:00 a.m., a public hearing will be held at the Professional and Occupational Licensing Conference Room, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of ARM 8.54.402, 8.54.403, 8.54.408 and 8.54.410 pertaining to the practice of public accounting.

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

"8.54.402 EXAMINATIONS (1) will remain the same.

(2) All applicants must meet the educational requirements of ARM 8.54.408 prior to submission of an application and must be approved by the board to sit for the examination.

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

~~(4) A candidate who is unable for any reason to sit for an examination for which he has been approved shall notify the board office in writing prior to the commencement of the examination in order to receive a refund of fees paid less an administrative fee as provided for in ARM 8.54.410.~~

(5) through (6)(e) will remain the same."

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-308, MCA

"8.54.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION (1) and (2) will remain the same.

(3) An out-of-state candidate will be considered a resident of his home state. ~~Out-of-state residents wishing to sit as Montana candidates must take the exam at a Montana site.~~"

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-210, 37-50-208, 37-50-308, MCA

"8.54.408 EDUCATION REQUIREMENTS (1) Prior to July 1, 1997:

(a) a candidate for examination, to be approved to sit for the exam, and subsequently to be certified or licensed as a public accountant, who submits an application for an examination administered prior to July 1, 1997, ~~or a candidate whose approved application for examination is still current under the provisions of ARM 8.54.405,~~ or a candidate who applies by transfer of grades prior to July 1, 1997, must, ~~prior to certification or licensure,~~ have graduated from a

college or university accredited to offer a baccalaureate degree (or be in his/her final semester), with a concentration in accounting~~, or~~

~~(i) a baccalaureate degree with a concentration other than accounting if supplemented by experience and the board determines that an equivalent education has been achieved; or~~

~~(ii) a baccalaureate degree with a concentration other than accounting if supplemented by related courses in other areas of business administration and the board determines that an equivalent education has been achieved~~.

~~(b)~~ A concentration in accounting ~~will be interpreted by the board to~~ shall include 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 18 semester hours (27 quarter hours) shall include no more than 6 semester hours (9 quarter hours) in one area.

~~(c) Supplemental experience will be interpreted by the board to be 5 years of employment by a public accounting firm, or 5 years of employment in industry or government in a responsible financial position, and the board determines that an equivalent accounting education has been achieved.~~

~~(d) A concentration other than accounting if supplemented by related courses in other areas of business will be interpreted by the board to include 12 semester hours (18 quarter hours) of accounting, auditing, and tax courses and 9 semester hours (14 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 9 semester hours (14 quarter hours) shall include no more than 3 semester hours (5 quarter hours) in one area.~~

(2) A candidate who has a previously approved application for an exam is still current under the provisions of ARM 8.54.405, but will be required to meet the educational requirements of (1) above prior to certification or licensure.

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

(a) through (c) will remain the same.

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

(a) through (f) will remain the same.

(4) and (5) will remain the same, but will be renumbered (5) and (6)."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, 37-50-302, 37-50-303, 37-50-305, MCA

"8.54.410 FEE SCHEDULE (1) through (3) will remain the same.

~~(4) Reexamination fee -- for each separate part to be reexamined (Accounting Practice I and II are two parts through the November, 1993 exam)..... 26.00~~

~~(5) Reexamination fee -- for each separate part to be reexamined beginning with the May, 1994 exam..... 32.50~~

(6) and (7) will remain the same, but will be renumbered (4) and (5).

~~(8) Candidates cancelling their examinations will be charged a maximum fee of $30.00 to cover administrative costs.~~

~~(a) Those candidates being reexamined in only 1 part of the exam will receive no refund for cancellation.~~

(9) will remain the same, but will be renumbered (6).

(7) Examination fee 175

(8) Re-examination fee

(a) all sections 150

(b) per section 50

(10) will remain the same, but will be renumbered (9).

(a) and (b) will remain the same.

(11) and (12) will remain the same, but will be renumbered (10) and (11)."

Auth: Sec. 37-1-134, 37-50-203, MCA; IMP, Sec. 37-1-134, 37-50-204, 37-50-314, 37-50-317, MCA

REASON: The Board of Public Accountants has recently had cause to believe that a large number of applicants have applied for and taken the CPA examination in Montana, although they have not completed an accountancy educational requirement, and do not therefore qualify for licensure in Montana. The national CPA examination review board has expressed concern to the Montana Board of Public Accountants over the 700+ candidates who sat for the May 1996 administration of the examination, and expressly recommended to the Montana Board that the examination be open only to candidates who have met all educational qualifications for licensure.

The Board has identified an immediate threat to the public welfare in that any further administrations of the exam to unqualified candidates may cause a security breach and a compromise of the exam. The proposed amendments will require the education qualifications be met prior to approval to sit for the exam, and thus eliminate the large number of unqualified applicants taking the exam.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., June 24, 1996, to advise us of the nature of the accommodation that you need. Please contact Sue Criswell, Board of Public Accountants, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1667; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Sue Criswell.

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 Board of Public Accountants, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., July 5, 1996.

5. Carol Grell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS
JIM SMRCKA, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 28, 1996.

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

In the matter of the proposed amendment, repeal and adoption of rules pertaining to respiratory care practitioners	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO RESPIRATORY CARE PRACTITIONERS

TO: All Interested Persons:

1. On June 26, 1996, at 10:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment of rules pertaining to the practice of respiratory care.

2. The proposed amendment of ARM 8.59.402, 8.59.501, 8.59.502, 8.59.503, 8.59.505, 8.59.506, 8.59.602 and 8.59.702 will read as follows: (new matter underlined, deleted matter interlined)

"8.59.402 DEFINITIONS (1) will remain the same.

~~(2) The board defines "unqualified practice" as that term is set forth in 37-28-101, MCA, as follows:~~

~~(a) performing acts beyond the authorized scope of respiratory care for which the individual is licensed;~~

~~(b) assuming duties and responsibilities within the practice of respiratory care without adequate preparation or when competency has not been maintained;~~

~~(c) performing new respiratory care techniques or procedures without proper education and practice;~~

~~(d) assigning functions of licensed respiratory care practice to persons not qualified to perform such functions or delegating respiratory care responsibilities to others contrary to Title 37, chapter 28, MCA, and the regulations enacted pursuant thereto.~~

(2) For the purposes of 37-28-102(3)(a), "respiratory care" does not include the delivery, assembly, testing, simulated demonstration of the operation, or demonstration of safety and maintenance of respiratory therapy equipment by home medical equipment ("HME") personnel to a client's home, pursuant to the written prescription of a physician. "Respiratory care" does include any instruction to the client regarding clinical use of the equipment, or any monitoring, assessment or other evaluation of therapeutic effects.

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

Auth: Subsection (2) and (3) are advisory only but may be a correct interpretation of the statute, Sec. 37-28-104, MCA; IMP, Sec. 37-28-101, 37-28-102, MCA

REASON: The proposed amendments are necessary because the substance in (2)(a) through (d) regarding unqualified practice is more appropriately included under the rule setting forth unprofessional conduct, ARM 8.59.702. It is necessary,

pursuant to 2-4-308, MCA, to note that (2) interprets the scope of practice of a respiratory care therapist to exclude performance of respiratory care by home medical equipment delivery personnel.

"8.59.501 APPLICATION FOR LICENSURE ~~(1) Any person seeking a license shall complete and submit to the board of respiratory care practitioners an application form which is provided by the board office, accompanied by the application fee and required documents.~~

~~(2) If the application is incomplete the application will be returned to the applicant.~~

~~(3) Each application shall be accompanied by:~~

~~(a) the required fee;~~

~~(b) a photocopy of the applicant's national board of respiratory care certificate which certifies successful completion of the entry level certification examination, or registry examination administered by the national board of respiratory care; or~~

~~(c) a completed request for verification of credentials form from the national board of respiratory care.~~

~~(4) Date of high school graduation, or GED or its equivalent.~~

~~(5) Name and location of school of respiratory care, in compliance with 37-28-202(1)(ii), MCA.~~

~~(6) Name and address of employer with dates of employment verified.~~

~~(7) The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.~~

~~(8) An applicant who has not worked in the profession of respiratory care for a period of three or more years must provide documentation of having acquired 20 continuing education units, as defined by rule, within 24 calendar months preceding application, or will re-test under an entry level certification examination or registry examination promulgated by the national board of respiratory care with the passing score set by the national board of respiratory care.~~

(1) An application for a license or temporary practice permit must be made on a form provided by the board and completed and signed by the applicant with the signature acknowledged before a notary public.

(2) The application must be typed or legibly written in ink, accompanied by the appropriate application and license fees, and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 28, MCA, and rules promulgated thereunder.

(3) The board shall require the applicant to submit original or certified documents in support of the application. The board may permit such documents to be withdrawn upon substitution of a true copy.

(4) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.

(5) The board shall review fully completed applications for compliance with board law and rules and shall notify the applicant in writing of the results of the evaluation of the

application. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions.

(6) The applicant shall correct any deficiencies and re-submit the application. Failure to re-submit the application within 60 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

(7) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, at 42 U.S.C. sections 12101, et seq., must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.

(8) An applicant who presents from an unlicensed state must provide documentation of active employment. An applicant who has not worked in the profession of respiratory care for a period of up to three years must provide documentation of having acquired continuing education equivalent to that which would have been required had the applicant been a licensee in this state. An applicant who has not worked in the profession of respiratory care for over three years shall provide evidence that they have successfully passed the NBRC certification or registration examination within one year prior to application for licensure."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-201, 37-28-202, MCA

REASON: The board proposes the amendments to generally set forth the application procedure and to make the rule uniform with other licensing boards in the bureau. Specific information that is needed to evaluate an applicant will be elicited on the forms proposed by the board. The requirement to submit sworn applications, certified copies of credentials, and photographs is intended to prevent fraud and to provide identification of licensure applicants and licensees. The rule as proposed makes reference to the board's commitment to ensuring access under the Americans with Disabilities Act. The substance of all current subsections are maintained in the proposed rule with minor changes in style.

"8.59.502 EXAMINATION (1) The board determines that a scaled score of 75 on a 0 to 99 scale of the certification examination for entry-level respiratory therapy practitioners examination, or the registry examination, utilized by the national board of respiratory care, shall be prescribed as the accepted testing requirement for licensing in this state.

(2) Except as provided in ARM 8.59.501(8), applicants for original licensure shall provide evidence that they have successfully passed the examination within one year prior to application for licensure."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-202, MCA

REASON: The proposed amendment is necessary to ensure the competency of the entry level practitioner who waits longer than one year to obtain licensure in this state and who does not possess a current license in another state. Despite having taken the licensing examination, after one year or longer without practicing, such persons need to re-establish competency by virtue of the licensing examination.

"8.59.503 TEMPORARY PRACTICE PERMIT ~~(1) Any person seeking a temporary permit shall complete and submit to the board of respiratory care practitioners an application form which is provided by the board office.~~

~~(2) If the application for temporary permit is not completed in accordance with the instructions, the application will be returned to the applicant.~~

~~(3) Each application shall be accompanied by:~~

~~(a) a check or money order in the amount required,~~

~~(b) a letter explaining the reason temporary permit is being sought, i.e.:~~

~~(i) awaiting documentation, reciprocity proof from other states; or~~

~~(ii) awaiting exam results from the NBRC; or~~

~~(iii)~~ (1) An applicant for a temporary practice permit ~~student respiratory care practitioner who either expects to~~ must have graduated ~~within 30 calendar days or has graduated~~ within the ~~6~~ 12 months immediately prior to the date of application ~~for a temporary permit~~.

(4) will remain the same, but will be renumbered (2).

~~(5) The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.~~

~~(6)~~ (3) Temporary permit holders ~~and students~~ must practice only under clinical supervision."

Auth: Sec. 37-1-305, 37-28-104, MCA; IMP, Sec. 37-28-206, MCA

REASON: These proposed amendments are necessary because the substance of (1) through (3)(ii) and (5) regarding application requirements is now set forth under ARM 8.59.501. Other changes are necessary to be consistent with 37-1-305, MCA, which limits the availability of temporary practice permits to individuals who have met all licensure requirements other than passage of a licensing examination. Students who have not graduated, therefore, are not eligible for a temporary permit. Further, statutory interpretation of 37-28-102(5) and 37-28-201, MCA, indicate that student practitioners are exempt from licensure requirements. The requirement that students work under clinical supervision is set forth in the statute and need not be repeated by rule.

"8.59.505 PROCEDURES FOR RENEWAL ~~(1) Renewals shall be due annually on May 1.~~

~~(2) Renewal forms will be provided by the board.~~

~~(a)~~ (1) The board shall mail the renewal notice ~~will be mailed~~ approximately 6-8 weeks in advance of the renewal date ~~of renewal~~ to the licensee's address on file with the board.

Failure to receive the renewal notice does not relieve the licensee from the obligation to renew in a timely manner.

~~(b) A second notice will be mailed by certified mail 60 days after the renewal date.~~

~~(c) The 90th day after the renewal date a certified letter will be mailed to lapsed licensees advising them that their licenses are expired because of a failure to renew.~~

~~(3) Documentation of having complied with the continuing education requirement is due at the time of renewal.~~

~~(4) A license to practice respiratory care lapses and is invalid 90 days after the expiration date printed on the face of the license, pursuant to section 37-28-203, MCA.~~

~~(5) An applicant whose license has expired may apply for relicensure between 91 days and 3 years following the renewal date by providing documents of having acquired 20 continuing education units, as defined by rule, within 24 calendar months preceding re-application and by paying the application fee of $60.00.~~

~~(6) After 3 years following the relicense date the applicant must reapply according to 37-1-141, MCA, and in addition will re-test under procedures promulgated by the national board of respiratory care with the passing score set by the national board of respiratory care.~~

(2) Licensees may renew their licenses for a period of three years from the expiration date of the license by submitting a renewal form, one renewal fee and one late fee, and documentation of the continuing education that would have been required had the license been renewed in a timely manner. A license that is not renewed within three years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing the certifying examination and paying the appropriate fees."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-203, MCA

REASON: The amendment is necessary to simplify the procedure for when a license terminates and to promote consistency among licensing boards in the bureau. The underlying issue is the determination of the length of time a practitioner remains competent after the practitioner fails to renew and is therefore presumed to be out of the practice. The proposed amendment retains this length of time as three years but proposes to eliminate the 90-day deadlines as arbitrary, implements a fee for late renewal, and eliminates the requirement of additional continuing education credits beyond what is normally required in a license year.

"8.59.506 FEE SCHEDULE (1) will remain the same.

(a)	Application fee	$20~~.00~~
(b)	License fee	40~~.00~~
(c)	Renewal fee	40~~.00~~
(d)	Temporary permit	60~~.00~~
(e)	Late renewal fee	40
(f)	Inactive license fee	20"

Auth: Sec. 37-1-134, 37-28-104, MCA; IMP, Sec. 37-1-202, 37-28-203, MCA

REASON: This amendment is proposed to include a $40 late renewal fee and a $20 inactive license fee. These fees are necessary to make fees commensurate with program area costs.

"8.59.602 TRADITIONAL EDUCATION BY SPONSORED ORGANIZATIONS - CATEGORY I (1) will remain the same.

(a) Institutions approved by the joint review committee for respiratory therapy education, respiratory care accreditation board, or other successor accreditation organizations and courses approved by the American association for respiratory care, the Montana society for respiratory care, the American thoracic societies, the American college of cardiology, the American college of chest physicians, the American nurses association, the national society for cardiopulmonary technologists, the American lung association, the American lung association of Montana, the Montana heart association, the Montana and American medical association, the Montana hospital association, and respiratory care journal (American association of respiratory care sponsored).

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

(2) All units in this ~~section~~ category must be documented ~~on the renewal form~~ by evidence provided by the instructor or the sponsoring organization."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

REASON: The proposed amendment to (1) is necessary to include other successor accreditation organizations. The board is proposing the amendment to (2) to include the instructor's signature requirement on the continuing education form.

"8.59.702 UNPROFESSIONAL CONDUCT ~~In order to implement the provisions of section 37-28-210, MCA,~~ In addition to 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

~~(1) Unqualified practice, as defined by ARM 8.59.402.~~

~~(2) Abandoning, neglecting, or otherwise physically or emotionally abusing a patient requiring respiratory care.~~

~~(3)~~ (1) Intentionally~~y~~ or negligently~~y causing~~ physical, verbal, or mental ~~emotional injury or~~ abuse ~~to~~ of a client ~~or patient or sexual contact with a client or patient~~ in a clinical setting~~.~~;

~~(4)~~ (2) Failing to safeguard the ~~patient's~~ client's dignity ~~and~~ or right to privacy ~~in providing services.~~;

~~(5) Violating the confidentiality of information or knowledge concerning the patient.~~

~~(6) Inaccurately recording, falsifying or otherwise altering any record of a patient or health care provider.~~

~~(7) Exercising undue influence on the patient including the promotion or sale of services, goods, appliances or drugs in such a manner as to exploit the patient for financial gain of the respiratory care practitioner, or of a third party.~~

~~(8) Assisting any individual to violate any law or regulation guiding the actions of a respiratory care practitioner, including aiding and abetting any person not duly licensed as a respiratory care practitioner to represent~~

~~himself as one or allowing another person to use one's respiratory care practitioner's license.~~

~~(9) Impersonating another licensed respiratory care practitioner or impersonating any applicant or acting as a proxy for any applicant in any respiratory care licensing examination.~~

~~(10) Advertising in any manner which is false, fraudulent, or misleading.~~

~~(11) Failure to cooperate with an investigation authorized by the board by refusing to respond to a complaint filed by a patient or refusing to comply with an administrative subpoena obtained by the board.~~

~~(12) Practicing respiratory care when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological or mental impediment.~~

~~(13) Practicing respiratory care when physical or mental ability to practice is impaired by alcohol or drugs.~~

(14) will remain the same, but will be renumbered (3).

~~(15) Possessing, obtaining, furnishing or administering prescription drugs to any person, including oneself, except as directed by a person authorized by law to prescribe drugs.~~

~~(16) Failure to disclose existence of a suspension, revocation, or restriction of the individual's license to practice respiratory care by competent authority in any state, federal or foreign jurisdiction, or failure to show cause why such suspension, revocation, or restriction should not be used to prohibit licensing in the state of Montana.~~

~~(17) Conviction of any misdemeanor or felony relating to the licensee's professional practice. For the purposes of this subsection, conviction includes, but is not limited to, those instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section denies rights guaranteed under section 37-1-201, MCA.~~

~~(18) Engaging in a clinical setting or in the course of treatment involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health without informing patient or exercising precautions to prevent transmission.~~

~~(19) Promotion for personal gain of any unnecessary or ineffective drug, device, treatment, procedure or service.~~

~~(20) Use of any other respiratory care practice that fails to conform to accepted standards and that reflects adversely on the health and welfare of the public.~~

(4) Falsifying, altering or making incorrect essential entries or failing to make essential entries of client records;

(5) Using a firm name, letterhead, publication, term, title, designation or document which states or implies an ability, relationship, or qualification that does not exist;

(6) Practicing the profession under a false name or name other than the name under which the license is held;

(7) Impersonating any licensee or representing oneself as a licensee for which one has no current license;

(8) Charging a client or a third-party payor for a service not performed;

(9) Submitting an account or charge for services that are false or misleading. This does not apply to charging for an unkept appointment;

(10) Filing a complaint with, or providing information to the board which the licensee knows or ought to know is false or misleading. This provision does not apply to any filing of complaint or providing information to the board when done in good faith;

(11) Violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 28, MCA, or rule promulgated thereunder, or any order of the board;

(12) Violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;

(13) Being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substance, or alcoholic beverage, or any combination of such substances;

(14) Using any dangerous drug or controlled substance illegally while providing professional services;

(15) Acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

(16) Maintaining an unsanitary or unsafe office or practicing under unsanitary or unsafe conditions;

(17) Performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure;

(18) Failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience, or competence;

(19) Maintaining a relationship with a client that is likely to impair the licensee's professional judgment or increase the risk of client exploitation including providing services to employees, supervisees, close colleagues, or relatives;

(20) Exercising influence on or control over a client, including the promotion or the sale of services, goods, property, or drugs for the financial gain of the licensee or a third party;

(21) Promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;

(22) Charging a fee that is clearly excessive in relation to the service or product for which it is charged;

(23) Failing to render adequate supervision, management, training, or control of auxiliary staff or other persons, including licensee, practicing under the licensee's supervision or control according to generally-accepted standards of practice;

(24) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services;

(25) Delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license, or certification to perform the delegated task. A professional responsibility that may not be delegated, includes, but is not limited to, pulse oximetry;

(26) Accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation, or who is not licensed or authorized to operate a professional practice or business;

(27) Failing to cooperate with a board inspection or investigation in any material respect;

(28) Failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;

(29) Failing to obtain informed consent from patient or patient's representative prior to providing any therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related care;

(30) Employing a nontraditional or experimental treatment or diagnostic process without informed consent from patient or patient's representative prior to such diagnostic procedure or treatment, or research, or which is inconsistent with the health or safety of the patient or public;

(31) Guaranteeing that a cure will result from the performance of medical services;

(32) Ordering, performing, or administering, without clinical justification, tests, studies, x-rays, treatments, or services;

(33) Possessing, using, prescribing for use, or distributing controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diverting controlled substances or legend drugs, violating any drug law, or prescribing controlled substances for oneself;

(34) Prescribing, dispensing, or furnishing any prescription drug without a prior examination and a medical indication therefor;

(35) Failing to provide to a patient, patient's representative, or an authorized health care practitioner, upon a written request, the medical record or a copy of the medical record relating to the patient which is in the possession or under the control of the professional. Prior payment for professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;

(36) Engaging in sexual contact, sexual intrusion or sexual penetration, as defined in Title 45, chapter 2, MCA, with a client during a period of time in which a professional relationship exists; or

(37) Failing to account for funds received in connection with any services rendered or to be rendered."

Auth: Sec. 37-28-104, 37-1-319, MCA; IMP, Sec. 37-1-307, 37-28-210, MCA

REASON: The proposed amendments are necessary to eliminate unnecessary repetition of 37-1-316, MCA, as follows: current

(8), (10), (12), (13), and (16) through (18), and a portion of (9). The substance of (1), (2), (6), (7), (11), (15), (19), and a portion of (9) will be maintained in the proposed new rule, but will incorporate uniform language that is being proposed for several licensing boards in the bureau. Additional unprofessional conduct sections are proposed to address unique situations for the profession.

3. The Board is proposing to repeal ARM 8.59.401, located at page 8-1633, Administrative Rules of Montana, (authority section 37-28-104, MCA; implementing section 2-4-201); ARM 8.59.504, located at page 8-1635.1, Administrative Rules of Montana, (authority section 37-28-104, MCA; implementing section 37-28-202, MCA); ARM 8.59.701, located at page 8-1635.13, Administrative Rules of Montana, (authority sections 37-1-101, 37-1-121, 37-1-131, MCA; implementing sections 37-1-101, 37-1-121, 37-1-131, MCA); ARM 8.59.703, located at page 8-1635.14, Administrative Rules of Montana, (authority section 37-28-104, MCA, implementing section 37-28-210, MCA). The reason for the proposed repeals is to delete language that unnecessarily repeats statutory language in 37-1-101, 37-1-121, 37-1-304, 37-1-308 and 37-1-314, MCA.

4. The proposed new rule will read as follows:

"I INACTIVE STATUS (1) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the annual renewal form or by submission of an application and payment of the appropriate fee. An individual licensed on inactive status may not practice respiratory care during the period in which he or she remains on inactive status.

(2) An individual licensed on inactive status may convert his or her license to active status by submission of an appropriate application and payment of the renewal fee for the year in question. The application must contain evidence of one of the following:

(a) full-time practice of respiratory care in another state and completion of continuing education for each year of inactive status, substantially equivalent, in the opinion of the board, to that required under these rules; or

(b) completion of a minimum of 24 continuing education units within two years prior to application for reinstatement.

(3) In no case may an individual remain on inactive status for more than three years. Documentation of the continuing education that would have been submitted had the license been renewed in a timely manner shall be required."

Auth: Sec. 37-1-131, 37-1-141, 37-28-104, MCA; IMP, Sec. 37-1-319, MCA

REASON: The proposed amendments are necessary to inform licensees of the procedure for seeking inactive status and the reactivation of an inactive license.

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

Board of Respiratory Care Practitioners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 4, 1996.

6. A staff attorney will be designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE PRACTITIONERS
RICH LUNDY, PRESIDENT

Ann M. Bartos
ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, May 28, 1996.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to the incorporation by reference of CABO one & two family dwelling code, funding of code enforcement programs, extension of municipal jurisdictional area and the incorporation by reference of safety code for elevators and escalators	NOTICE OF PROPOSED AMENDMENT OF 8.70.108 INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE, 8.70.208 FUNDING OF CODE ENFORCEMENT, 8.70.211 EXTENSION OF MUNICIPAL JURISDICTIONAL AREA, 8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ASME A17.1 - 1993, ASME A17.1a - 1994 ADDENDA, AND A17.1b - 1995 ADDENDA

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 6, 1996, the Building Codes Bureau proposes to amend the above-stated rules.

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

"8.70.108 INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE (1) through (3) will remain the same.

(4) Section 314.2 Treads and Risers, is amended to allow a maximum riser height of eight and one-quarter (8 1/4) inches and a minimum tread depth of nine (9) inches.

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

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-103, 50-60-402, MCA

REASON: The bureau proposes these amendments to retain the previous rise and run stair geometry. The recently-amended stair geometry requirements created a hardship for homebuilders.

"8.70.208 FUNDING OF CODE ENFORCEMENT PROGRAM (1) through (3)(a) will remain the same.

(b) a proportionate share of the local government's indirect costs, which are those costs incurred for common or joint purposes that benefit more than one program or activity. These include, but are not necessarily limited to, legislative services, executive services, administrative services, financial services, data processing services, purchasing services, personnel services, legal services and facilities administration. A maximum of 30% of direct building code

enforcement costs may be claimed as indirect costs in lieu of using actual indirect costs.

(4) through (4)(e) will remain the same.

(5) Permit fees collected in a given year in excess of the costs of administering the building code enforcement program may be placed in reserve to be used in subsequent years, provided that the reserve amount not exceed the amount needed to support the building code enforcement program for ~~six~~ twelve months. Fees must be reduced if necessary to avoid creation of excess reserve."

Auth: Sec. 50-60-302, MCA; IMP, Sec. 50-60-302, MCA

"8.70.211 EXTENSION OF MUNICIPAL JURISDICTIONAL AREA

(1) Section 50-60-101, MCA, provides that municipalities may extend their inspection jurisdiction up to 4 1/2 miles from their corporate limits upon written request and upon approval by the bureau. The written request must include a statement as to how the additional work-load will be handled, discussion of why the municipality wants an extended jurisdictional area and why approval would be in the best interest of affected land owners and/or the municipality, evidence that the municipality has made a reasonable effort to notify ~~all~~ landowners in the affected area, in writing, or through other means approved in advance by the bureau, of the ramifications of approval and that interested persons may comment to the bureau on the proposed extension. Once the municipality is granted authority to inspect within the 4 1/2 mile jurisdictional area, the county may not inspect in that area unless the municipality relinquishes its right or as otherwise provided in (4) of this rule.

(2) through (4) will remain the same."

Auth: Sec. 50-60-302, MCA; IMP, Sec. 50-60-101, 50-60-302, MCA

REASON FOR 8.70.208 AND 8.70.211: The Montana Department of Commerce has found that imminent peril to public health, safety and welfare requires the adoption of the proposed amendment to ARM 8.70.208(3)(b). Because of longstanding, established and acceptable accounting methods, it may be a hardship for municipalities to meet the Bureau's administrative reporting requirements which relate to the identification of indirect costs incurred in support of their respective local building code enforcement programs. As a result, municipalities could face potential decertification as code enforcement units. Such decertification could compromise public health, safety and welfare as residential buildings containing less than five dwelling units being constructed or remodeled within a municipality's jurisdiction would not be subject to building permit requirements. As a result, those buildings might not be constructed or remodeled in accordance with the minimum safety standards set forth in the State Building Code.

The Montana Department of Commerce has found that imminent peril to public health, safety and welfare requires the adoption of the proposed amendment to ARM 8.70.208(5). Because

of longstanding, established and acceptable accounting methods, it may be a hardship for municipalities to meet the Bureau's administrative reporting requirements which relate to allowable building code enforcement reserve accounts. Extended depressed building periods may rapidly deplete needed reserves. Because it has been determined that present reserve allowances may be insufficient and because failure to comply with present administrative reserve account requirements is grounds for the decertification of a code enforcement unit, several municipalities may face potential decertification as code enforcement units as a result of current administrative requirements. Such decertification could compromise public health, safety and welfare as residential buildings containing less than five dwelling units being constructed or remodeled within a municipality's jurisdiction would not be subject to building permit requirements. As a result, those buildings might not be constructed or remodeled in accordance with the minimum safety standards set forth in the State Building Code.

The Montana Department of Commerce has found that imminent peril to public health, safety and welfare requires the adoption of the proposed amendment to ARM 8.70.211(1). It may be a hardship for municipalities to meet present public notification requirements. Absent an amendment to the public notification procedure, members of the public may not receive adequate notification of municipal jurisdictional building code enforcement extension requests. In the event that an approved extended jurisdictional area is decertified pending resolution of a jurisdictional extension request, residential buildings containing less than five dwelling units being constructed or remodeled in the area in question would not be subject to building permit requirements. As a result, buildings may not be constructed or remodeled in accordance with the minimum standards (designed to protect public health and safety) required by the State Building Code.

"8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ASME A17.1 - 1993, ASME A17.1a - 1994 ADDENDA, AND A17.1b - 1995 ADDENDA (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Safety Code for Elevators and Escalators, ASME A17.1 - 1993, ~~Edition~~ ASME A17.1a - 1994 Addenda, and A17.1b - 1995 Addenda. A copy of the Safety Code for Elevators and Escalators ASME A17.1 - 1993, ASME A17.1a - 1994 Addenda, and A17.1b - 1995 Addenda can be obtained from The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(2) through (5) will remain the same."

Auth: Sec. 50-60-203, 50-60-701, 50-60-702, MCA; IMP, Sec. 50-60-203, 50-60-701,50-60-702, MCA

REASON: The bureau proposes these amendments to keep the state standard current with modern technology by adopting the latest available edition of the ASME Safety Code for Elevators, as well as the latest available addenda to the Elevator Code.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Building Codes Bureau, 1218 E. Sixth, P.O. Box 200517, Helena, Montana 59620-0517, or by facsimile to (406) 444-4240, to be received no later than 5:00 p.m., July 5, 1996.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517, or by facsimile to (406) 444-4240, to be received no later than 5:00 p.m., July 5, 1996.

5. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; 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 more than 25 persons based on the estimated number of building construction projects in the area.

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 28, 1996.

BEFORE THE MONTANA LOTTERY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to retailer commission and sales staff incentive plan	)))	NOTICE OF PROPOSED AMENDMENT OF 8.127.407 RETAILER COMMISSION AND 8.127.1007 SALES STAFF INCENTIVE PLAN

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 6, 1996, the Montana Lottery proposes to amend the above-stated rules.

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

"8.127.407 RETAILER COMMISSION (1) Each retailer is entitled to a base commission of 5% of the face value of tickets and chances that he purchases from the lottery and does not return. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales~~, as follows:~~.

(a) Each retailer is assigned an instant ticket sales base ~~created by using historical sales data collected by the lottery for similar retailer types and situations~~.

(b) will remain the same.

(c) ~~When a~~ For each 20% increase in retailer's sales during the quarterly ~~sales~~ period ~~reach 20%~~ over his established base sales, the retailer's commission shall be ~~6%~~ increased by an additional 1%, to a cap of 10% total commission for any quarterly period.

~~(d) When a retailer's sales reach 40% over his established base sales, the retailer's commission shall be 7%.~~

~~(e) When a retailer's sales reach 60% over his established base sales, the retailer's commission shall be 8%.~~

~~(f) When a retailer's sales reach 80% over his established base sales, the retailer's commission shall be 9%.~~

~~(g) When a retailer's sales reach 100% over his established base sales, the retailer's commission shall be 10%.~~

(h) will remain the same, but will be renumbered (d)."

Auth: Sec. 23-5-1007, 23-7-202, 23-7-301, MCA; IMP, Sec. 23-5-1007, 23-5-1016, 23-7-301, MCA

"8.127.1007 SALES STAFF INCENTIVE PLAN (1) ~~In order t~~To further the sale of lottery products, the lottery commission adopts the following sales incentives and bonus plans for lottery sales staff. Incentive pay will be based on incremental increases in lottery ticket sales, as specified by the commission. Lottery bonuses will be based on recruiting and retaining new retailers, as specified by the commission.

(a) and (b) will remain the same.

(i) The sales period will be calendar quarters. ~~For the field sales staff, each employee's individual base will be calculated by totaling the retailer bases within his respective sales regions. The sales supervisor's base will be the total of all retailer bases within the state. The marketing accounts manager and tel sell assistants' bases will be the combined total of all retailer bases assigned to each. The key accounts manager's base will be the total of all key account bases as identified and assigned.~~

(ii) ~~When~~ For each 5% that an employee's sales increase ~~by 5% or more~~ over his base sales, the employee will receive ~~incentive pay of~~ 1% of his annual salary as incentive pay, to a cap of 8% of his annual salary for any quarterly period.

~~(iii) When an employee's sales increase by 10% or more over his base sales, the employee will receive incentive pay of 2% of his annual salary.~~

~~(iv) When an employee's sales increase by 15% or more over his base sales, the employee will receive incentive pay of 3% of his annual salary.~~

~~(v) When an employee's sales increase by 20% or more over his base sales, the employee will receive incentive pay of 4% of his annual salary.~~

~~(vi) When an employee's sales increase by 25% or more over his base sales, the employee will receive incentive pay of 5% of his annual salary.~~

~~(vii) When an employee's sales increase by 30% or more over his base sales, the employee will receive incentive pay of 6% of his annual salary.~~

~~(viii) When an employee's sales increase by 35% or more over his base sales, the employee will receive incentive pay of 7% of his annual salary.~~

~~(ix) When an employee's sales increase by 40% or more over his base sales, the employee will receive incentive pay of 8% of his annual salary.~~

(c) will remain the same."

Auth: Sec. 23-7-202, MCA; IMP, Sec. 23-7-202, MCA

3. These amendments are in response to the Governor's request to reduce administrative rules by a minimum of five percent. These amendments collapse those sentences that talk about the incremental earnings and bonuses paid.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Lottery, 2525 North Montana, P.O. Box 200544, Helena, Montana 59620-0544, or by facsimile to (406) 444-5830, to be received no later than 5:00 p.m., July 4, 1996.

5. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Montana Lottery, 2525 North Montana, P.O. Box 200544, Helena, Montana 59620-0544, or by facsimile to (406) 444-5830, to be received no later than 5:00 p.m., July 4, 1996.

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

MONTANA LOTTERY
CHARMAINE MURPHY, DIRECTOR

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, May 28, 1996.

BEFORE THE MONTANA DEPARTMENT OF JUSTICE

In the matter of the application for a certificate of public advantage by the Columbus Hospital and Montana Deaconess Medical Center, Great Falls, Montana.	))))))	NOTICE OF PROPOSED AMENDMENTS TO THE CERTIFICATE OF PUBLIC ADVANTAGE AND APPROVING THE MERGER OF COLUMBUS HOSPITAL AND MONTANA DEACONESS MEDICAL CENTER

TO: All Interested Persons.

1. Pursuant to sections 50-4-604 through 50-4-623, MCA, and ARM 23.13.101 through 23.13.108, an application was filed with the Department by Columbus Hospital and the Montana Deaconess Medical Center of Great Falls, Montana for a Certificate of Public Advantage authorizing the consolidation of the two hospitals.

2. The purpose of the statutes and rules is to provide immunity from the antitrust laws to health care facilities and physicians who enter into cooperative agreements that are likely to result in lower health care costs or in improved access to health care or higher quality health care without any undue increase in health care costs.

3. After an extensive evaluation of the application by the Department, including the review and consideration of written comments submitted by the public and oral comments presented at public hearings held in Great Falls, Montana on January 24, 1996, the Department issued Findings of Fact, Conclusions of Law and a Certificate of Public Advantage (COPA) on March 6, 1996. The COPA includes numerous Terms and Conditions imposed by the Department to ensure that the consolidation promotes the statutory goals set forth in section 50-4-603, MCA.

4. Copies of the COPA are available at the Great Falls Public Library, Columbus Hospital, Montana Deaconess Medical Center and the Great Falls Senior Center. The decision is also available electronically on the State bulletin board (1-800-962-1729).

5. On April 3, 1996, the Department received a letter from the applicants requesting that the Department clarify certain Terms and Conditions of the COPA and expressing concerns about the application of other Terms and Conditions. Several Great Falls physicians also expressed concerns about one section of the Terms and Conditions.

6. In response to these requests, the Department interviewed representatives of the hospitals, physicians and

other interested parties. In a letter dated April 25, 1996, the Department identified those Terms and Conditions that it believes should be amended to clarify the original intent of the COPA.

7. The Department also reviewed and considered amendments proposed by the hospitals in a Memorandum dated April 18, 1996. The hospitals claim that these proposed amendments are necessary to preserve the Consolidated Hospital's access to the public financing markets. On May 3, 1996, the Department notified the applicants in writing of several concerns that would have to be addressed before the Department would recommend that the proposed amendments relating to public financing be adopted. The applicants submitted revised amendments on May 20, 1996.

8. The Department concludes that the amendments set forth below will promote and facilitate the statutory goals upon which the COPA was originally granted to best achieve lower health care costs or greater access to or quality of care. Sec. 50-4-603(3), MCA. The Department further finds that these amendments are necessary to enable the Consolidated Hospital to obtain public financing on favorable terms that will ultimately benefit consumers by reducing the Consolidated Hospital's financing costs. Therefore, the Department proposes to adopt the following amendments to the COPA:

(a) Amend the first sentence of Section 2.12 to read: "Continue to collect data for all quality indicators selected by PHHS and set forth in the interagency agreement referred to in Section 2.1."

(b) Amend the first sentence of Section 2.15 to add the word "hospital" on line two after the word "medical," to read "surveys of the hospital's medical, hospital and nursing staffs".

(c) Amend Section 2.6 to read: "Not become conditionally accredited by the JCAHO after expiration of the one-year transition period following the effective date of this Certificate".

(d) Amend Section 2.7 to read: "within the time provided by JCAHO, or within one year from receipt of the JCAHO survey results if no deadline is stated by the JCAHO".

(e) Amend Section 4.1 to substitute "hospital services" for "medical services".

(f) Amend Section 5.5 to remove "anesthesiologists" from line 6 of that provision and amend lines 2-5 on page 62 to read: "so long as these contracts do not exceed three years in duration and are reviewed and awarded after consideration of all available options, taking into account issues of quality,

access, and cost, and any other factors customarily considered in the award of such provider contracts."

(g) Amend Paragraph 10 on page 2 of the COPA to add the following sentence: "'Health Plans' does not include organized health services or purchasing programs provided by the Consolidated Hospital to its employees."

(h) Amend Section 1.3(j)(2) to add the following sentence at the end of paragraph 2 on page 52: "For purposes of Sections 1.3(j)(1) and (2), the $3.5 million sum shall be adjusted for inflation pursuant to the formula set forth in paragraph 1.3 of these Terms and Conditions."

(i) Amend Section 15.3 of the Terms and Conditions by replacing the word "Trustees" with the word "Directors" in the first sentence, and by amending the second sentence to read: "Accordingly, the Consolidated Hospital shall remain a nonprofit hospital governed by such a local board of directors, the initial board to consist of fifteen (15) local members. Five of the initial members shall carry over from the MDMC board, five shall carry over from the Columbus Board, and the remaining five shall be local residents without prior service on the board of either of the Great Falls hospitals. Only one member of the board shall be appointed by Providence Services from a list of nominees submitted by the remaining board members."

(j) Add a new Section 16 to the Terms and Conditions as follows:

16. Conflicts with Master Indenture.

16.1 Nothing contained in this COPA shall be deemed to require the Consolidated Hospital to take any action or prevent the Consolidated Hospital from taking any action that it shall demonstrate to the reasonable satisfaction of the Department (a) is likely to result in a breach by the Obligated Group of its obligations under Section 5.01, 5.03(f) or 5.06 of the Master Indenture or require the Obligated Group to engage a Consultant pursuant to Section 5.06 of the Master Indenture or, if the Consolidated Hospital should no longer be a party to or bound by the Master Indenture, is likely to result in a breach by the Consolidated Hospital of its obligations under comparable provisions of its master trust indenture or similar debt instrument or require it to engage a consultant pursuant to the rate covenant provisions of such master trust indenture or similar debt instrument or (b) that would result in the occurrence of an Event of Default within the meaning of Section 6.01 of the Master Indenture or a default or event of default under comparable provisions of any master trust indenture or similar debt instrument to which the

Consolidated Hospital is a party or by which it is bound.

16.2 The Consolidated Hospital will, prior to taking any action pursuant to Section 16.1, consult with the Department as to the action proposed to be taken, will give due consideration to all actions that can feasibly be taken by the Obligated Group, given the nature and type of breach, Event of Default, default or event of default which is likely to occur and will use all reasonable efforts to comply (as if the exceptions permitted pursuant to Section 16.1 did not exist) with this COPA within the shortest practicable period. In the event the Department determines that the Consolidated Hospital has not used all reasonable efforts to comply with this COPA within the shortest practicable period, the Department may order the Consolidated Hospital to take whatever action the Department determines is reasonably necessary to satisfy the requirements of this COPA subject to the limitations set forth in Section 16.1.

16.3 Notwithstanding Section 16.1, in the event the Consolidated Hospital shall have demonstrated to the reasonable satisfaction of the Department pursuant to Section 16.1 that compliance with the provisions of Section 1.3j(2) of this COPA (a) is likely to result in a breach by the Obligated Group of its obligations under Section 5.06 of the Master Indenture or require the Obligated Group to engage a Consultant pursuant to Section 5.06 of the Master Indenture or (b) if the Consolidated Hospital should no longer be a party to or be bound by the Master Indenture, is likely to result in a breach by Consolidated Hospital of its obligations under the comparable provisions of its master trust indenture or similar debt instrument or require the Consolidated Hospital to engage a consultant pursuant to the rate covenant provisions of such master trust indenture or similar debt instrument, the provisions of said Section 1.3j(2) shall be deemed to require a rebate or return to the Department of only such amount of surplus as shall not be likely to result in such a breach or to require the engagement of a consultant and, as to the remaining amount of surplus, in lieu of a rebate or return to the Department, such surplus will be retained by the Consolidated Hospital and returned to the health care consumer through lower patient prices or through other benefits approved by the Department, in either case, pursuant to a schedule approved by the Department, recognizing the effects of Section 5.06 of the Master Indenture or the rate covenant provisions of any other such master trust indenture or similar debt instrument, as the case may be.

16.4 So long as the Consolidated Hospital is a Member of the Obligated Group under the Master Indenture or a member of another obligated group (the "Other Obligated Group") pursuant to another master trust indenture or similar debt instrument, no addition to or withdrawal from the Obligated Group or Other Obligated Group, as the case may be, shall be made (except a withdrawal or disassociation of the Consolidated Hospital from or with the Obligated Group or Other Obligated Group, so long as the Consolidated Hospital shall, following such withdrawal or disassociation, remain subject to this COPA), without the prior approval of the Department; provided, however, that no such approval of the Department shall be required if, after giving effect to such addition or withdrawal, the Obligated Group or Other Obligated Group, as the case may be, would comply with either of the following tests:

(a) the historical pro forma debt service coverage ratio (determined in the same manner the Historical Pro Forma Debt Service Coverage Ratio of the Obligated Group is determined under the Master Indenture, as evidenced by a certificate delivered to the Department and signed by an officer of the Consolidated Hospital) of the Obligated Group or the Other Obligated Group, as the case may be, for the most recent Fiscal Year preceding the date of delivery of such certificate to the Department for which financial statements of the Obligated Group or Other Obligated Group reported upon by independent certified public accountants are available would be 2:1 or greater; or

(b) the projected debt service coverage ratio (determined in the same manner as the Projected Debt Service Coverage Ratio of the Obligated Group is determined under the Master Indenture, as evidenced by a certificate delivered to the Department and signed by an officer of the Consolidated Hospital) of the Obligated Group or the Other Obligated Group, as the case may be, for the full Fiscal Year next following the Fiscal Year during which such certificate is delivered to the Department would be 2:1 or greater.

16.5 Nothing contained in this COPA shall be deemed to create any lien, charge or encumbrance on any property or assets of the Consolidated Hospital, it being understood that any claim or right of the

Department for the payment or refund of moneys shall constitute a general, unsecured obligation of the Consolidated Hospital.

(k) Amend Section 3.3 to add the following language at the end of the third paragraph of that Section:

> It is understood that the Council shall act solely in an advisory and consultive capacity, except as specifically provided in (iv) of the preceding sentence, and that the Council shall have no separate powers to enforce the provisions of this COPA. Nothing in this Section shall be deemed to preclude or limit the Department's authority to enforce the provisions of this COPA, regardless of whether such enforcement has been suggested, recommended or approved by the Council.

(l) Amend Section 15 to add the following paragraph at the end of Section 15.1 and a new Section 15.4:

> The foregoing shall not apply to any sale or transfer of control which may be deemed to arise solely by reason of the termination of Providence Services' corporate membership in the Consolidated Hospital or a withdrawal of the Consolidated Hospital from the Obligated Group (as defined in the Master Indenture).
>
> 15.4 The foregoing provisions of this Section 15 shall not limit in any respect (a) the rights, remedies or powers granted to the Master Trustee, to any holder of indebtedness (whether Master Notes or otherwise), to any lender or to any credit enhancer to enforce any provision of the Master Indenture (or similar debt instrument to which the Consolidated Hospital is a party or by which it is bound), or the rights or powers of any trustee, secured party, lender, credit enhancer, receiver, custodian, liquidator or judicial or regulatory authority to deal with the property or assets of the Consolidated Hospital, upon the occurrence or continuance of an Event of Default, default or similar event under the Master Indenture (or similar debt instrument to which the Consolidated Hospital is a party or by which it is bound) or to effect any sale, transfer or other disposition of any property or assets pursuant to or resulting from any debt or

security arrangement or (b) limit the right of the Consolidated Hospital to grant any lien or to transfer any property or assets as security for any indebtedness (whether Master Notes or otherwise).

(m) Renumber Section 16 as Section 17 with the following language added to renumbered Section 17.2 at the end of the second sentence:

or, in respect of modifications to Section 1.3, 2.11 or 3.1 of these Terms and Conditions, if the Department determines that the requested modifications are necessary to provide sufficient funding to the Consolidated Hospital to ensure quality health care.

(n) Add the following Section to renumbered Section 17:

17.4 In exercising its authority to impose additional terms and conditions or to modify existing terms and conditions pursuant to Section 17.1 and in granting requests for modifications to or the repeal of any terms and conditions in the COPA pursuant to Section 17.2, the Department shall not take any action if such action would result or would reasonably be likely to result in the occurrence of a default or Event of Default under the Master Indenture or similar debt instrument to which the Consolidated Hospital is a party or by which it is bound. The Department agrees that, in the event of any requests pursuant to Section 17.2, it will use its best efforts to act without unreasonable delay.

(o) Renumber Sections 17, 18, 19, 20, 21 and 22 as Sections 18, 19, 20, 21, 22 and 23, respectively.

(p) Amend renumbered Section 21 to add the following language at the end of that paragraph:

The term "successors and assigns" shall include any entity with which the Consolidated Hospital merges or consolidates or to which it transfers its assets as an entirety or substantially as an entirety. Notwithstanding the foregoing but subject to the provisions of Section 15.2 of this COPA, no other Member of the Obligated Group shall be bound by this COPA solely by reason of

its status as a Member of the Obligated Group.

(g) Add the following definition as paragraph 16 of Section I of the Findings of Fact and Conclusions of Law on page 3 of the COPA:

"Master Indenture" refers to the Master Trust Indenture dated as of October 1, 1985, between Sisters of Charity of Providence of Montana and Mellon Bank, N.A., as Master Trustee, as heretofore amended and supplemented and as it may hereafter be amended or supplemented.

9. Interested parties may submit their views or arguments concerning the proposed amendments in writing to Joseph P. Mazurek, Attorney General, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401, to be received no later than 5:00 p.m., June 26, 1996.

10. After the Department has received and considered the comments submitted, it will determine whether a public hearing should be held on the proposed amendments. In the event that the Department determines that a hearing is warranted, notice of the location and date of the hearing will be published. The Department will issue a decision on the proposed amendments within 15 days following the date of the hearing or within 15 days following the written comment period in the event the Department determines that a hearing is not warranted.

11. The Department's decision on the proposed amendments will be based on the factors set forth in sections 50-4-603 and 50-4-609, MCA and ARM 23.18.104. The Department will only approve those amendments that are consistent with the goals of "lower health care costs or improved access to health care or higher quality health care without any undue increase in health care costs."

By: Chris D. Tweeten
CHRIS D. TWEETEN
Chief Deputy Attorney General

Certified to the Secretary of State May 28, 1996.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 34.3.101 through 34.3.104, the emergency and disaster relief policy	))))	NOTICE OF PROPOSED REPEAL OF ARM 34.3.101 THROUGH 34.3.104, THE EMERGENCY AND DISASTER RELIEF POLICY

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On July 6, 1996, the department of military affairs proposes to repeal ARM 34.3.101 through 34.3.104, the emergency and disaster relief policy.

2. The rules proposed for repeal are found on pages 34-27 through 34-31 of the Administrative Rules of Montana. The department's authority to repeal these rules is based on 10-3-105, MCA and the rules implement 10-3-311, MCA.

3. Repeal of these rules is necessary in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary provisions.

4. Interested parties may submit data, views or arguments concerning the proposed repeal in writing to: LTC Mike McCabe, Full-Time Staff Judge Advocate, Department of Military Affairs, PO Box 4789, Helena, MT 59604-4789. Any comments must be received no later than July 5, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to: LTC Mike McCabe, Full-Time Staff Judge Advocate, Department of Military Affairs, PO Box 4789, Helena, MT 59604-4789. A written request for hearing must be received no later than July 5, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 the persons directly affected has been determined to be at least 25 persons based on the number potentially affected by an emergency or national disaster.

7. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact LTC Mike McCabe, Full-Time Staff Judge Advocate, Department of Military Affairs, PO Box 4789, Helena, MT 59604-4789; telephone: (406) 444-6949.

BY: _____ _____

Michael T. McCabe
Rule Reviewer

John E. Prendergast
Director

Certified to the Secretary of State May 20, 1996.

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

In the matter of the amendment of rules 46.12.5002 through 46.12.5004, 46.12.5007, 46.12.5011 and 46.12.5014 pertaining to the passport to health program	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES

TO: All Interested Persons

1. On June 26, 1996, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.5002 through 46.12.5004, 46.12.5007, 46.12.5011 and 46.12.5014 pertaining to the passport to health program.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on June 17, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.5002 PASSPORT TO HEALTH PROGRAM: DEFINITIONS

(1) "Authorization" means the approval by a primary care provider ~~approves~~ for the delivery to an enrollee by another provider of a service defined in ARM 46.12.5007, ~~provided by another provider and provides~~ Authorization includes the provision of the primary care provider's medicaid number, ~~or~~ unique physician identifying number (UPIN), or the provider's passport number to the other treating provider. The primary care provider shall establish parameters of the authorization.

(2) through (9) remain the same.

(10) "Primary care case management" or "managed care" means promoting the access to, coordination of, quality of, and appropriate use of medical care, and containing the costs of medical care by having an enrollee obtain certain medical care from and through a ~~designated~~ primary care provider.

(11) "Primary care provider" means a physician, clinic, or mid-level practitioner other than a certified registered nurse anesthetist ~~or a clinic which~~ that is responsible by agreement

with the department for providing primary care ~~and~~ case management to enrollees in the passport to health program.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-116, MCA

46.12.5003 PASSPORT TO HEALTH PROGRAM: ELIGIBILITY (1) through (2)(i) remain the same.

(j) is in a county in which there are not enough primary care providers ~~in that county and adjacent counties~~ to serve the medicaid population ~~in that county~~ required to participate in the program;

(2)(k) through (2)(n) remain the same.

(3) A medicaid recipient eligible for medicaid as a participant in the FAIM welfare demonstration project as required at ARM 46.18.101, et seq. must enroll in an HMO unless an HMO is not available or the available HMO's are at capacity.

~~(3)~~(4) At the department's discretion, medicaid recipients who are exempted from participation as provided in (2)(j) may elect to enroll by choosing a primary care provider from ~~the nearest non adjacent~~ a county that the program serves.

(4) and (5) remain the same in text, but are renumbered (5) and (6).

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-116 and 53-6-117, MCA

46.12.5004 PASSPORT TO HEALTH PROGRAM: ENROLLMENT IN THE PROGRAM (1) ~~The department will notify a~~ A medicaid recipient required by ARM 46.12.5003 to enroll in the ~~managed care~~ program is notified by the Department that the recipient must enroll in the program.

(2) The recipient required to enroll in the program must select a primary care provider within 30 days of being notified of the enrollment requirement. ~~The department will send a~~ A second notice is sent to a recipient who does not choose a primary care provider within 30 days stating that if the recipient does not make a selection, the department ~~will~~ chooses a primary care provider for the recipient.

(3) remains the same.

(4) An enrolling recipient must choose a primary care provider from the list of primary care providers ~~in the county of residence or an adjacent county~~. ~~A recipient enrolling as provided in ARM 46.12.5003(3) must choose a primary care provider from the nearest non adjacent county that the program serves.~~

(5) through (6) remain the same.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-116, MCA

46.12.5007 PASSPORT TO HEALTH PROGRAM: SERVICES

(1) An enrollee must obtain the services in (1)(a), except as provided in (1)(b), directly from or through authorization by the enrollee's primary care provider:

(a) medicaid services requiring authorization:

(i) inpatient hospital services as defined in ARM 46.12.503;

(ii) ~~outpatient~~ hospital emergency room and surgery services as defined in ARM 46.12.506;

(1)(a)(iii) through (1)(a)(vii) remain the same.

~~(viii) Indian health clinic services;~~

~~(ix)~~ (viii) the following EPSDT~~/kids count~~ services for enrollees under 21 years of age:

(1)(a)(ix)(A) and (1)(a)(ix)(B) remain the same in text, but are renumbered (1)(a)(viii)(A) & (1)(a)(viii)(B).

(1)(a)(x) through (1)(a)(xii) remain the same in text, but are renumbered (1)(a)(ix) through (1)(a)(xi).

(b) aspects of services listed in (1)(a) that do not require prior authorization:

(i) obstetrical services, both inpatient and outpatient;

(ii) ~~outpatient mental health services;~~ inpatient and outpatient services for which the primary diagnosis is one of the following ICD-9 codes: 290 through 302, 306 through 314, or 316.

(1)(b)(iii) through (2)(ad) remain the same.

(ae) nonhospital laboratory and radiology (x-ray) as defined in ARM 46.12.2101; ~~and~~

(2)(af) remains the same.

(ag) dietician as defined in ARM 46.12.1480; and

(ah) respiratory therapy as defined in ARM 46.12.1474.

(3) remains the same.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-116, MCA

46.12.5011 PASSPORT TO HEALTH PROGRAM: REIMBURSEMENT

(1) remains the same.

(2) A primary care provider may be reimbursed for ~~managed~~ primary care case management for an enrollee for a month during which case management or medical care was not provided to the enrollee if the primary care provider is otherwise in compliance with the agreement with the program.

(3) remains the same.

(4) Services listed in ARM 46.12.5007(1) provided to enrollees are not reimbursable unless provided or authorized by an enrollee's primary care provider in accordance with these rules.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-116, MCA

46.12.5014 PASSPORT TO HEALTH PROGRAM: FAIR HEARING

(1) An enrollee or a provider has the right to appeal ~~any departmental~~ an adverse action in accordance with ARM 46.2.201, et seq.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-116, MCA

3. The proposed rule changes are necessary generally to incorporate changes made in other areas of the Medicaid program which impact PASSPORT, to conform terminology, and to clarify the PASSPORT rule itself.

The proposed amendment to ARM 46.12.5003, providing for a new subsection (3), would require an able bodied adult to participate in an HMO unless one is not available. If an HMO is not available, an able bodied adult must participate in PASSPORT. This provision in part implements a federal waiver relating to welfare reform.

The proposed amendments to ARM 46.12.5003(2)(j), 46.12.5003(3), and 46.12.5004 (4) implement a policy of allowing recipients to choose a PASSPORT provider from a non-adjacent county. In some areas of the state people regularly see health care providers in a non-adjacent county. It makes sense to allow people mandated into PASSPORT to maintain an existing relationship with a primary care provider, even if the provider is not in an adjacent county.

The proposed deletion in ARM 46.12.5007(1)(a)(viii) of Indian Health Service clinic services from the list of services which require authorization is a correction needed to conform with the federal statute which guarantees people eligible for IHS services access to those services.

In ARM 46.12.5007(1)(b)(ii), the proposed amendment replacing "outpatient mental health services" with the list of diagnosis codes included in the mental health managed care program is needed to ensure mental health services are not managed by a Passport provider. The mental health program, currently being implemented, is to manage all inpatient and outpatient services for persons with a primary diagnosis code that is on the list of mental health diagnosis codes.

The proposed amendment to ARM 46.12.5007(2), including dietitian and respiratory therapy services on the list of services not requiring Passport authorization, is necessary to correct their previous omission from the rule. These services do not require PASSPORT authorization, and it is important to state this in the rule.

The remaining changes were made to correct terminology and to clarify the PASSPORT rule itself.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than July 5, 1996.

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

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State May 28, 1996.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to conduct of nurses	NOTICE OF AMENDMENT OF 8.32.413 CONDUCT OF NURSES

TO: All Interested Persons:

1. On February 8, 1996, the Board of Nursing published a notice of proposed amendment of the above-stated rule at page 353, 1996 Montana Administrative Register, issue number 3.

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

"8.32.413 CONDUCT OF NURSES (1) through (r) will remain the same as proposed.

(s) ~~failing~~ refusing to sign for or accept a certified mailing from the board office."

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

COMMENT: One comment was received from Greg Van Horssen. He indicated that (s) could cause a licensee to be disciplined for not signing or accepting a certified mailing unintentionally, i.e. if licensee was out of state for a long period of time.
RESPONSE: The Board concurred and amended the rule to strike the word "failing" and insert the word "refusing."

COMMENT: One comment was received from Gloria Larson in support of the proposal.
RESPONSE: The Board acknowledged receipt of the comment.

BOARD OF NURSING
JEAN BALLANTYNE RN, MN, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 28, 1996.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the emergency amendment of rules pertaining to examinations, out-of-state candidates for examination, education requirements and fees) NOTICE OF EMERGENCY AMENDMENT

TO: All Interested Persons:

1. The Board of Public Accountants has recently had cause to believe that a large number of applicants have applied for and taken the CPA examination in Montana, although they have not completed an accountancy educational requirement, and do not therefore qualify for certification and licensure in Montana. The national CPA examination review board has expressed concern to the Montana Board of Public Accountants over the 700+ candidates who sat for the May 1996 administration of the examination (200 more than the 11/95 examination with expected number over 1,000 for the 11/96 examination), and expressly recommended to the Montana Board that the examination be open only to candidates who have met all educational qualifications for certification and licensure. The CPA examination review board based this recommendation on a concern that the non-disclosed exam will be exposed to persons who are not true candidates for licensure, as they do not qualify for licensure in Montana or any other jurisdiction. Also, the Board is aware of allegations that review courses send in large numbers of candidates whose sole purpose is to breach the examination.

The Board has identified an immediate threat to the public welfare in that any further administrations of the exam to unqualified candidates may cause a security breach and a compromise of the exam. Should the logistics of administering the exam to this large group of people cause a security breach in Montana and disclosure of the exam, it may affect candidates throughout the entire nation. The scores of all candidates taking the examination might not be certified and valid.

The public's welfare is also threatened in that any security breach in Montana may cause potential losses in the hundreds of thousands of dollars to the candidates and the vendors of the exam. Montana could potentially be sued by the vendor and all candidates participating in the exam. Additionally, the costs of re-writing the exam and testing the questions, etc., would have to be borne by the state board causing the breach. The Montana Board of Public Accountants would therefore have to pay all these costs from its budget, through increased licensing and examination fees, thus unfairly placing a share of the cost on the already licensed accountants in the state.

Finally, the public's welfare is immediately threatened in that the Board is not able to ensure that qualified persons are becoming licensed in this state, as no educational requirements are being checked prior to administration of the exam. Many persons with no accounting knowledge at all may be applying for

the exam, and one of the Board's primary duties is to ensure that only qualified persons are licensed in this state, for the protection of the public.

Since the next administration of the exam is scheduled for November, 1996, the Board must have this emergency rule requiring educational qualifications to be met prior to sitting for the exam in place immediately to begin evaluating applications already being received for the next exam and prevent a threat to the public welfare. The soonest a remedial rule could be adopted under regular procedures would be September, 1996, which would allow no time for evaluation of the hundreds of applications before the deadline for the November exam.

Therefore, the Board intends to adopt the following emergency rule amendments. The rules as adopted will be mailed to persons and associations who may be affected by these rule amendments and published as an emergency rule in the next issue of the Montana Administrative Register.

2. The emergency amendments will be effective May 28, 1996.

3. The text of the emergency amendments is as follows:

"8.54.402 EXAMINATIONS (1) will remain the same.

(2) All applicants must meet the educational requirements of ARM 8.54.408 prior to submission of an application and must be approved by the board to sit for the examination.

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

~~(4) A candidate who is unable for any reason to sit for an examination for which he has been approved shall notify the board office in writing prior to the commencement of the examination in order to receive a refund of fees paid less an administrative fee as provided for in ARM 8.54.410.~~

(5) through (6)(e) will remain the same."

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-308, MCA

"8.54.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION (1) and (2) will remain the same.

(3) An out-of-state candidate will be considered a resident of his home state. ~~Out of state residents wishing to sit as Montana candidates must take the exam at a Montana site.~~"

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-210, 37-50-208, 37-50-308, MCA

"8.54.408 EDUCATION REQUIREMENTS (1) Prior to July 1, 1997:

(a) a candidate for examination, to be approved to sit for the exam, and subsequently to be certified or licensed as a public accountant, who submits an application for an examination administered prior to July 1, 1997, ~~or a candidate whose approved application for examination is still current under the provisions of ARM 8.54.405,~~ or a candidate who applies by transfer of grades prior to July 1, 1997, must,

~~prior to certification or licensure,~~ have graduated from a college or university accredited to offer a baccalaureate degree (or be in his/her final semester), with a concentration in accounting~~, or~~

~~(i) a baccalaureate degree with a concentration other than accounting if supplemented by experience and the board determines that an equivalent education has been achieved; or~~

~~(ii) a baccalaureate degree with a concentration other than accounting if supplemented by related courses in other areas of business administration and the board determines that an equivalent education has been achieved~~.

~~(b)~~ A concentration in accounting ~~will be interpreted by the board to~~ shall include 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 18 semester hours (27 quarter hours) shall include no more than 6 semester hours (9 quarter hours) in one area.

~~(c) Supplemental experience will be interpreted by the board to be 5 years of employment by a public accounting firm, or 5 years of employment in industry or government in a responsible financial position, and the board determines that an equivalent accounting education has been achieved.~~

~~(d) A concentration other than accounting if supplemented by related courses in other areas of business will be interpreted by the board to include 12 semester hours (18 quarter hours) of accounting, auditing, and tax courses and 9 semester hours (14 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 9 semester hours (14 quarter hours) shall include no more than 3 semester hours (5 quarter hours) in one area.~~

(2) A candidate who has a previously approved application for an exam is still current under the provisions of ARM 8.54.405, but will be required to meet the educational requirements of (1) above prior to certification or licensure.

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

(a) through (c) will remain the same.

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

(a) through (f) will remain the same.

(4) and (5) will remain the same, but will be renumbered (5) and (6)."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, 37-50-302, 37-50-303, 37-50-305, MCA

"8.54.410 FEE SCHEDULE (1) through (3) will remain the same.

~~(4) Reexamination fee -- for each separate part to be reexamined (Accounting Practice I and II are two parts through the November, 1993 exam) ..... 26.00~~

~~(5) Reexamination fee -- for each separate part to be reexamined beginning with the May, 1994 exam..... 32.50~~

(6) and (7) will remain the same, but will be renumbered (4) and (5).

~~(8) Candidates cancelling their examinations will be charged a maximum fee of $30.00 to cover administrative costs~~.

~~(a) Those candidates being reexamined in only 1 part of the exam will receive no refund for cancellation.~~

(9) will remain the same, but will be renumbered (6).

(7) Examination fee 175

(8) Re-examination fee

(a) all sections 150

(b) per section 50

(10) will remain the same, but will be renumbered (9).

(a) and (b) will remain the same.

(11) and (12) will remain the same, but will be renumbered (10) and (11)."

Auth: Sec. 37-1-134, 37-50-203, MCA; IMP, Sec. 37-1-134, 37-50-204, 37-50-314, 37-50-317, MCA

4. The rationale for the emergency amendments is set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of these emergency amendments.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Board of Public Accountants, P.O. Box 200513, Helena, Montana 59620-0513.

BOARD OF PUBLIC ACCOUNTANTS
JIM SMRCKA, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEW

Certified to the Secretary of State, May 28, 1996.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the emergency amendment of rules pertaining to funding of code enforcement programs and extension of municipal jurisdictional area	) NOTICE OF EMERGENCY AMENDMENT) TO ARM 8.70.208 AND 8.70.211)))

TO: All Interested Persons:

1. The Montana Department of Commerce has found that imminent peril to public health, safety and welfare requires the adoption of the proposed amendment to ARM 8.70.208(3)(b). Because of longstanding, established and acceptable accounting methods, it may be a hardship for municipalities to meet the Bureau's administrative reporting requirements which relate to the identification of indirect costs incurred in support of their respective local building code enforcement programs. As a result, municipalities could face potential decertification as code enforcement units. Such decertification could compromise public health, safety and welfare as residential buildings containing less than five dwelling units being constructed or remodeled within a municipality's jurisdiction would not be subject to building permit requirements. As a result, those buildings might not be constructed or remodeled in accordance with the minimum safety standards set forth in the State Building Code.

The Montana Department of Commerce has found that imminent peril to public health, safety and welfare requires the adoption of the proposed amendment to ARM 8.70.208(5). Because of longstanding, established and acceptable accounting methods, it may be a hardship for municipalities to meet the Bureau's administrative reporting requirements which relate to allowable building code enforcement reserve accounts. Extended depressed building periods may rapidly deplete needed reserves. Because it has been determined that present reserve allowances may be insufficient and because failure to comply with present administrative reserve account requirements is grounds for the decertification of a code enforcement unit, several municipalities may face potential decertification as code enforcement units as a result of current administrative requirements. Such decertification could compromise public health, safety and welfare as residential buildings containing less than five dwelling units being constructed or remodeled within a municipality's jurisdiction would not be subject to building permit requirements. As a result, those buildings might not be constructed or remodeled in accordance with the minimum safety standards set forth in the State Building Code.

The Montana Department of Commerce has found that imminent peril to public health, safety and welfare requires the adoption of the proposed amendment to ARM 8.70.211(1). It may be a hardship for municipalities to meet present public notification requirements. Absent an amendment to the public notification procedure, members of the public may not receive adequate notification of municipal jurisdictional building code

enforcement extension requests. In the event that an approved extended jurisdictional area is decertified pending resolution of a jurisdictional extension request, residential buildings containing less than five dwelling units being constructed or remodeled in the area in question would not be subject to building permit requirements. As a result, buildings may not be constructed or remodeled in accordance with the minimum standards (designed to protect public health and safety) required by the State Building Code.

2. These amendments will become effective May 16, 1996.

3. The text of the emergency amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.70.208 FUNDING OF CODE ENFORCEMENT PROGRAM (1) through (3)(a) will remain the same.

(b) a proportionate share of the local government's indirect costs, which are those costs incurred for common or joint purposes that benefit more than one program or activity. These include, but are not necessarily limited to, legislative services, executive services, administrative services, financial services, data processing services, purchasing services, personnel services, legal services and facilities administration. A maximum of 30% of direct building code enforcement costs may be claimed as indirect costs in lieu of using actual indirect costs.

(4) through (4)(e) will remain the same.

(5) Permit fees collected in a given year in excess of the costs of administering the building code enforcement program may be placed in reserve to be used in subsequent years, provided that the reserve amount not exceed the amount needed to support the building code enforcement program for ~~six~~ twelve months. Fees must be reduced if necessary to avoid creation of excess reserve."

Auth: Sec. 50-60-302, MCA; IMP, Sec. 50-60-302, MCA

"8.70.211 EXTENSION OF MUNICIPAL JURISDICTIONAL AREA (1) Section 50-60-101, MCA, provides that municipalities may extend their inspection jurisdiction up to 4 1/2 miles from their corporate limits upon written request and upon approval by the bureau. The written request must include a statement as to how the additional work-load will be handled, discussion of why the municipality wants an extended jurisdictional area and why approval would be in the best interest of affected land owners and/or the municipality, evidence that the municipality has made a reasonable effort to notify ~~all~~ landowners in the affected area, in writing, or through other means approved in advance by the bureau, of the ramifications of approval and that interested persons may comment to the bureau on the proposed extension. Once the municipality is granted authority to inspect within the 4 1/2 mile jurisdictional area, the county may not inspect in that area unless the municipality relinquishes its right or as otherwise provided in (4) of this rule.

(2) through (4) will remain the same."

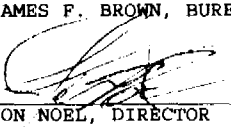
Auth: Sec. 50-60-302, MCA; IMP, Sec. 50-60-101, 50-60-302, MCA

4. The rationale for the emergency amendments is set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of these emergency amendments.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Building Codes Bureau, 1218 East 6th Avenue, P.O. Box 200517, Helena, Montana 59620-0517.

BUILDING CODES BUREAU
JAMES F. BROWN, BUREAU CHIEF

BY: 
JON NOEL, DIRECTOR
DEPARTMENT OF COMMERCE


ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, May 16, 1996.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the transfer of rules 16.2.101 through 16.2.762, and 26.2.634 through 26.2.638 and 26.2.640 pertaining to procedural rules for the Montana Environmental Policy Act.	NOTICE OF TRANSFER (MEPA)

To: All Interested Persons

1. Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, the procedural rules for the Montana Environmental Policy Act were transferred from the Department of Health and Environmental Sciences and the Department of State Lands to the Department of Environmental Quality. In order to implement that legislation, ARM 16.2.101 through 16.2.762, inclusive, with the exception of the repealed rules, are transferred to the Department of Environmental Quality, ARM 17.4.101 through 17.4.703, and ARM 26.2.634 through 26.2.638, and 26.2.640, are transferred to the Department of Environmental Quality, ARM 17.4.720 through 17.4.725.

2. The Department of Environmental Quality has determined that the transferred rules will be numbered as follows:

OLD	NEW	
16.2.101	17.4.101	Model Rules
16.2.110	17.4.102	Procedures for Compliance with MEPA
16.2.206	17.4.201	Water Pollution Rules
16.2.211	17.4.202	Occupational Health Rules
16.2.502	17.4.501	Opportunity for Public Comment After Application Complete
16.2.503	17.4.502	Public Hearing After Preliminary Decision
16.2.601	17.4.601	Policy
16.2.624	17.4.602	Policy Statement Concerning MEPA Rules
16.2.625	17.4.603	Definitions
16.2.626	17.4.607	General Requirements of the Environmental Review Process
16.2.627	17.4.608	Determining the Significance of Impacts
16.2.628	17.4.609	Preparation and Contents of Environmental Assessments
16.2.629	17.4.610	Public Review of Environmental Assessments
16.2.630	17.4.615	Determining the Scope of an EIS
16.2.631	17.4.616	Environmental Impact Statements--General Requirements
16.2.632	17.4.617	Preparation and Contents of Draft Environmental Impact Statements
16.2.633	17.4.618	Adoption of Draft Environmental

		Impact Statement as Final
16.2.634	17.4.619	Preparation and Contents of Final Environmental Impact Statement
16.2.635	17.4.620	Time Limits and Distribution of Environmental Impact Statements
16.2.636	17.4.621	Supplements to Environmental Impact Statement
16.2.637	17.4.625	Adoption of an Existing EIS
16.2.638	17.4.626	Interagency Cooperation
16.2.639	17.4.627	Joint Environmental Impact Statements and EA's
16.2.640	17.4.628	Preparation, Content, and Distribution of a Programmatic Review
16.2.641	17.4.629	Record of Decision for Actions Requiring Environmental Impact Statements
16.2.642	17.4.632	Emergencies
16.2.643	17.4.633	Confidentiality
16.2.644	17.4.634	Resolution of Statutory Conflicts
16.2.645	17.4.635	Contracts and Disclosure
16.2.646	17.4.636	Public Hearings
16.2.760	17.4.701	Fees: Determination of Authority to Impose
16.2.761	17.4.702	Fees: Determination of Amount
16.2.762	17.4.703	Use of Fee
26.2.634	17.4.720	Fee Assessment Categories: General Requirement
26.2.635	17.4.721	Fee Assessment Categories: Hard Rock
26.2.636	17.4.722	Fee Assessment Categories: Open Cut
26.2.637	17.4.723	Fee Assessment Categories: Strip and Underground Mine Siting
26.2.638	17.4.724	Fee Assessment Categories: Strip and Underground Mine Reclamation
26.2.640	17.4.725	Department Assistance to Applicants

3. The transfer of rules is necessary because the Department of Health and Environmental Sciences and the Department of State Lands were eliminated by Chapter 418, Laws of Montana 1995.

Mark A. Simonich
MARK A. SIMONICH, Director

Certified to the Secretary of State May 28, 1996 .

Reviewed by:

John F. North
JOHN F. NORTH, Rule Reviewer

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND
THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the transfer and proposed amendment of Title 16, Chapters 16, 17, 18, 20, and 38, subchapter 1, pertaining to water quality, with the exception of the repealed rules.	NOTICE OF TRANSFER AND AMENDMENT OF RULES (Water Quality)

To: All Interested Persons

1. On February 22, 1996, the department and the board published notice of the transfer and proposed amendment of the above-captioned rules at page 493 of the Montana Administrative Register, Issue No. 4.

2. The board has transferred and amended the rules as proposed. The authority to amend the rules is contained in 75-5-201, 75-5-516, 75-6-103, 76-4-104, and 76-4-105, MCA.

3. One comment was received from the Department of Environmental Quality requesting "housekeeping" amendments to be made to the following rules:

COMMENT: ARM 16.20.914 and 16.20.916 were repealed in 1989 and some of the references to those rules was apparently overlooked. Therefore, ARM 16.20.1012, 16.20.1022, and 16.20.1101 should be amended as follows:

16.20.1012 [17.30.1022] EXCLUSIONS FROM PERMIT REQUIREMENTS (1)(a)-(d) Remain the same.

(e) water injection wells, reserve pits and produced water pits employed in oil and gas field operations and approved pursuant to ARM 36.22.1005, 36.22.1226 through 36.22.1234, and ~~16.20.916~~ 16.20.1325 [17.30.1354];

(f)-(n) Remain the same.

(2) Remains the same.

AUTH: 75-5-301, MCA; IMP: 75-5-401, 75-5-602, MCA

16.20.1022 [17.30.1042] GENERAL PERMITS (1) The department may issue general MGWPCS permits pursuant to the provisions of ARM ~~16.20.914~~ 16.20.1015 [17.30.1030].

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-105, 75-5-401, MCA

16.20.1101 [17.30.1501] PURPOSE (1) The purpose of this subchapter is to implement a permit system to control the discharge of pollutants into groundwaters from activities associated with in-situ solution mining of uranium. Permits shall be issued pursuant to 75-5-402, MCA. This subchapter supersedes ARM ~~16.20.916~~ 16.20.1325 [17.30.1354], relating to the disposal of pollutants into waste disposal wells, to the

extent that such wells disposing of wastes or pollutants associated with in-situ solution mining of uranium will be regulated and permitted pursuant to this subchapter. Notwithstanding anything contained in this subchapter, an applicant who obtains a permit from the department under this subchapter shall not be relieved from liability for pollution to any person suffering damage or injury or cause of action that he may have as a consequence thereof, or from the obligation to comply with other applicable state and federal laws.
AUTH: 50-1704, RCM 1947 [not codified temporary], 75-5-401, MCA; IMP: 50-1704, RCM 1947 [not codified temporary], 75-5-401, MCA

RESPONSE: The board agrees with the commenter and has amended the rules accordingly.

COMMENT: ARM 16.20.1303 is a rule which lists the material incorporated by reference throughout Subchapter 13. This rule needs to be amended to correspond to the actual incorporations by reference in the subchapter. No substantive changes to the rule are being made.

RESPONSE: The board agrees with the commenter and has amended the rules accordingly.

16.20.1303 [17.30.1303] INCORPORATIONS BY REFERENCE (1)-(6) remain the same.

(7) The list of incorporations by reference follows:

(a)-(q) Remain the same.

~~(r) 1318~~	~~Part 136~~	~~Guidelines establishing test procedures for the analysis of pollutants.~~

(s)-(aj) Remain the same but are renumbered (r)-(ai).

~~(ak) 1343~~	~~124.64~~	~~Procedures for appealing variance determinations.~~

(al)-(ar) Remain the same but are renumbered (aj)-(ap).

~~(as)~~ (aq) ~~1327~~ 1361	Sec. 301(c), (i), and (k); and Sec. 316(a)	Provisions for extension of compliance dates with effluent limitations based on, respectively, the economic capability of the permit applicant, delay in completion of POTW's, the use of innovative technology, and specific limits for thermal components of a discharge.

~~(at)~~(ar) ~~1327~~ 1361	Sec. 301(g)	Provisions for modifying effluent limitations for ammonia, chlorine, color, iron and total phenols.
~~(au)~~(as) ~~1327~~ 1361	Sec. ~~302(b)(2)~~ 402(b)(3)	Provision for ~~modifying effluent limitations based on a "no reasonable relationship to costs" demonstration~~ notifying other states of certain proposed discharges.

AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

COMMENT: In ARM 16.20.1305, two corrections should be made in the incorporation paragraph to correspond to the reference in the rule.

RESPONSE: The board agrees with the commenter and has amended the rules accordingly.

16.20.1305 [17.30.1310] EXCLUSIONS The following discharges do not require MPDES permits:

(1)-(6) Remain the same.

(7) The board hereby adopts and incorporates herein by reference 40 CFR Part ~~1510~~ 300 and 33 CFR 153.101 which are federal agency rules setting forth requirements concerning releases of hazardous wastes or petroleum products. See ARM 16.20.1303 [17.30.1303] for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

DEPARTMENT OF ENVIRONMENTAL QUALITY

MARK A. SIMONICH, Director

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State May 28, 1996.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through X pertaining to all activities on classified forest lands within Montana during the legal fire season, the amendment of rule 36.10.122, pertaining to debris disposal, and the repeal of rules 36.10.109 through 36.10.115, and 36.10.118, pertaining to fire prevention on forest lands	)))))))	NOTICE OF ADOPTION AMENDMENT, AND REPEAL

TO: All Interested Persons.

1. On April 4, 1996, the Board of Land Commissioners published notice of public hearings on the proposed adoption of new rules I through X, which apply to all activities on classified forest lands within Montana during the legal forest fire season, the proposed amendment of rule 36.10.122, pertaining to debris disposal, and the proposed repeal of rules 36.10.109 through 36.10.115, and 36.10.118 pertaining to fire prevention on forest lands, at page 877 of the 1996 Montana Administrative Register, issue number 7.

2. At the May 7th public hearing held in Kalispell, comments were received from a representative of the F.H. Stoltze Land and Lumber Company on rules VIII (36.10.130(5)(b)) and X (36.10.132(6)). Comments were also received from the Administrative Code Committee concerning citations which provide the Board authority to adopt rules. The department has thoroughly considered the comments and testimony received on the proposed rules.

3. The Board has adopted rule I (36.10.123), rule II (36.10.124), rule III (36.10.125), rule IV (36.10.126), rule V (36.10.127), rule VI (36.10.128), rule VII (36.10.129), rule IX (36.10.131), and rule X (36.10.132), amended rule 36.10.122, and repealed rules 36.10.109 through 36.10.115 and 36.10.118 as proposed.

RULE III (36.10.125) RAILROADS AND POWERLINES For the purpose of this sub-chapter the following are defined: Subsection (1) remains the same.

AUTH: 76-13-109, MCA
IMP: ~~69-14-721,~~ 76-13-101 and 76-13-201, MCA

RULE VI (36.10.128) FIREWORKS For the purpose of this sub-chapter the following are defined: Subsection (1) remains the same.

AUTH: 76-13-109, MCA
IMP: ~~50-37-103, 50-37-106,~~ and 76-13-106, MCA

RULE X (36.10.132) DEFINITIONS For the purpose of this sub-chapter the following are defined: Subsections (1) through

(12) remain the same.

AUTH: 76-13-109, MCA
IMP: ~~50-37-101, 77-5-103(3), 76-11-101, 76-11-102, and~~ 76-13-109, MCA

COMMENT: The Administrative Code Committee commented that 76-13-109, MCA, expressly provides the Board with authority to adopt rules to enforce the provisions of Title 76, chapter 13, parts 1 and 2. This section does not grant the Board with any authority to adopt rules to implement the sections listed under Title 69 in Rule III, under Title 50 in Rules VI and X, under Title 77 in Rule X, or under Title 76, chapter 11, in Rule X.

RESPONSE: The Board has eliminated references to Title 69 in Rule III, Title 50 in Rules VI and X, Title 77 in Rule X, and Title 76, chapter 11 in Rule X.

4. The Board has adopted rule VIII as proposed, but with the following change:

Rule VIII (36.10.130) FIRE EXTINGUISHERS AND FIREFIGHTING TOOLS For the purpose of this sub-chapter the following are defined:

Subsections (1) through (5)(a) remain the same.

(b) One backpack pump with each vehicle and with any equipment, mobile or stationary, used off road, with an internal combustion engine/motor, that cannot be used to build fireline and is being operated on combustible material.

Subsection (6) remains the same.

COMMENT: A representative of F.H. Stoltze Land and Lumber Company commented that he felt some confusion over the intent of rule 36.10.130(5)(b). He felt that the requirement for a backpack pump was vague and could easily be interpreted as requiring his foresters' pickups to have a backpack pump if they were operating on unimproved roads with a grassy median.

RESPONSE: The intent of this rule is to require backpack pumps on vehicles and equipment engaged in commercial, ranching, and industrial activities such as skidding, when heavy demand is being placed on an engine and exhaust particles are more likely to be blown from the engine or where sparks might be created as the result of equipment use. Passenger vehicles (pickups) would fall into this category if used for purposes other than the transport of persons and/or equipment to or from a site, i.e., a pickup being used to skid logs. The addition of "used off road" was added to help qualify our intent. This rule was not intended to affect the normal use of passenger vehicles in off road situations.

COMMENT: Rule X (36.10.132) DEFINITIONS The representative of the F.H. Stoltze Land and Lumber Company also commented that he foresees difficulty with rule 36.10.132(6), in relation to the definition of forest land. He feels that without a map of some sort delineating classified forest land, the general public will be confused as to what areas are affected by the rules and regulations.

RESPONSE: Such a map would be impractical considering the scale it would have to be in order to lend sufficient accuracy to its use. It is the responsibility of the individual to contact the recognized fire protection agency for help in determining whether a given tract or land area is classified forest land.

BOARD OF LAND COMMISSIONERS
MARC RACICOT, CHAIR

By: _____
ARTHUR R. CLINCH, DIRECTOR
DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

_____
DON MacINTYRE, RULE REVIEWER

Certified to the Secretary of State May 28, 1996.

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

In the matter of the amendment of rules 16.10.1501 through 16.10.1505, 16.10.1507, 16.10.1512, 16.10.1516, 16.10.1518, 16.10.1519, 16.10.1522 through 16.10.1527 and 16.10.1529 pertaining to swimming pool licensing requirements	)))))))))	NOTICE OF AMENDMENT OF RULES

TO: All Interested Persons

1. On December 7, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rules 16.10.1501 through 16.10.1505, 16.10.1507, 16.10.1512, 16.10.1516, 16.10.1518, 16.10.1519, 16.10.1522 through 16.10.1527 and 16.10.1529 pertaining to swimming pool licensing requirements at page 2642 of the 1995 Montana Administrative Register, issue number 23.

2. The Department has amended the following rules 16.10.1501, 16.10.1504, 16.10.1505, 16.10.1512, 16.10.1519, 16.10.1526 and 16.10.1529 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

16.10.1502 DEFINITIONS In addition to the definitions in 50-53-102, MCA, the following definitions apply to this subchapter:

(1) through (9) remain as proposed.

(10) "OXIDATION REDUCTION POTENTIAL (ORP)" MEANS MEASUREMENT OF THE OXIDIZING PROPERTIES OF ANY SANITIZER BEING USED IN A POOL OR SPA AND IS MEASURED IN MILLIVOLTS (MV) BY AN ORP METER.

(10) and (11) remain as proposed but are renumbered (11) and (12).

(13) "SATURATION INDEX" MEANS A MATHEMATICAL CALCULATION, BASED ON THE INTERRELATION OF TEMPERATURE, CALCIUM HARDNESS, TOTAL ALKALINITY AND PH, THAT PREDICTS IF THE POOL WATER IS CORROSIVE, SCALE-FORMING OR NEUTRAL.

(12) remains as proposed but is renumbered (14).

~~(13)~~(15) "Spa" means a unit designed for recreational bathing or therapeutic use which is not drained, cleaned or refilled for individual use. It may include, but not be limited to, hydrojet circulation, hot water, cold water, air induction bubbles, or any combination thereof. Industry terminology for a spa includes, but is not limited to, therapeutic pool, hydrotherapy pool, whirlpool, hot~~spa~~tub, or jacuzzi. A spa is included as either a public swimming pool or a privately owned public swimming pool, as defined in ~~subsections (14)(15)~~ (17)(a)

and (b), and includes a hot springs spa. ~~of this rule~~ for the purposes of this subchapter.

(14) through (19) remain as proposed but are renumbered (16) through (21).

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-106, 50-53-107, and 50-53-115, MCA

16.10.1503 REVIEW OF PLANS (1) remains as proposed.

(a) ALL SWIMMING POOLS AND SPAS MUST BE DESIGNED AND CONSTRUCTED TO WITHSTAND ALL ANTICIPATED BATHER LOADS. OUTDOOR POOLS MUST HAVE A MINIMUM OF 27 SQUARE FEET FOR EACH PERSON IN THE DEEP END OF THE POOL AND 15 SQUARE FEET FOR EACH PERSON IN THE SHALLOW END OF THE POOL IN THE POOL'S MAXIMUM ANTICIPATED BATHER LOAD. INDOOR POOLS MUST HAVE A MINIMUM OF 24 SQUARE FEET FOR EACH PERSON IN THE POOL'S MAXIMUM ANTICIPATED BATHER LOAD. SPAS MUST HAVE A MINIMUM OF 10 SQUARE FEET FOR EACH PERSON IN THE SPA'S MAXIMUM ANTICIPATED BATHER LOAD.[THIS SUBSECTION IS EFFECTIVE ON THE DATE WHEN IT HAS BEEN ADOPTED BY THE DEPARTMENT OF COMMERCE AS PART OF THE STATE BUILDING CODE AND FILED WITH THE SECRETARY OF STATE PURSUANT TO 50-60-204, MCA.]

(2) through (2)(e) remain as proposed.

(f) CONSTRUCTION AND DESIGN DETAILS RELATED TO ANTICIPATED BATHER LOAD OF THE POOL OR SPA.

(3) through (4) remain as proposed.

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-107, MCA

16.10.1507 AREA REQUIREMENTS, DECK AREAS, HANDHOLDS

(1) ~~All swimming pools and spas shall must be designed and constructed to withstand all anticipated bather loads.~~ Consideration ~~shall~~ must be given to the shape of the pool or spa from the standpoint of safety, the need to facilitate supervision of bathers using the pool or spa, and maintaining adequate recirculation of the pool or spa waters. ~~Pools must have a minimum of 24 square feet for each person in the pool's maximum anticipated bather load, and spas must have a minimum of 10 square feet for each person in the spa's maximum anticipated bather load.~~

(2) through (11) remain as proposed.

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-107, MCA

16.10.1518 WATER TESTING AND TESTING EQUIPMENT

(1) through (5) remain as proposed.

(6) ORP MAY BE USED AS AN ADDITIONAL DIAGNOSTIC TOOL TO AID IN THE DETERMINATION OF OVERALL WATER QUALITY BUT MUST NOT BE USED AS A COMPLETE SUBSTITUTE FOR DPD TESTING. If ORP is used as aN ADDITIONAL DIAGNOSTIC TOOL ~~method~~ for determining sanitizer strength, the ~~approved range is a~~ minimum STANDARD IS

~~of 650 millivolts (mvV) to a maximum of~~ AND THE PREFERRED STANDARD IS 750 (mvV).

~~(7) Residual chlorine and pH must be measured at least once every 4 hours that the swimming pool or spa is in operation, with date and time of testing noted on the operation records.~~

~~(8) Water temperature must be measured at least once per hour for every hour of operation for all spas and all types of hot springs pools, with date and time of testing noted on the operation records.~~

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-107 and 50-53-115, MCA

16.10.1522 BACTERIOLOGICAL AND CHEMICAL QUALITY (1) and (2) remain the same.

(3) All swimming pools and spas, when open or in use, ~~shall~~ must be continuously disinfected by a chemical which imparts a residual effect and ~~shall~~ must be maintained in an alkaline condition. Disinfection must be handled by mechanical means. A chlorine residual of 1.0-~~3.0~~ 5.0 (3.0-5.0 ppm recommended) must be maintained in the pool at all times. A difference of .5 ppm between free and total chlorine readings in swimming pools requires superchlorination. Spa pools ~~shall~~ must be superchlorinated ~~daily~~ as necessary which will be indicated by use of a DPD test kit. SPA POOLS WHICH UTILIZE A COMBINATION OZONE AND BROMINE DISINFECTION METHOD ARE NOT REQUIRED TO SUPERCHLORINATE.

(4) through (8) remain as proposed.

(9) The total alkalinity (TA) of the water ~~should~~ must be at least 80 ppm and no greater than 200 ppm. TA LEVELS ARE 100-125 PPM FOR PLASTER POOLS, 80-150 PPM FOR SPAS AND 125-150 PPM FOR PAINTED AND FIBERGLASS POOLS. POOLS MUST BE IN CHEMICAL BALANCE, OR WATER BALANCE, AS DETERMINED BY THE SATURATION INDEX.

(a) CALCIUM HARDNESS READINGS MUST BE TAKEN AND RECORDED AT LEAST WEEKLY TO DETERMINE WATER CHEMICAL BALANCE. CHEMICAL BALANCE, AS DETERMINED BY THE SATURATION INDEX, MUST BE TESTED AT A MINIMUM OF ONCE PER WEEK ON POOLS, OR MORE FREQUENTLY AS NECESSITATED BY THE CONDITIONS OF THE POOL. IF A SPA DOES NOT MEET THE TA LEVEL REQUIREMENTS FOR SATURATION INDEX AND CHEMICAL BALANCE AND IS NOT CHEMICALLY CORRECTED, THE SPA WATER MUST BE COMPLETELY EXCHANGED WITH FRESH MAKE UP WATER ACCORDING TO ONE OF THE FREQUENCY STANDARDS IN ARM 16.10.1523(8).

(b) THE SATURATION INDEX READING MUST BE MAINTAINED BETWEEN -.5 AND +.5. ADJUSTMENTS MUST BE MADE TO THE POOL WATER OVER THE NEXT 24 HOURS AS DETERMINED BY THE SATURATION INDEX.

(c) THE FOLLOWING TABLE MUST BE USED TO DETERMINE THE SATURATION INDEX:

SATURATION INDEX = pH + TF + CF + AF - 12.1
NUMERICAL VALUES FOR FORMULA

TEMP °F	TF	CALCIUM HARDNESS EXPRESSED AS PPM $CaCO_3$	CF	TOTAL ALKALINITY EXPRESSED AS PPM $CaCO_3$	AF
32	0.0	5	0.3	5	0.7
37	0.1	25	1.0	25	1.4
46	0.2	50	1.3	50	1.7
53	0.3	75	1.5	75	1.9
60	0.4	100	1.6	100	2.0
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	300	2.1	300	2.5
94	0.8	400	2.2	400	2.6
105	0.9	800	2.5	800	2.9
128	1.0	1,000	2.6	1,000	3.0

Index between -0.5 and +0.5 is balanced water.
Over +0.5 is scale forming.
Below -0.5 is corrosive.

Key: TF = temperature factor
CF = calcium factor
AF = alkalinity factor

(10) remains as proposed.

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-107 and 50-53-115, MCA

16.10.1523 OPERATION, CLEANING AND MAINTENANCE (1) An accurate ~~report~~ record showing the daily operation of the swimming pool or spa ~~shall~~ must be maintained at the facility. This ~~report shall~~ record must include information regarding the sanitation and safety aspects of the pool or spa, including but not limited to disinfectant residuals, pH, ~~total alkalinity,~~

combined chlorine, cyanuric acid, water temperature, maintenance records, and bather load. ALL SANITATION AND SAFETY ASPECT TESTS MUST BE CONDUCTED IF APPROPRIATE FOR THE TYPE OF POOL OR SPA OPERATION. WHERE CONDUCTED, THE ~~All~~ sanitation and safety aspect tests, EXCLUDING TESTING FOR CYANURIC ACID RESIDUALS, must be tested at least twice daily, ~~with additional sanitation and safety aspect tests being performed as required by ARM 16.10.1518.~~OR MORE FREQUENTLY IF REQUIRED TO ENSURE THAT WATER SAFETY AND SANITATION STANDARDS ARE MET. CYANURIC ACID RESIDUAL TESTING MUST BE CONDUCTED AT LEAST WEEKLY, OR MORE FREQUENTLY IF REQUIRED TO ENSURE THAT WATER SAFETY AND SANITATION STANDARDS ARE MET, FOR SWIMMING POOLS OR SPAS WHICH UTILIZE EITHER CYANURIC ACID OR A STABILIZED CHLORINE COMPOUND UTILIZING CYANURIC ACID AS A CHLORINE STABILIZER. These ~~reports shall~~ records must be kept on file for 6 ~~24~~ 12 months for review by the regulatory authority. The swimming pool or spa must furnish copies of the records to the department upon the department's request.

(2) through (7) remain as proposed.

(8) ~~Spa pools shall~~ Spas must be drained, ~~and~~ thoroughly cleaned ~~weekly~~, and sanitized ~~every 72 hours~~.USING ANY OF THE FREQUENCY STANDARDS IN (8)(a), (b) or (c) BELOW, WHICH MUST BE DOCUMENTED IN THE SANITARY AND SAFETY ASPECT TEST RECORDS SPECIFIED IN ARM 16.10.1523(1):

(a) WEEKLY; OR

(b) WHEN THE TOTAL DISSOLVED SOLIDS REACH 1500 PPM ABOVE WATER SUPPLY LEVEL; OR

(c) WHEN REQUIRED AS DETERMINED BY UTILIZING THE FORMULA: (NUMBER OF SPA GALLONS ÷ 3) ÷ NUMBER OF BATHERS IN A 24 HOUR PERIOD = NUMBER OF DAYS BEFORE DUMPING.

(9) through (10) remain as proposed.

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-106 and 50-53-107, MCA

16.10.1524 SAFETY (1) ~~Swimming~~ A conduct safety sign or signs must be conspicuously posted at every pool and spa ~~safety regulations shall be conspicuously posted at every swimming pool or spa stating~~ regulated by this subchapter and include the following words or words of substantially the same

meaning:

~~(a) "No person is allowed in the pool alone."~~

~~(a)(b)~~(a) ~~"Spitting, spouting of water, or blowing the nose in the swimming pool or spa shall be~~ is ~~strictly prohibited."~~"OFFENSIVE OR UNSANITARY BEHAVIOR IS PROHIBITED."

(1)(c) through (1)(f) remain as proposed but are renumbered (1)(b) through (1)(e).

(2) through (3) remain as proposed.

~~(2)~~(4) An individual certified in cardiopulmonary resuscitation ~~shall~~ must be on the premises at all times. Copies of all CPR certification ~~shall be kept on file at the pool~~ MUST BE KEPT ON THE POOL PREMISES AND BE AVAILABLE FOR REVIEW AND VERIFICATION DURING POOL INSPECTIONS.

(5) remains as proposed.

~~(6) An emergency telephone shall be located within 100' of the pool or spa, available to the public, and with an emergency number posted.~~

(6) IF A SWIMMING POOL OR SPA REQUIRED TO OBTAIN A LICENSE UNDER THE AUTHORITY OF 50-53-201, MCA, IS NOT LICENSED, THE SWIMMING POOL OR SPA SHALL POST PUBLIC NOTIFICATION THAT IT IS A NONLICENSED SWIMMING POOL OR SPA AND THAT IT IS NOT AVAILABLE FOR USE BY THE PUBLIC.

AUTH: 50-53-103, MCA
IMP: 50-53-107 and 50-53-115, MCA

16.10.1525 EQUIPMENT AND PERSONNEL (1) remains the same.

(2) Every publicly owned public swimming pool ~~shall~~ must have a trained lifeguard or lifeguards in complete charge of bathing facilities who shall have authority to enforce all rules of safety. The number of lifeguards ~~shall~~ must be based on one per 2,000 square feet of pool area or fraction thereof, with a minimum of one lifeguard at all public pools regardless of size. Lifeguards ~~shall~~ must be currently ~~trained~~ CERTIFIED in American Red Cross methods of first aid and water safety or its equivalent. Each lifeguard ~~shall~~ must be at least ~~16~~ 15 years of age. Lifeguards shall be on duty at all times when a swimming pool or bathing place is open for use by the bathers.

(3) through (6) remain as proposed.

AUTH: 50-53-103, MCA
IMP: 50-53-107, MCA

16.10.1527 HOT SPRINGS POOLS AND FLOW-THROUGH HOT SPRINGS POOLS (1) through (2)(a) remain as proposed.

~~(b) meet all bacteriological standards as set forth in (1) of ARM 16.10.1522. If standards cannot be met, a disinfection device must be installed and utilized.~~

(b) Each pool must have an inline thermometer installed to monitor the temperature of the pool~~, except that~~. ~~t~~The PROBE MUST BE LOCATED AS CLOSE TO THE INLET AS POSSIBLE OR PLACED WHERE IT WILL ACCURATELY READ POOL TEMPERATURE. THE department may allow a deviation from the use of an inline thermometer by an applicant who can demonstrate in a written application to the department that the water temperature can be accurately measured by an alternative method in lieu of an inline thermometer and that the deviation does not have the potential to cause adverse public health effects. To be eligible for a deviation from the inline thermometer requirement, the applicant must submit to the department as part of its application a plan that describes the alternative method that accurately measures the water temperature.

(c) Upon request by the department, the pool OPERATOR must collect water samples for bacteriological or other testing for public health investigations or when the turnover rate is greater than 8 hours, the provisions of (3)(c)(i) below are not met, or the pool is a flow-through hot springs pool that does not utilize the alternative of chemical disinfection but has not been drained, cleaned, and sanitized every 72 hours.

(d) remains as proposed.

(3) Every flow-through hot springs pool must comply with the following:

(a) Each such pool must comply with the provisions of ARM 16.10.1503 through ARM 16.10.1507; ARM 16.10.1510 through ARM 16.10.1511; ARM 16.10.1515; ARM 16.10.1517(1) and (3); ARM 16.10.1518(1)~~, (7), and (8)~~; ARM 16.10.1519 through ARM 16.10.1520; ARM 16.10.1521(2); ARM 16.10.1522(1), (2), (6), (7), and (9); ARM 16.10.1523 through ARM 16.10.1526; and ARM 16.10.1528 through ARM 16.10.1531.

(b) The temperature of a pool or spa used primarily for

soaking may not exceed 106° F, and the temperature of a pool used primarily for swimming may not exceed 100° F. Water temperature must be monitored ~~at a frequency~~ and recorded in accordance with ARM ~~16.10.1518, and records must be maintained in accordance with ARM~~ 16.10.1523(1).

(3)(c)(i) and (ii) remain as proposed.

(d) If, as allowed by 50-53-115, MCA, the pool is not chemically disinfected, a sign must be conspicuously posted at poolside that states the following in the same words or words of substantially the same meaning: "State law does not require chemical disinfection of this pool (or spa) if it is completely drained and sanitized every 72 hours. ~~Therefore, nNo person~~ ONE with ~~diarrhea, skin infection, open sores, a "runny nose", or a communicable~~ disease COMMUNICABLE BY WATER is allowed in the pool".

(3)(e) remains as proposed.

(f) A FLOW-THROUGH HOT SPRINGS POOL MAY SUBMIT TO THE DEPARTMENT IN WRITING A STANDARD OPERATING PLAN WHICH PROPOSES HOW THAT OPERATION PLANS TO MEET THE STANDARDS OF ARM 16.10.1527(3) USING AN ALTERNATIVE METHOD OR METHODS. THE APPLICANT MUST DEMONSTRATE IN THE STANDARD OPERATING PLAN THAT THE STANDARDS CAN BE ACHIEVED AND THAT THE PLAN DOES NOT HAVE THE POTENTIAL TO CAUSE ADVERSE PUBLIC HEALTH EFFECTS. THE STANDARD OPERATING PLAN IS NOT EFFECTIVE UNTIL THE DEPARTMENT APPROVES THE WRITTEN STANDARD OPERATING PLAN IN WRITING. A COPY OF THE APPROVED STANDARD OPERATING PLAN MUST BE KEPT ON THE POOL PREMISES AND BE AVAILABLE FOR REVIEW AND VERIFICATION DURING POOL OR SPA INSPECTIONS.

(4) remains as proposed.

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-107 and 50-53-115, MCA

4. In response to comments received from the public, the department has amended rule 16.10.1516, although it was not proposed to be amended in the first notice. The amendment to the rule will benefit the public and will allow facilities some latitude in meeting requirements. The department feels the amendment is not significant enough to require additional public notification. The rule is amended as follows:

16.10.1516 PIPING SYSTEM (1)(a) through (f) remain the same.

(g) The piping system may use labels stating the pipe function with direction of flow arrows as an acceptable pipe identification method alternative to color coding.

AUTH: Sec. 50-53-103, MCA
IMP: Sec. 50-53-107, MCA

5. The department received multiple written and oral comments on the proposed rules. The comments are summarized and responded to below.

GENERAL COMMENTS

COMMENT #1: One commentor noted that Section 50-53-115 (Special requirements for flow-through hot springs pools), MCA, had not been cited for any rules, where applicable, as the rulemaking authority for the rule and/or as the implemented statute for the rule.

RESPONSE: The department agrees with the commentor and has amended the affected rules to reflect Section 50-53-115, MCA, as the implemented statute.

COMMENT #2: One commentor noted that Section 50-53-103(2), MCA, states that any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of commerce as part of the state building code, and asked if the department had made a determination as to whether any of the proposed rule amendments related to the above specified listing of subjects.

RESPONSE: The department acknowledges that the additions to ARM 16.10.1503(a) (previously proposed to be a part of ARM 16.10.1507) relate to the subjects specified in Section 50-53-103(2), MCA. The Department of Commerce has reviewed the proposed rules and has agreed to include the requirements

contained in ARM 16.10.1503(a) in the state building code. This subsection will not be effective until the Department of Commerce has complied with 50-60-204, MCA.

COMMENT #3: One commentor voiced concern that the proposed rule changes would generally place more enforcement responsibilities upon the operators, particularly the sign requirements.

RESPONSE: Sections 50-53-106 and 50-53-107, MCA, establish that each person operating a public swimming pool or public bathing place must operate the pool or public bathing place in a sanitary and safe manner and establishes sanitary, healthful, and safe public swimming pool and public bathing place provisions. The amended rules reflect public health and safety requirements that must be addressed by the operator in his or her operation. Responsibility for the operation of the public swimming pool or public bathing place rests with the operator of that facility.

COMMENT #4: One commentor questioned the department's authority to adopt administrative rules regulating businesses that operate public bathing places.

RESPONSE: Section 50-53-103, MCA, authorizes the department to adopt rules relating to the operation of public swimming pools and public bathing places, including adopting rules setting standards to ensure sanitation and safety in public swimming pools and public bathing places to assure public health and safety and rules relating to the licensing of operators of public swimming pools and public bathing places.

COMMENT #5: One commentor questioned whether the department gave appropriate rulemaking notice to all public bathing places regulated by Title 50, Chapter 53, MCA.

RESPONSE: The department mailed a copy of the public swimming pool and public bathing places notice of rulemaking to all operations that are regulated or licensed under the authority of Title 50, chapter 53, MCA.

ARM 16.10.1501 PURPOSE-APPLICABILITY

COMMENT #6: One commentor suggested that the costs of any maintenance or construction required by a public swimming pool or spa to meet the requirements of ARM 16.10.1513 because of the removal of the "grandfather" provision in ARM 16.10.1501(3) should be paid by the department. Further, the commentor was concerned that removal of the "grandfather" provision from ARM 16.10.1501(3) violated a facility's rights under the U.S. Constitution and conflicted with the provisions of Senate Bill 400 during the 1995 legislative session.

RESPONSE: Upon consideration, the department disagrees with the comments posed in Comment #6. The department has very carefully assessed the subject areas that fall within the protection of public health and safety and has limited its rules accordingly. The department has removed the "grandfather" provision in ARM 16.10.1501(3) regarding the requirement that a public swimming pool or spa meet construction and operating standards for chlorine gas production equipment, based on the serious risk posed to public health and safety where chlorine gas is not regulated according to the standards in ARM 16.10.1513. The department does not assume financial liability for the costs incurred by public bathing place operators in meeting the minimum health and safety requirements established by these rules. Removal of the "grandfather" provision does not violate a facility's rights under the U.S. constitution nor does its removal conflict with Senate Bill 400. (SB 400, Chapter 155, Laws of Montana, 1995, is codified at 50-53-115, MCA.) If a flow-through hot springs pool meets the operating standards of Senate Bill 400, it is not required to chlorinate. If a flow-through hot springs pool does not meet the operating standards of Senate Bill 400, it is not a flow-through hot springs pool and may require disinfection.

COMMENT #7: One commentor questioned whether the removal of the "grandfather" provision from chlorine gas production construction and operation requirements affected the requirements and approval process for other types of disinfection systems.

RESPONSE: The removal of the "grandfather" provision does not affect the requirements of ARM 16.10.1501(3) and ARM 16.10.1503 which require plan review approval for any new construction, remodeling, or alteration of systems. This applies to all public bathing places and does not exempt any facility from plan review by type of disinfection system. Any pool or spa which is remodeled must conform to the requirements of this subchapter and will need review and written approval, including approval of its disinfection system.

16.10.1502 DEFINITIONS

COMMENT #8: One commentor was concerned that all flow-through hot springs pools cannot meet the definition requirements of ARM 16.10.1502(7) and will have difficulty meeting operation standards.

RESPONSE: The department acknowledges that some public swimming pools that call their pool a "flow-through hot springs pool" do not meet the standards for that type of pool as established by Senate Bill 400. The definition in ARM 16.10.1502(8) and the requirements in ARM 16.10.1527(1) address standards for hot springs pools which do not meet the standards for flow-through hot springs pools.

COMMENT #9: One commentor stated the department should define the term "oxidation reduction potential (ORP)" as it is used in ARM 16.10.1518(6).

RESPONSE: Upon consideration, the department agrees with the commentor and has added a definition for "ORP" in ARM 16.10.1502(10).

COMMENT #10: One commentor raised the issue that ARM 16.10.1522(9) regarding water alkalinity did not adequately address all factors pertaining to balanced water.

RESPONSE: Upon consideration, the department agrees with the commentor and has expanded ARM 16.10.1522(9) to include a saturation index, which is defined in ARM 16.10.1502(13).

16.10.1503 REVIEW OF PLANS

COMMENT #11: One commentor asked the department to explain what types of pools are considered large or complex facilities for purposes of ARM 16.10.1503(4), and one commentor requested the department to restore the original wording.

RESPONSE: School, city or county pools were listed in ARM 16.10.1503(4) as examples of types of pools which are considered large or complex facilities. The use of "such as" in the amended text versus "e.g." used in the original text, is a language structure change to provide maximum clarification.

16.10.1507 AREA REQUIREMENTS, DECK AREAS, HANDHOLDS

COMMENT #12: One commentor asked why "shall" used in the original text, was changed to "must" in the amended text.

RESPONSE: The change implements administrative rule language format.

COMMENT #13: Several commentors objected to proposed standards to establish minimum pool and spa square feet for anticipated bather loads. This was perceived as setting maximum pool and spa bather use numbers per pool or spa and setting an operating compliance standard if peak pool or spa bather loads exceeded the pool or spa design and construction standards. One commentor felt this change was not required by passage of Senate Bill 400 in the 1995 Legislative Session. One commentor stated the bather load standards were not a problem from a construction view. One commentor stated the anticipated bather load standards did not adequately address the differences between indoor and outdoor pools and specialty pools.

RESPONSE: The department has amended ARM 16.10.1507 by moving that part of subsection (1) of ARM 16.10.1507 which pertains to standards for minimum pool and spa square feet for anticipated bather loads to ARM 16.10.1503(1)(a) to clarify that those requirements are design and construction standards. The department further amended ARM 16.10.1503(2) by adding a new

subsection (f) which requires the facility to submit, as part of its plans and specifications, construction and design details related to anticipated bather load of the pool or spa. The proposal for bather load capacity design and construction standards addresses plan review issues, which impact on public health and safety, and do not represent changes to the administrative rules to implement Senate Bill 400. Recirculation systems for pools and spas are designed based on the volume of water in the pool and bather load. The department proposed the design and construction standards so that swimming pools and spas generally operated within the parameters of the anticipated bather load capacity do not overload recirculation system filters and chlorinators. The department has further amended ARM 16.10.1503(1)(a) to include a bather load standard for outdoor pools that is separate from indoor pools or spas. Since wading, diving, or plunge pools have a variety of design issues which must be addressed, anticipated bather load capacity for these types of pools would be addressed on an individual basis during the plan review process.

COMMENT #14: Two commentors agreed with the department's provision for a deviation request to allow for pool deck carpeting, although one commentor felt it could be more simply stated.

RESPONSE: The department has reviewed the deviation procedure in ARM 16.10.1507(2)(d) and has retained the language as proposed by the department. As use of deck carpeting is not the standard, the applicant submitting a deviation request must meet the specific requirements delineated in ARM 16.10.1507(2)(d), to show that public health and safety can be maintained with, and no reasonable alternative exists to, the use of deck carpeting.

16.10.1512 RECIRCULATION SYSTEM

COMMENT #15: One commentor suggested that "make up" water conflicts with existing plumbing codes, as a direct connection is not permitted.

RESPONSE: The department has reviewed this comment and does not

agree that "make up" water conflicts with existing plumbing codes. "Make up" water is fresh water added to the pool from a municipal water supply or a well. The fill line is required to be protected by either an air gap or back-flow preventor. This requirement complies with existing plumbing codes.

16.10.1516 PIPING SYSTEM

COMMENT #16: Two commentors stated the piping color codes are confusing because some of them conflict with OSHA color standard identities.

RESPONSE: The department agrees that some of the color codes in the existing rules conflict with OSHA color standard identities. However, if the department changes the color codes, this may create difficulties for existing facilities. Therefore, the department has amended ARM 16.10.1516(1) to allow a facility to use labels with pipe function and direction of flow arrows as an acceptable pipe identification method alternative to the use of color coding.

16.10.1518 WATER TESTING AND TESTING EQUIPMENT

COMMENT #17: Two commentors stated that test kits are not available which record within 0.1 ppm.

RESPONSE: The language in ARM 16.10.1518(3) states the test kit "standards" must be accurate within plus or minus 0.1 ppm, not that the test have 0.1 ppm readings.

COMMENT #18: Two commentors stated the department's ORP standards should have an adjusted upper range for pH and free chlorine factors. One commentor stated that ORP should be utilized as an additional water quality diagnostic tool but not as a replacement test for DPD testing.

RESPONSE: With respect to the first comment, ORP is a new methodology for determining sanitizer effectiveness and as it is not in common usage, the department has amended ARM 16.10.1518(6) to state only a minimum standard and a preferred

standard for ORP test levels. Currently, no one upper standard limit has been determined as the maximum acceptable oxidation reduction potential. With respect to the second comment, the department agrees with the commentor, and has further amended ARM 16.10.1518(6) to reflect use of the ORP as an additional but not replacement water quality diagnostic test.

COMMENT #19: Many commentors requested the department to reduce the proposed residual chlorine and pH four hour testing frequency and water temperature hourly testing frequency requirements in ARM 16.10.1518(7) and (8). The commentors stated that residual chlorine, pH, and water temperatures vary little when water recirculation systems and chemical water quality are properly adjusted and operated. They stated that the proposed testing frequencies were unreasonable and burdensome to the operators based upon labor costs and minimal reduction in the risk to public health. One commentor stated that chlorine, pH and temperature measurements should be performed as often as necessary to ensure the water safety and sanitation standards are met.

RESPONSE: Upon consideration, the department agrees with the commentors as their comments relate to the mandatory testing frequency delineated in ARM 16.10.1518(7) and (8) and has accordingly, deleted ARM 16.10.1518(7) and (8). However, the department believes that it is reasonable and necessary for each public swimming pool and spa to maintain daily sanitation and safety aspect records of each pool or spa and retains the proposed language in ARM 16.10.1523(1) which requires certain specified tests to be performed and recorded twice daily. ARM 16.10.1523(1) does not designate the specific time that the twice daily tests are to be taken and recorded, thus allowing the operator to determine the most reasonable and useful time for performing the sanitation and safety aspect tests for their operation. Further, the department has amended ARM 16.10.1523(1) to require that the twice daily testing frequency be conducted "more frequently if required to ensure that water safety and sanitation standards are met" recognizing that adjusting water quality increases necessary testing frequency.

COMMENT #20: One commentor stated that the department should require that an easily readable thermometer be available in the pool for users to read and that signs should be required stating the maximum allowable pool temperature.

RESPONSE: The department has reviewed the comment and after consideration, declines to amend the rule due to concerns of thermometer breakage and comments that proposed sign requirements are already too extensive.

COMMENT #21: One commentor was concerned that the usefulness of pH and disinfection residuals would be diminished by bather overload.

RESPONSE: The department agrees with the commentor and has amended ARM 16.10.1523(8) to delineate three different methods which can be utilized to determine the frequency for cleaning spas.

COMMENT #22: One commentor asked why the testing frequency was increased in ARM 16.10.1518(7) and (8).

RESPONSE: The department increased the proposed testing frequencies to reflect recommendations by the National Swimming Pool Foundation. Please refer to the department's response to Comment #19, in which the department deleted 16.10.1518(7) and (8).

16.10.1522 BACTERIOLOGICAL AND CHEMICAL QUALITY

COMMENT #23: Two commentors suggested that superchlorination is not required when a combination ozone and bromine disinfection system is in use for spas. One commentor stated a properly sized ozonator will provide shock level treatment to the water on a continuous basis. One commentor stated that superchlorination of spas is performed on an as needed basis as opposed to daily.

RESPONSE: The department agrees with the commentors, and has amended ARM 16.10.1522(3) to exclude spas using a combination

ozone and bromine disinfection system from superchlorination requirements and to delete "daily" from the spa superchlorination requirement.

COMMENT #24: One commentor stated they disagreed with the increased chlorine residual range in ARM 16.10.1522(3).

RESPONSE: After consideration, the department declines to decrease the chlorine residual range in ARM 16.10.1522(3) based on new national standards in progress which are changing the upper limit of chlorine residual to 5.0 ppm in pools.

COMMENT #25: One commentor felt this rule should be worded to exempt flow-through hot springs pools from disinfection requirements.

RESPONSE: Flow-through hot springs pools do not require pool or spa disinfection unless the standards identified in Section 50-53-115(4), MCA, are not met.

COMMENT #26: One commentor asked if the use of ozone as a disinfectant still requires approval in ARM 16.10.1522(5).

RESPONSE: The use of any disinfectant method for new construction or remodeled pools or spas must be approved through the plan review approval process in ARM 16.10.1503. Existing pools must have disinfectant methods other than chlorine approved by the department as required by ARM 16.10.1522(5). Ozone would therefore require approval by the department as a disinfectant prior to its use.

COMMENT #27: With respect to the upper pH limit of 7.2 established in ARM 16.10.1522(8), one commentor stated that there are indications in the industry that 8.2 can be the upper pH limit without adverse affect.

RESPONSE: Upon consideration, the department declines to increase the upper pH limit to 8.2. The pH of swimming pool water must be kept slightly above 7.0 and must not exceed 7.8 because of the pH level of human body fluids. Pool water

maintained between 7.2 and 7.6 provides the best conditions for precipitations of flocculants on conventional sand filters and for effectiveness of chlorine as a bactericide.

COMMENT #28: One commentor was concerned that existing language in ARM 16.10.1522(9) concerning total alkalinity did not adequately address all the factors necessary to achieve balanced water. One commentor asked why the department regulated alkalinity and why a standard of 80 ppm was chosen.

RESPONSE: The department agrees with the first commentor that total alkalinity standards must be expanded to include alkalinity levels specific for different types of pool construction materials and types of pools and accordingly, has amended ARM 16.10.1522(9). A saturation index has been inserted in ARM 16.10.1522(9)(c) which includes factors for pH, temperature, calcium hardness and total alkalinity. ARM 16.10.1502 has been amended to add a definition in ARM 16.10.1502(13) for saturation index. The frequency for water chemical balance tests, as determined by the saturation index, are weekly as stated in ARM 16.10.1523(9)(a); therefore, total alkalinity has been deleted from ARM 16.10.1523(1) as a required twice daily sanitation and safety aspect test. With respect to the second comment, total alkalinity is a measure of the pH buffering capacity or the water's resistance to a change in pH. Total alkalinity and pH balance must be achieved to ensure that water quality standards are met. A minimum alkalinity level of 80 ppm is necessary as a buffer to stabilize the pH level.

16.10.1523 OPERATION, CLEANING AND MAINTENANCE

COMMENT #29: One commentor requested the department to explain the purpose of ARM 16.10.1523(1).

RESPONSE: The intent of ARM 16.10.1523(1) is to establish a method for public swimming pool and spa operators to monitor and verify that public bathing place operation, cleaning, and maintenance standards are met to ensure public health and safety as authorized by 50-53-103, MCA.

COMMENT #30: With respect to ARM 16.10.1523(1), one commentor stated that a cyanuric acid screen isn't applicable to a spa and that alkalinity testing is not necessarily performed twice daily. One commentor asked whether cyanuric acid tests must be performed daily.

RESPONSE: The department disagrees with the first commentor's statement about the applicability of a cyanuric acid screen to spas. Cyanuric acid is used either as a separate additive or as an incorporated additive into stabilized chlorine compounds for swimming pools or spas which are exposed to sunlight. Although economics usually deter use of cyanuric acid in either indoor or outdoor spas, its use is not prohibited. The department has amended ARM 16.10.1523(1) to reflect generally, that the specified sanitation and safety aspects tests must be conducted if appropriate for the type of pool or spa operation. With respect to the second comment, the department has added a separate statement in ARM 16.10.1523(1) which requires cyanuric acid residual tests to be performed weekly or as frequently as necessary to ensure water safety and sanitation standards are met. The department deleted total alkalinity from the list as it is addressed in the amended language of ARM 16.10.1522(9).

COMMENT #31: Three commentors asked why the department increased record retention time in ARM 16.10.1523(1) and felt 24 months of record keeping was burdensome. One commentor felt the 24 month record retention was not an issue. One commentor asked if the department has a recommended daily testing log for record keeping. Another commentor asked whether electronic sensors could be used to test for water requirements.

RESPONSE: The department increased record retention time to assure availability of records for review during facility inspections due to seasonal facility operations and random inspection frequencies. Upon consideration of the comments, the department has amended ARM 16.10.1523(1) to decrease the record keeping retention time from 24 months to 12 months thereby reducing operation burden yet meeting facility inspection record review needs. The department does have a model daily record keeping log which is available to all public swimming pools and

spas for use; however, use of this particular form is not required if the public swimming pool or spa has an alternative method that is approved for recording all testing requirements. Electronic sensors may be utilized to test water for different requirements, but those systems should have recording devices attached to those probes to chart or record those results for reviewing by the regulatory authority.

COMMENT #32: Many commentors suggested that increasing spa draining and cleaning frequency from once weekly to every 72 hours in ARM 16.10.1523(8) was not practical based upon: 1) the difficulty in readjusting the spa chemical water quality; 2) the increased labor allocation; 3) the consumption of at least twice as much water volume; and 4) the minimal improvement of water quality and spa cleanliness to the public. Also, one commentor stated that there is a direct relationship between bather load and the ability of a spa recirculation and disinfection system to "recover" sanitary water quality.

RESPONSE: The department agrees with the commentors and has amended ARM 16.10.1523(8) to restore the weekly testing frequency as one of three allowable methods to determine when spas should be completely drained, cleaned, and sanitized. The sanitizing step of the process has been separately identified from cleaning to clarify that the spa surfaces require an effective surface disinfection step after removal of spa surface buildup by a detergent. ARM 16.10.1523(8) applies to all public spas that are not defined as a "flow-through hot springs pool" in ARM 16.10.1502(7).

COMMENT #33: Four commentors requested the department to delete ARM 16.10.1523(9) stating a visible clock for spas was intrusive, defeated the purpose of guest relaxation in public accommodations, and created operator liability issues. One commentor stated a clock was not necessary as each individual's total time in a pool would be based upon that individual's heat tolerance, not watching a clock. It was noted that medical warning signs would be posted and all users would be either adults or children under adult supervision. One commentor stated use of a timer delay could be installed to require the

spa user to physically exit the spa.

RESPONSE: The department has considered the comments and elects to retain the visible clock requirement in ARM 16.10.1523(9) because spa users need to determine the length of their use for medical safety reasons including potential heat stroke risks. The department did not include the requirement for a timer delay because it only addresses the exiting of the spa by one person, not group usage.

COMMENT #34: With respect to ARM 15.10.1523(10), one commentor felt department staff was not knowledgeable concerning good pool operation and felt this provision would be utilized to harass pool operators. One commentor was concerned this provision would necessitate mandatory knowledge tests.

RESPONSE: Section 50-53-103(1)(a), MCA, requires the department to adopt rules which set standards to ensure sanitation and safety in public bathing places to protect public health and safety. The department does not adopt rules, nor does it utilize rules, for the purpose of harassment. In order for a public bathing place to be operated in a sanitary and safe manner, it is necessary that the operator be knowledgeable concerning sanitary and safety practices in their daily establishment operations. However, that knowledge can be obtained through a number of methods and does not necessitate mandatory operator training and testing requirements.

COMMENT #35: One commentor stated there should be different sanitary and operating standard concerns for spas which are located in private or guest rooms as opposed to spas which are located in a common guest access area. One commentor representing a condominium association recommended the department adopt a general policy allowing variations to the rules because of the individual nature of all public swimming pool or spa operations.

RESPONSE: The department has not added a special provision for spa operation and maintenance requirements for spas located in private or guest rooms as this issue was not addressed in this

rulemaking notice, and therefore did not receive adequate public comment. Although there are individual differences between all public swimming pool and spa operations, they must be maintained in a sanitary, healthful, and safe manner and meet the minimum standards established in the these rules.

16.10.1524 SAFETY

COMMENT #36: Several commentors stated the sign requirements in ARM 16.10.1524(2) and (3) were well intended but numerous and extensive, creating difficult to read signs and imposing additional costs upon facilities to reformat their existing signs. It was suggested the department review these sections and scale down the proposed changes. One commentor asked who determines what are words of substantial meaning. Several commentors were concerned that the proposed language in ARM 16.10.1524 would necessitate that existing signs would require replacement if they did not contain the exact language as amended in this section or if the letters were not the exact height as designated.

RESPONSE: When the department reviewed public swimming pool or spa sign requirements, the sign information was categorized into three sections, based upon the specific public health and safety information needed while using a particular type of facility. The signs in ARM 16.10.1524(1) are safety conduct warnings which are applicable to all types of swimming pool or spa facilities. The signs in ARM 16.10.1524(2) are medical safety warnings which are applicable to all warm water pools and spas that have water temperature of 100 °F or above. The signs in ARM 16.10.1524(3) are applicable to privately owned public swimming pools which are not lifeguarded, meeting the requirement of Section 50-53-107(2), MCA, and addresses the issues of nonswimmers and children under age 14 in nonlifeguarded pools. ARM 16.10.1524(3) is not a new provision to these rules and has been moved from ARM 16.10.1525(3) to ARM 16.10.1524(3) to consolidate the sign language requirements, where possible.

The department was also concerned that the proposed sign language requirements in ARM 16.10.1524 were extensive and had the potential to impose additional costs upon facilities to

reformat their existing signs. Based on this concern, the department purposely proposed in ARM 16.10.1524(1) and ARM 16.10.1524(2) that the signs include the stated words "or words of substantially the same meaning." If there is a question by either the pool or spa operator or a local health department concerning whether the language on an existing sign meets the "words of substantially the same meaning" requirements of either ARM 16.10.1524(1) or ARM 16.10.1524(2), then the department will make that determination.

Concerning ARM 16.10.1524(2), the department has declined to amend this subsection as the information noted therein is essential to ensure the medical safety and health of users of the pool or spa. The department will review any commercial sign submitted by a pool or spa operator to determine if the sign meets the requirements of ARM 16.10.1524(2).

Concerning ARM 16.10.1524(3), the department stated the exact language and lettering size. If there is a question by either a pool or spa operator or a local health department concerning whether an existing sign meets the requirements of ARM 16.10.1524(3), the department will make that determination.

COMMENT #37: Several commentors were concerned about the requirement in ARM 16.10.1524(1)(a) that signs reflect the prohibition "No person is allowed in the pool alone."

RESPONSE: ARM 16.10.1524(1)(a) was proposed to address potential drowning and injury safety concerns that are increased when an individual swims alone. Upon consideration of the comments, the department agrees that this issue has already been adequately addressed by ARM 16.10.1524(3). ARM 16.10.1524(3) requires sign language that nonswimmers and children under the age of 14 should not use the pool without a responsible adult in attendance for nonlifeguarded privately owned public swimming pools. The department is deleting ARM 16.10.1524(1)(a) as not necessary for those pools which are lifeguarded. In response to the public lodging industry concerns, ARM 16.10.1524(3) continues to allow adult swimmers to swim alone in a privately owned public swimming pool.

COMMENT #38: One commentor stated that the sign language in ARM

16.10.1524(1)(b) listing offensive behavior was not appropriate for spas, was offensive to the public, and not inclusive of all unsanitary behaviors.

RESPONSE: Upon consideration, the department has amended ARM 16.10.1524(1)(b) to read "Offensive or unsanitary behavior is prohibited."

COMMENT #39: Several commentors were concerned that the safety conduct signs required by ARM 16.10.1524(1)(e) and (f) and ARM 16.10.1524(2)(a) were not enforceable and increased owner liability.

RESPONSE: Upon consideration, the department declines to amend the safety conduct signs required by ARM 16.10.1524(1)(e) and (f) and ARM 16.10.1524(2)(a) based upon the need to notify swimmers that certain conduct can adversely affect their health and safety in public swimming pools and spas. The smoking restriction in ARM 16.10.1524(e) in the swimming and bathing area has been an existing safety conduct sign requirement since June 28, 1985. The sign requirement in ARM 16.10.1524(f) prohibiting alcohol, food, or gum in or near the pool notifies the public of the existing provision of ARM 16.10.1530(1) which has been effective since June 28, 1985. As many Montana drowning deaths in spas have been associated with the consumption of intoxicating liquor or drugs, the medical safety warning required in ARM 16.10.1524(2)(a) is deemed appropriate.

COMMENT #40: One commentor questioned the requirement in ARM 16.10.1524(2)(c) that restricted children under the age of 5 from using the spa; another commentor noted that parents would be offended by this restriction. One commentor asked the department whether the 15 minute time warning for adult spa users was per hour or per day.

RESPONSE: Upon consideration, the department has declined to delete the requirement that restricts children under the age of 5 years from using the spa. Children under the age of 5 years have small bodies with a small percentage of skin to surface area. They are unable to dissipate heat buildup from elevated

spa temperatures as easily as adults and have a higher risk of experiencing heat stroke which can cause permanent consequences, including brain damage or death. Parents have a safety responsibility for their minor children and need to be informed about the serious medical consequences which can be caused by their child's exposure to very warm water. The 15 minute time warning is to limit the effects of heat stress on an adult's body and to allow the body to cool to normal temperature. The time warning is not strictly applied on either a per hour or a per day basis, as individuals make that decision for themselves as an informed choice.

COMMENT #41: One commentor was concerned about the requirement in ARM 16.10.1524(4) of posting CPR certificates and operating licenses in a moist indoor atmosphere and one commentor asked where CPR records should be kept.

RESPONSE: ARM 16.10.1524(4) has been amended to clarify that copies of CPR certification must be kept on the pool premises as verification that statutory CPR certification requirements for privately owned public pools have been met. ARM 16.10.1524(4) does not require that the CPR certifications be posted for public viewing; that is an operator choice.

COMMENT #42: One commentor stated that if the pool or spa is not licensed as a public bathing place, the sign should state that the spa or pool is not licensed as a public bathing place and is not for the use of guests. One commentor stated it is difficult for privately owned public swimming pools to have a CPR certified person on the premises.

RESPONSE: Upon consideration, the department agrees with the commentor's concerns about public swimming pools and spas which are not licensed. Accordingly, the department has amended ARM 16.10.1524 to include a new subsection (6) which requires that a public swimming pool or spa required to obtain a license under the authority of Title 50, chapter 53, MCA, but which has not acquired a license, post public notification of nonlicensure status and nonaccessibility to the public. The CPR trained person on premises requirement for privately owned public pools

is a statutory requirement in Section 50-53-107, MCA.

COMMENT #43: Three commentors voiced concern about the requirement in ARM 16.10.1524(6) that a telephone be located within 100 feet of the pool or spa indicating that the telephone would be of questionable value, difficult to maintain, and create operator liability issues.

RESPONSE: Upon consideration, the department acknowledges industry concerns of maintaining functional telephone access by the poolside and accordingly, has deleted ARM 16.10.1524(6). Industry has stated their willingness to respond to emergency situations by utilizing telephones located in management offices and through their on premises CPR trained personnel.

16.10.1525 EQUIPMENT AND PERSONNEL

COMMENT #44: Two commentors requested the department amend ARM 16.10.1525(2) to allow more flexibility in determining the number and location of lifeguards.

RESPONSE: Upon consideration, the department declines to amend ARM 16.10.1524(2) to allow more flexibility in determining the number and location of lifeguards. The public health and safety of swimmers requires that the exact numbers and locations of lifeguards be established by rule.

COMMENT #45: One commentor recommended replacing the word "training" with the word "certification" for CPR requirements and lowering the lifeguard age to 15 years.

RESPONSE: Upon consideration, the department agrees with the commentor and accordingly, amends ARM 16.10.1524(2) to reflect the word "certified" and the minimum lifeguard age of 15.

COMMENT #46: One commentor stated a public swimming pool or spa should not be required to have a backboard in ARM 16.10.1525(5), as only Emergency Medical Technicians can use the board.

RESPONSE: Upon consideration, the department declines to delete

the requirement in ARM 16.10.1525(5) of a backboard for a public swimming pool or spa. Some types of pool emergencies might require the on premises personnel to respond with a backboard (for example, to prevent the drowning of an injured swimmer) before an Emergency Medical Technician could arrive. As Montana develops a statewide injury control program, the on premises safety equipment requirements will be reviewed on an ongoing basis.

16.10.1526 DISEASE CONTROL

COMMENT #47: One commentor stated the department should remove the bather inspection requirement in ARM 16.10.1526.

RESPONSE: Upon consideration, the department declines to delete the bather inspection requirement in ARM 16.10.1526. It is the operator's responsibility to make reasonable effort to monitor bathers for open lesions and sores and prohibit them from entering the swimming pool. Swimming pool water must be maintained as safe as possible for the general public.

COMMENT #48: Two commentors suggested deleting the requirement in ARM 16.10.1526(2) that a bather use warm water and soap for a cleansing shower before entering a pool or spa because it is impossible to monitor compliance.

RESPONSE: Upon consideration, the department declines to delete the warm water and soap requirement in ARM 16.10.1526(2) as dirt, bacteria, body oils, etc. decrease the effectiveness of a pool or spa's recirculation or disinfection system.

16.10.1527 FLOW-THROUGH HOT SPRINGS POOLS

COMMENT #49: One commentor voiced concern that the proposed amendments to ARM 16.10.1527 do not implement the intent of Senate Bill 400 in the 1995 Legislative Session.

RESPONSE: Upon consideration, the department disagrees with the commentor. The standards established for flow-through hot springs pools in Senate Bill 400, Section 50-53-115, MCA, were

very specific and are implemented through the definition in ARM 16.10.1502(7) and the amendments to ARM 16.10.1527.

COMMENT #50: Two commentors stated the flow meter required by ARM 16.10.1527(2)(a) served no purpose for a flow-through hot springs pool or that the flow rate could be determined by alternative methods.

RESPONSE: The requirement for a flow meter is retained as the standard to determine if a flow-through hot springs pool or spa meets the required turnover time. As established in ARM 16.10.1527(2)(a), the department may allow a deviation from the use of an accurate flow indicator by an applicant who demonstrates in a written application to the department that the water volume exchange turn over rate from the pool can be accurately measured by an alternative method.

COMMENT #51: Two commentors stated the in line thermometer required by ARM 16.10.1527(2)(b) served no purpose for a flow-through hot springs pool due to time and volume factors for dissipation of heat.

RESPONSE: The department has retained the requirement for an in line thermometer as the standard to determine if a flow-through hot springs pool or spa meets the required temperature requirements. As established in ARM 16.10.1527(2)(b), the department may allow a deviation from the use of an in line thermometer by an applicant who demonstrates in a written application to the department that the water temperature can be accurately measured by an alternative method.

COMMENT #52: With respect to ARM 16.10.1527(2)(b), one commentor suggested the in line thermometer location should be specified at the water inlet to gauge the highest incoming water temperature.

RESPONSE: Upon consideration, the department agrees with the commentor and accordingly, has amended ARM 16.10.1527(2)(b) to specify the location of the temperature probe.

COMMENT #53: Several commentors stated the water testing requirements in ARM 16.10.1527(2)(c) conflict with the provisions of Senate Bill 400. One commentor requested that the department clarify when water sampling requirements in ARM 16.10.1527(2)(c) must be met.

RESPONSE: The department disagrees with the commentors that ARM 16.10.1527(2)(c) conflicts with Senate Bill 400, Section 50-53-115, MCA, as water samples are not required when the pool or spa meets the statutory 8-hour turnover rate of entire pool water to waste and the pool or spa is drained, cleaned, and sanitized according to ARM 16.10.1527(3)(c) or when the pool or spa is disinfected.

Collection of water samples for testing may be required at the request of the department for public health or safety investigation purposes pursuant to ARM 16.10.1527(2)(c) or when the pool or spa does not meet the requirements of Section 50-53-115(4), MCA, or the requirements in ARM 16.10.1527(3)(c).

COMMENT #54: With respect to ARM 16.10.1527(3)(a), one commentor felt flow-through hot springs pools should be exempted from the provisions of ARM 16.10.1518(7) and (8).

RESPONSE: Upon consideration, the department has deleted the requirement for flow-through hot springs pools to comply with ARM 16.10.1518(7) and (8) in ARM 16.10.1527(3)(a) for the same reasons that it was similarly deleted for other types of pools and spas. See the department's response to Comment #19. To maintain consistency with the deletion of this requirement, language in ARM 16.10.1527(3)(b) requiring compliance with ARM 16.10.1518(7) and (8) has also been deleted to reflect the above determination.

COMMENT #55: One commentor objected to ARM 16.10.1522(1) being included in the standards for flow-through hot springs pools listed in ARM 16.10.1527(3)(a).

RESPONSE: Upon consideration, the department declines to delete ARM 16.10.1522(1) as a bacteriological water quality standard for flow-through hot springs pools. If a flow-through hot

spring pool meets the provisions of ARM 16.10.1527(3)(c) and (c)(i), then that pool does not need to disinfect to meet the standard of ARM 16.10.1522(1). However, if a flow-through hot springs pool does not meet the provisions of ARM 16.10.1527(3)(c) and (c)(i), then that pool or spa must disinfect according to the provisions of ARM 16.10.1527(3)(c)(ii), and may be required to test, using the standards of ARM 16.10.1522(1).

COMMENT #56: Two commentors felt flow-through hot springs pools should be exempted from the provisions of ARM 16.10.1523(1) stating nothing is done to the water and is not needed to implement the provisions of Senate Bill 400.

RESPONSE: Upon consideration, the department retains the requirement that flow-through hot springs pools must comply with ARM 16.10.1523(1) as referenced in ARM 16.10.1527(3)(a), (b), and (c)(i). Even though a flow-through hot springs pool or spa may not be required to disinfect the water based on its meeting the requirements in ARM 16.10.1527(3)(c) and (c)(i), sanitation and safety aspect tests referenced in ARM 16.10.1523(1), such as water temperature or pH, are appropriate to a flow-through hot springs pool or spa, whether disinfected or not, to ensure that public health and safety requirements in Section 50-53-106, MCA, are met.

COMMENT #57: One commentor stated the 100 °F maximum temperature for a flow-through hot springs pool used primarily for swimming was a problem and that ARM 16.10.1527(3)(b) should be clarified.

RESPONSE: Upon consideration, the department declines to change the 100 °F maximum water temperature for flow-through hot springs pools utilized primarily for swimming. The 100 °F maximum temperature originates from the statement of intent from Senate Bill 400 in the 1995 Legislature and compensates for body heat production which occurs through the activity of swimming as related to potential heat stress risks. Although the standard has not been changed, the operator may be able to utilize operating procedures to address pool water cooling issues or

swimmer access to the pool.

COMMENT #58: One commentor requested the department to delete ARM 16.10.1527(3)(c)(i) as repetitive of ARM 16.10.1523(1) requirements.

RESPONSE: Upon consideration, the department does not find that ARM 16.10.1527(3)(c)(i) is repetitive of ARM 16.10.1523(1) and accordingly, declines to delete ARM 16.10.1527(3)(c)(i). The sanitation requirements relating to draining, cleaning and sanitizing every 72 hours are unique to flow-through hot springs pools. The department requires that records be kept of such sanitation to determine whether the flow-through hot springs pool or spa is exempted from disinfection requirements. The reference to ARM 16.10.1523(1) is retained as the methodology for maintaining the records required by ARM 16.10.1527(3)(c)(i).

COMMENT #59: One commentor stated flow-through hot springs pools that drain, clean, and sanitize every 72 hours should be exempted from the disinfection requirements in ARM 16.10.1522(3).

RESPONSE: The disinfection requirements in ARM 16.10.1522(3) are not listed as flow-through hot springs pool requirements in ARM 16.10.1527(3)(a). However, flow-through hot springs pools that do not drain, clean, and sanitize every 72 hours as stated in ARM 16.10.1527(3)(c) and (c)(i) are required to be disinfected by ARM 16.10.1527(3)(c) and comply with the disinfection method and residual provisions in ARM 16.10.1527(3)(c)(ii).

COMMENT #60: One commentor felt that the hot springs source water lines and incoming water lines should be exempted from the requirement in ARM 16.10.1522(3)(c) to drain, clean, and sanitize every 72 hours.

RESPONSE: Upon consideration, the department declines to change the language in ARM 16.10.1527(3)(c) which is based on the statutory directive in Section 50-53-115(4), MCA, which requires that the pool and all surfaces that flow into the pool be

drained, cleaned, and sanitized every 72 hours. Potential water contamination issues depend upon the sanitary condition of the water source, the water collection and distribution lines, and water inlets.

COMMENT #61: One commentor requested the department to interpret the provisions of Section 50-53-115(4)(a), MCA, and ARM 16.10.1527(3)(c) and 16.10.1527(3)(c)(i) relating to draining, cleaning, and sanitizing all flow-through hot spring pool surfaces every 72 hours, citing some pools have intermittent availability to the public.

RESPONSE: See the department's response to Comment #60. Section 50-53-115(4)(a) requires that flow-through hot spring pools open to the public, and which do not disinfect, drain, clean and sanitize every 72 hours.

COMMENT #62: One commentor requested the department to delete the sign requirement in ARM 16.10.1527(3)(d) listing communicable disease symptoms stating they are derogatory to industry and that a simple caution sign would suffice. One commentor suggested the reference to restricting people with communicable disease symptoms from the pool should be deleted.

RESPONSE: Upon consideration, the department agrees to delete the listed communicable disease symptoms from the required sign language, and has amended ARM 16.10.1527(3)(d) to reflect more general prohibitory language as that relates to communicable diseases due to interpretation concerns by the general public. The department has not completely deleted the sign requirement in ARM 16.10.1527(3)(d) because the general public should be aware that use of a pool that does not disinfect the water poses an increased risk of contracting communicable diseases when carriers of the diseases use the pool.

COMMENT #63: One commentor suggested the department provide for the submission of standard operating plans for flow-through hot springs pools acknowledging the difficulty in writing uniform rules for pools which have unique issues associated with their particular hot spring water source.

RESPONSE: Upon consideration, the department agrees and has provided in ARM 16.10.1527(3)(f) for the submission of an approved standard operating plan procedure as one method by which an operator can address meeting public health and safety standards for their unique flow-through hot springs pool requirements.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State May 28, 1996.

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

In the matter of the amendment of rules 46.12.506 and 46.12.508 pertaining to medicaid reimbursement for outpatient hospital emergency, clinic and ambulatory surgery services	))))))	NOTICE OF THE AMENDMENT OF RULES

TO: All Interested Persons

1. On January 25, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.506 and 46.12.508 pertaining to medicaid reimbursement for outpatient hospital emergency, clinic and ambulatory surgery services at page 237 of the 1996 Montana Administrative Register, issue number 2.

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

46.12.506 OUTPATIENT HOSPITAL SERVICES, DEFINITION (1) through (4) remain as proposed.

(5) "Partial hospitalization services" means partial hospitalization as defined in the Montana medicaid partial hospitalization policy (May 1995 edition). The department adopts and incorporates by reference the Montana medicaid partial hospitalization policy (May 1995 edition). A copy of the policy may be obtained through the Department of Public Health and Human Services, ~~Medicaid Services Division~~ Health Policy and Services Division, ~~111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210~~ 1400 BROADWAY, P.O. BOX 202951, HELENA, MT 59620-2951.

(6) through (7) remain as proposed.

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

46.12.508 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT (1) through (5)(a)(i) remain as proposed.

(A) Critical care procedures are those procedures designated by the department as such and identified in the department's emergency room critical care procedures list. The department hereby adopts and incorporates by reference the outpatient hospital emergency room critical care procedures list (January 1996). A copy of the emergency room critical care procedures list may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, ~~111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210~~ 1400 BROADWAY, P.O. BOX 202951, HELENA, MT 59620-2951.

(ii) Emergency visits are emergency room visits for which the ICD-9-CM diagnosis code chiefly responsible for the services provided is a diagnosis ~~recognized~~ DESIGNATED as an emergency diagnosis ~~by~~ IN the medicaid PASSPORT program EMERGENCY DIAGNOSIS LIST ~~described in ARM 46.12.5001 through 46.12.5014~~. FOR PURPOSES OF THIS RULE, THE DEPARTMENT HEREBY ADOPTS AND INCORPORATES BY REFERENCE THE PASSPORT EMERGENCY DIAGNOSIS LIST (SEPTEMBER 1995). The PASSPORT program emergency diagnoses list is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, ~~111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210~~ 1400 BROADWAY, P.O. BOX 202951, HELENA, MT 59620-2951.

(iii) Other emergency room and clinic visits are emergency room and clinic visits that do not meet the criteria for the critical or emergency visit groups specified in (5)(a)(i) or (ii).

(b) Fees for emergency room and clinic service groups DESCRIBED IN (5)(a)(i) THROUGH (iii) ABOVE for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital emergency room fee schedule. The department hereby adopts and incorporates herein by reference the outpatient hospital emergency room fee schedule (~~January~~ JUNE 1996). A copy of the emergency room fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, ~~111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210~~ 1400 BROADWAY, P.O. BOX 202951, HELENA, MT 59620-2951.

(5)(c) through (5)(c)(ii) remain as proposed.

(d) For ~~sole community~~ hospital emergency room and clinic visits determined by the department to be unstable, the fee will be a stop-loss payment. If the provider's net usual and customary emergency room or clinic charges are more than ~~500%~~ 400% OR LESS THAN 75% of the fee specified in (5)(b), the visit is unstable and the net charges will be paid at the statewide cost to charge ratio specified in (12). For purposes of the stop-loss provision, the provider's net emergency room or clinic charges are defined as total usual and customary claim charges less charges for laboratory, imaging, other diagnostic and any non-covered services.

(e) Emergency VISITS AS DEFINED IN (5)(a)(ii) AND OTHER EMERGENCY room and clinic visits AS DEFINED IN (5)(a)(iii) with ICD-9-CM surgical or major diagnostic procedure codes will be grouped into one of the ambulatory surgery day procedure groups described in (11).

(6) remains as proposed.

~~(6)~~ (7) Dialysis visits will be reimbursed at the provider's medicare composite rate for dialysis services determined by medicare under 42 CFR subpart H. The facility's composite rate is a comprehensive prospective payment for all modes of facility and home dialysis and constitutes payment for the complete dialysis treatment, except for a physician's professional services, separately billable laboratory services

and separately billable drugs. The provider must furnish all of the necessary dialysis services, equipment and supplies. Reimbursement for dialysis services and supplies is further defined in the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"). For purposes of specifying the services covered by the composite rate and the services that are separately billable, the department hereby adopts and incorporates ~~herein~~ by reference Pub. 15. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, ~~Medicaid Services Division~~ Health Policy and Services Division, ~~111 N. Sanders, P.O. Box 4210, Helena, MT 59604 4210~~ 1400 BROADWAY, P.O. BOX 202951, HELENA, MT 59620-2951.

(8) through (10) remain as proposed.

(a) OTHER DIAGNOSTIC SERVICES CONTAINED IN THE CPT-4 MANUAL THAT ARE NOT LISTED IN ADDENDUM K WILL BE REIMBURSED UNDER THE RETROSPECTIVE COST BASIS AS SPECIFIED IN ARM 46.12.508(2).

(11) Ambulatory surgery services provided by hospitals that are not isolated hospitals or medical assistance facilities as defined in ARM 46.12.504(17) and (18) will be reimbursed on a fee basis. A separate fee will be paid within each day procedure group depending on whether or not the hospital is a sole community hospital as defined in ARM 46.12.503. Payment for ambulatory surgery services is a fee for each VISIT determined as follows:

(a) The department assigns a day procedure group to each medicaid visit as specified in the day procedure group (DPG) ambulatory surgery classification system developed by the Canadian Institute for Health Information (CIHI). The day procedure group ~~(DPG)~~ system is an ambulatory surgery classification system that assigns patients to one of 66 groups according to the principal, ~~most significant,~~ ICD-9-CM procedure code recorded on the UB-92 claim form.

(b) The department determines a fee for each day procedure group which reflects the estimated cost of hospital resources used to treat cases in that group relative to the statewide average cost of all medicaid cases. Fees for day procedure groups for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital fee schedule. The department hereby adopts and incorporates by reference the outpatient hospital ambulatory surgery fee schedule (~~January~~ JUNE 1996). A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, ~~111 N. Sanders, P.O. Box 4210, Helena, MT 59604 4210~~ 1400 BROADWAY, P.O. BOX 202951, HELENA, MT 59620-2951.

(c) Except as provided in (11)(c)(i) and (ii), the payment specified in (11)(b) or (d) is an all inclusive bundled payment per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, LABORATORY, imaging services, other diagnostic services, supplies and equipment and other outpatient hospital services.

For purposes of outpatient hospital ambulatory surgery services, a visit includes all outpatient hospital services related or incident to the ambulatory surgery visit that are provided the day before, OR the day of ~~or the day after~~ the ambulatory surgery event.

(i) Physician services are separately billable according to the applicable rules governing billing for physician services.

(ii) Payment for certified registered nurse anesthetists (CRNAs) will be based on cost as a pass through in the cost settlement, as provided in ARM 46.12.505.

(d) For ~~sole community~~ hospital ambulatory surgery services, day procedure groups determined by the department to be unstable will be reimbursed a stop-loss payment. If the provider's net usual and customary charges are more than ~~500%~~ 400% OR LESS THAN 75% of the fee specified in (11)(b), the day procedure group is unstable and the net charges will be paid at the statewide cost to charge ratio specified in (12). For purposes of the stop-loss provision, the provider's net ambulatory surgery charges are defined as total usual and customary claim charges less charges for any non-covered services.

(e) IF THE DEPARTMENT'S OUTPATIENT HOSPITAL AMBULATORY SURGERY FEE SCHEDULE DESCRIBED IN (1)(b) DOES NOT ASSIGN A FEE FOR A PARTICULAR DPG, THE DPG WILL BE REIMBURSED AT THE STATEWIDE AVERAGE OUTPATIENT COST TO CHARGE RATIO SPECIFIED IN (12).

(f) AMBULATORY SURGERY SERVICES FOR WHICH THE PRIMARY ICD-9-CM PROCEDURE CODE IS NOT INCLUDED IN THE DAY PROCEDURE GROUPER DESCRIBED IN (11)(a) WILL BE REIMBURSED UNDER THE RETROSPECTIVE COST BASIS AS SPECIFIED IN ARM 46.12.508(2).

(12) The medicaid outpatient hospital statewide average cost to charge ratio equals ~~.70~~ .67.

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

3. The Department has thoroughly considered all commentary received:

COMMENT #1: Hospitals want a payment method that accomplishes the following goals: (1) incentives for providers should be similarly aligned; (2) payments should be based on coding systems or groups that link the payment amount to expected resource use; (3) payment mechanisms should maintain incentives to provide less expensive outpatient services; and (4) new payment systems should not complicate claims processing or introduce new administrative costs for providers.

RESPONSE: The department agrees strongly with the comment and believes its proposed payment method represents an improvement

over the current method with regard to each goal.

Similar incentives. The current method means that different hospitals get paid very different amounts for providing similar services. This is unfair to hospitals. In 1993, average payment for the most common medicaid outpatient diagnosis (special examinations) was $199 to one large hospital but $31 to another. For the second most common diagnosis, suppurative otitis media, average payment was $162 to one hospital but $37 to another. For the third most common diagnosis, normal pregnancy, average payment was $45 to one hospital but $116 to another. Each comparison is of the five hospitals that reported the diagnosis most often; the comparisons are not skewed through selective choice of hospitals.

Under the proposal, hospitals will receive similar payments for similar services. Hospitals will be paid the same basic rate for emergency room visits, but those rates will be higher for critical care visits and emergencies than they will be for visits more similar to clinic visits. Hospitals will also be paid separately for the laboratory and imaging tests their ER patients require. For ambulatory surgeries and other major procedures, hospitals will be paid flat rates that include lab and imaging services, but those rates will be higher for procedures that require more resources than they will be for simpler procedures.

Expected resource use. Under the current system, hospitals are reimbursed for their costs, but those costs may or may not reflect the amount of hospital resources needed to provide the service efficiently. Under the proposed method, visits are categorized into one of 70 groups. Most important, the payment rates for ambulatory surgery, emergency room and clinic visits are based on the actual experience that Montana hospitals have had in treating medicaid patients. We estimate that 96% of all payments made under the proposed system will be for visits whose payment rates will be based upon Montana experience. The other 4% will be for visits that fall into groups for which too few Montana cases were available to use in setting rates.

Incentives to provide less expensive services. Under the current method, hospitals have a perverse incentive to incur costs. Since they are reimbursed according to their actual costs, we increase payments if a hospital increases its costs and cut payments if it decreases its costs. Such an inflationary incentive leads to higher and higher payment levels. When the increases cannot be sustained, sudden and drastic measures may have to be taken, such as cutting benefits, reducing eligibility or instituting across-the-board payment cuts that hurt the efficient hospitals as well as the inefficient. Under the proposed system, different hospitals will be paid similar amounts for providing similar services. If a hospital is

efficient enough that payments cover costs, it will keep the difference. If it cannot cover its costs, it will have a strong incentive to improve efficiency.

Administrative costs. The department has tried to minimize the administrative impact on hospitals of implementing the proposed changes. Abt Associates did keep this concern in mind when they designed the proposed reimbursement changes. Based upon the data available and comments from providers, several medicaid payment policies were adopted based upon medicare payment policies. This was done to minimize the coding and billing burdens on providers and to streamline subsequent maintenance of the reimbursement policy by the medicaid program. The department is not requiring changes to the coding requirements and information that hospitals must submit on the standard claims form. The proposed system relies on information currently provided, such as primary diagnosis, revenue codes, HCPCS codes, and the ICD-9-CM procedure coding that hospitals now must use in submitting claims to medicare, medicaid, Blue Cross and CHAMPUS. Under the current system, hospitals are paid on an interim basis but must wait several years for cost reports to be settled and payment amounts to be finalized. The proposed method will allow hospitals to plan their finances much more accurately, which is consistent with sound financial and operational management.

COMMENT #2: A commentor compared the proposed system to "Frankenstein's monster" because part of it originated in Utah, part in Maryland, part in Canada, and so forth.

RESPONSE: It would be prohibitively expensive to design a new payment system solely for Montana. In developing the proposed payment system, the department and its consultants, Abt Associates, drew on the best methods available from elsewhere. This process yielded a system that reflects the specific cost experience that Montana hospitals have had in serving medicaid recipients, which we believe is an important strength.

COMMENT #3: A commentor expressed its concern that hospitals are being "saddled with an onerous reimbursement system" that stays in place because it meets medicaid's "objective of reducing its obligations" without addressing longer term issues related to benefits, community obligations, equitability, etc.

RESPONSE: The department does not believe the proposed system is onerous. The department estimates that the proposed system will not result in a cut in payments. The proposal, however, does represent a transformation of the department's role from a passive reimburser of costs to an active purchaser of services. Hospitals that are already efficient and those that increase their efficiency will benefit from the proposed method. By changing the system's fundamental incentive from rewarding increased costs to rewarding increased efficiency, the proposal

will help ensure the viability of the medicaid program in coming years. That will benefit beneficiaries, hospitals and Montanans in general.

COMMENT #4: A commentor said that throughout the development of the proposal the department has refused to respond to serious issues raised by a hospital advisory committee.

RESPONSE: In the last three years the department has worked hard to keep the hospital industry informed about the proposal as it developed, to answer its questions and to do further research and analysis as suggested. This consultation occurred through formal and informal briefings and meetings involving department and Abt staff. The department has made every effort to respond to the issues raised by providers and the hospital association. We have responded to provider and association comments by revising the proposed rules, and responded directly with providers and the hospital association. Although the department has not agreed with all of the comments, the department believes that it has responded fully to the industry's questions and concerns.

COMMENT #5: A commentor said it is not opposed to prospective payment but that "significant discussions and interactions between the department and providers" are necessary before a fair, logical and equitable payment system can be implemented.

RESPONSE: As we noted in the previous response, the department has worked hard to keep the industry informed and to respond to specific concerns. Many concerns have been raised for the first time only in recent weeks, as hospitals focused on the proposed rule language, despite the fact the same proposals were first made in essentially the same form almost 18 months ago. Providers and the hospital association had significant opportunities to comment upon the proposals well before the formal rule process was initiated. Nonetheless, because of the nature and volume of comments, we postponed implementation by three months to July 1, 1996. The department will do as much as it can to address the hospitals' concerns and help them prepare for implementation.

COMMENT #6: A commentor asked if medicaid has been coding data since July 1995 to build its models, why couldn't the results of its studies be shared with the hospitals?

RESPONSE: The department did share its study results with hospitals 18 months ago. In November 1994 the department provided the Montana Hospital Association with Abt Associates' two-volume report, which thoroughly explained its methods and included hospital-by-hospital impacts of its recommendations. In addition, two updated sets of estimated impacts were provided to the MHA after this comment was received. The two earlier

sets of estimates showed very similar impacts, while the most recent estimates show that the payment method incorporated in this final rule would have smaller impacts on hospitals than the method described in the original proposed rule. The department has been applying the grouper logic on outpatient claims since July 1995, but has not done any studies using that data. The department plans to access this data for analysis and will discuss the results with hospitals.

COMMENT #7: A commentor said that although the conceptual framework for the methodology has been in discussion stage for two years, the information provided to hospitals was not detailed enough to allow analysis of its merits.

RESPONSE: The department was pleased to provide hospitals with additional time to analyze the proposed system and its impacts upon them. The department extended the comment deadline and delayed final decisions on the methodology and implementation to allow further comment and analysis. We would note, however, that the two-volume Abt Associates report provided to hospitals in November 1994 contained essentially all the information that the state is now using to implement prospective payment for ambulatory surgery, emergency room and clinic visits.

COMMENT #8: A commentor asked if the grouping logic considers complications, comorbidities and multiple diagnoses, and which code should be primary if the patient is treated for two or more conditions. Another commentor asked if the grouping logic, or grouper, considers multiple procedures.

RESPONSE: The grouping logic relies on primary procedure (for ambulatory surgery), primary and secondary diagnosis (for emergency groups) and revenue codes (for emergency and clinic groups). A more refined system would take into account complications, comorbidities and multiple procedures, although it should be remembered that particularly difficult cases would be treated on an inpatient rather than an outpatient basis. More complex alternatives, such as the Ambulatory Patient Group (APG) system that medicare is considering, would have been much harder for hospitals and the department to implement and could not have incorporated payment rates that reflected the relative costs of outpatient care in Montana. We also note that the scaled back version of APGs that medicare has proposed to Congress does not include the complex adjustments included in APGs, which suggests that Medicare may not have confidence in them.

In regard to multiple diagnosis codes and which code should be primary if the patient is treated for two or more conditions, we refer to the general definitions contained in the Uniform Hospital Discharge Data Set. Generally the condition which should be listed first is the diagnosis, problem, symptom or

other reason for the encounter as shown in the patient's health care record that is chiefly responsible for the ambulatory care services provided during the encounter. Providers should code the condition(s) or symptom(s) to the highest degree of certainty for that encounter. In addition, all significant procedures are to be reported. A significant procedure is one that is surgical in nature, or carries a procedural risk, or carries an anesthetic risk, or requires specialized training. When more than one procedure is reported, the principal procedure is to be designated using the following criteria. The principal procedure is one that was performed for definitive treatment rather than one performed for diagnostic or exploratory purposes, or was necessary to take care of a complication. If there appear to be two procedures that are principal, then the one most related to the principal diagnosis code should be selected as the principal procedure.

COMMENT #9: A commentor objected to the statement in the rule that the proposed change is estimated to be budget neutral. It said the Abt Associates study used an unknown methodology to estimate total payments under the new system and to compare them with estimated costs for 1993, and that the estimation of 1993 costs itself is questionable. The commentor said it believes the proposal means "yet another payment cut for hospitals." It noted that 1991 cost report data were used to estimate 1993 costs, and said the use of the DRI inflation index "purposefully" underestimates the actual cost growth reimbursed by the department. It said department staff have no idea what actual cost growth was between 1991 and 1996 and it asked that the rule documents state that budget neutrality is not intended to apply to SFY 1996 and SFY 1997.

RESPONSE: The methodology used to estimate total payments under the new system was described on pages 65-72 of the Abt report that was provided to Montana hospitals in November 1994. "Baseline" payments were estimated to reflect 98.8% or 93% of costs and were determined on a hospital by hospital basis. The baseline payments are estimated to mirror the payment method now in use. Because cost reports are settled several years after the fact, it was necessary to estimate 1993 costs by applying cost-to-charge ratios from 1991 to actual charges in 1993. This method required very substantial effort but was chosen because it yielded the best available estimates on a hospital-specific basis. To the extent that cost-to-charge ratios have tended to fall over time, this method overstated costs and therefore benefited hospitals.

The Department put extensive work into its budget analysis and believes it is legitimate. We intended that the proposed payment system be roughly budget neutral, and this was found to be the case when its effects were estimated. By necessity, the estimation process used 1993 data, which were the most recent

figures available. The use of historical data to design payment systems cannot be avoided, and the lag between 1993 and 1996 is not excessive compared with the practices of other payors, such as medicare. We expect the proposed payment system to be budget-neutral in the coming year compared with what would have been the system otherwise, but certainty obviously cannot be achieved. To inflate payment rates to 1996 dollars, the department used the DRI hospital input inflation index because it is widely accepted by hospitals and payors across the country. We did not purposefully underestimate costs. In fact, no one knows what costs have been in 1996 or even 1995, since cost settlements will not be completed until 1998 or 1999.

COMMENT #10: A commentor expressed its concern about the overall adequacy of payment. It singled out payment for emergency visits (group 92) in particular as inadequate. It also questioned whether 1993 data were an accurate basis for payment rates in 1996, given the changed technology and methods of treatment. A second commentor asked if basing the rates on 1993 data meant that they had not been indexed forward.

RESPONSE: All prospective payment systems are based on historical data. The only alternatives are to pay hospitals their actual charges or to reimburse them for actual costs, which can take several years to finalize. Paid claims data from 1993 were used to derive the payment rates of one group relative to another, and then to simulate the effects of the proposed system compared with the current method. The actual payment rates proposed in this rule are the 1993 rates updated to 1996 dollars using the DRI index of hospital input costs. Using 1994 data instead of 1993 data would therefore not change the average level of payments to hospitals, although it would probably mean that relative payments among groups would be slightly different.

COMMENT #11: Two commentors said the proposed payment system cuts payment rates to providers, increases cost shifting, further reduces access to care for medicaid recipients, creates incentives to further fragment delivery of care and fails to align payment incentives among provider groups.

RESPONSE: The department estimates that the proposal neither increases nor decreases overall payments to hospitals for these services. The proposed payment system was designed to be budget neutral, and a hospital-by-hospital simulation of its impacts confirmed that neutrality. Simulation of impacts is necessarily approximate, but the department believes that it succeeded in its good-faith effort to develop a budget-neutral system. It is unclear, then, how such a system would increase cost-shifting or decrease access. In fact, the proposed system includes higher payment rates for sole-community hospitals for the specific purpose of encouraging access to care. The proposed system rewards hospitals that increase efficiency while the current

system rewards hospitals that increase costs. By improving the fundamental incentive of the payment system, the proposal is expected to improve the long term viability of the medicaid program and Montanans' access to it. Hospitals will still have strong incentives to accept medicaid cases and will benefit when the care they provide is coordinated well. It is unclear how the proposal might further fragment the delivery of care. The department does believe that payment incentives should be aligned across provider groups and services. This proposal makes similar the incentives for inpatient and outpatient services, and the department sees the need to improve incentives for other provider types where appropriate.

COMMENT #12: A commentor said the hospital industry has not seen a facility-specific analysis of the estimated impacts of the proposed payment methodology. Furthermore, without such an analysis the department cannot conclude that payments under the proposed methodology would be reasonable.

RESPONSE: The Abt Associates report that was provided to the Montana Hospital Association in November 1994 included estimated impacts by hospital. These impacts included services not included in this proposed rule, but the excluded services represented less than one-fifth of total payments shown. Since this comment was received, the department has provided the Montana Hospital Association with two sets of updated hospital-specific estimates for ambulatory surgery, emergency room and clinic visits only. The most recent estimates, which reflect the payment method described in this final rule, show smaller impacts on the hospitals than the estimates that reflected the payment method described in the proposed rule.

Each set of estimates show that payments for these services will be roughly unchanged overall, as the department intended. Individual hospitals will see increased or decreased payment levels to the extent that their costs are less than or greater than statewide averages. Of the 15 hospitals that provide the most outpatient care to medicaid patients, the estimates indicate that nine would see an increase in payments and six would see a decrease. In only one case would the decrease exceed 10%. The percentage changes, both plus and minus, are somewhat larger in the smaller hospitals, but their low volumes generally make the changes modest in absolute terms. The department believes that the analysis undertaken to evaluate the proposed system was reasonable, and that the payment system adopted will result in payment of reasonable and adequate rates.

COMMENT #13: A commentor said the proposed payment system was supposed to be budget-neutral but it said it would reduce its payment by approximately one-third.

RESPONSE: The estimates described above show that the system

would be budget-neutral over all hospitals. Those estimates also show that some hospitals, including the one that submitted this comment, would see lower payments under the proposal than under the current methodology while other hospitals would see higher payments.

COMMENT #14: Two commentors objected to the proposed stop-loss payment methodology, saying that the highest-volume hospitals would never qualify for additional payments and that the benchmark for triggering the payment protection for sole community hospitals is set so high it would be rarely, if ever, triggered. One said the stop-loss pool amounts to a "slush fund" for the department rather than a legitimate reserve. It asked the department to detail how the stop-loss trigger point was determined and to estimate the portion of current claims that would be accorded stop-loss protection.

RESPONSE: The stop-loss provision was designed so that the amount put into the stop-loss fund through lower overall payment levels would equal the additional payments made to hospitals treating unusually expensive cases. If anything, overall payment rates should have been reduced by a slightly larger percentage, as noted in Abt Associate's November 1994 report, page 72.

In designing the provision, the goal was that about 5% of total payments would be made for stop-loss cases. This policy is consistent with the outlier philosophy the department implemented for inpatient payments. After performing calculations on actual 1993 claims, Abt found that the 5% payout would be achieved when stop-loss thresholds were set at 500% of the payment rate. The actual threshold was higher than 500% but was lowered in the interest of simplicity. Charges were used because they are readily available from the claim.

The incidence of stop-loss cases will naturally be concentrated in the most common emergency room and ambulatory surgery groups such as other ER and clinic visits, emergency visits, skin procedures, GI endoscopies, external ear procedures, tonsil and adenoid procedures, and so forth. It is true that the stop-loss provision is less likely to be triggered for the less common groups, but that effect will be outweighed by the volume of cases among the more common groups where the provision is triggered. As Abt said in its November 1994 report, about 5.4% of ambulatory surgery visits and 3.5% of ER/clinic visits are expected to qualify for stop-loss payments. The department did provide the commentor with a printout of claims that were afforded the stop-loss provision under the proposed rule.

In response to concerns expressed by the hospitals, the department has revised the stop-loss provisions of the proposed rule. This is the single most important change the department

made since the proposed rule was published. The department believes the changes result in a stronger payment method. We also would like to emphasize that the previous stop-loss provision created a legitimate pool that would have been paid out on unusually expensive visits. In no sense was there any kind of "slush fund." The new stop-loss provisions are as follows:

Under the final rule, all hospitals are eligible for stop-loss payments. This is a change from the proposed rule under which only sole-community hospitals were eligible for stop-loss payments. The stop-loss threshold has been lowered from 500% to 400% of charges and a "low" stop-loss provision has been added to the proposed rules. Visits for which charges are less than 75% of the prospective rate will be paid at the statewide average outpatient cost-to-charge ratio times usual and customary charges. The statewide average outpatient cost-to-charge ratio has been lowered from 70% to 67%. This decrease results from additional analysis of recent medicaid cost reports, which are from state fiscal year 1993. Under the stop-loss provisions the payment is considered the final payment and not subject to cost settlement.

Based upon the stop-loss changes, the department is able to increase reimbursement rates by 3% instead of reducing the prospective rates by 5% as originally proposed. In the proposed rules, stop-loss payments were always higher than the prospective rates, so the stop-loss payment pool was funded by reducing rates 5%. Under the new stop-loss provisions the high stop-loss payments take money from the stop-loss pool but the low stop-loss payments add money to the pool. The net effect is that the pool more than pays for itself, by a small margin. Therefore, prospective payment rates are no longer decreased by 5% but in fact are increased by 3%. This increase results in an aggregate payment system that remains budget neutral. In 1993, Montana hospitals provided 48,898 emergency room, clinic and ambulatory surgery visits. We estimate that 2,017 of these, or 4%, would have qualified a high stop-loss visits and 17,434, or 36%, would have qualified as low stop-loss visits.

COMMENT #15: Two commentors requested that the stop-loss pool, which is created using funds from all hospitals, be amended to provide protection to all hospitals rather than to sole community hospitals only.

RESPONSE: As noted in the previous response, the proposed stop-loss provisions will apply to all hospitals.

COMMENT #16: Two commentors asked that some form of protection be given to rural hospitals.

RESPONSE: Hospitals in isolated rural areas are exempt from the

proposed prospective payment methodology for ambulatory surgery and ER services. These are the same hospitals that are exempt from the inpatient hospital DRG prospective payment system. Of the other 32 hospitals, 20 are designated as sole community hospitals and would benefit from higher payment rates. They would also be eligible for stop-loss protection on unusually expensive visits, as would non-sole community hospitals.

COMMENT #17: A commentor objected to the use of a list of diagnosis codes to determine whether a patient has a true need for emergency care, since the diagnosis codes do not reflect the intensity of care a patient may require.

RESPONSE: Any set of criteria used to differentiate emergency and non-emergency cases may be considered arbitrary to at least some extent. Even medical reviews of patient charts, which would be prohibitively expensive, would result in cases in which reasonable people disagreed. Yet the widespread inappropriate use of the expensive emergency room setting, both in Montana and across the nation, required us to take action. The diagnosis list defines "emergency" broadly; under it, any injury other than a sprain is an emergency, as are many illnesses that could be readily treated in a physician's office or free-standing clinic.

It should be remembered that exclusion from the list does not mean that the hospital does not receive payment. The use of the diagnosis list simply groups the emergency room visits into basically three groups: ER, Other ER/Clinic, and the Screen Fee. Emergency room visits where the recipient's primary or secondary diagnosis is present on the list will receive the higher ER reimbursement. In addition, if the recipient is enrolled in the PASSPORT program the ER visit does not require the PASSPORT provider's authorization in order to get the claim paid. The department however encourages hospitals to contact the PASSPORT provider so they can effectively manage the recipient's care.

If the recipient's primary or secondary diagnosis for the ER visit is not on the list, then the reimbursement is determined at the lower rate for other ER/Clinic visits. If a recipient is enrolled in the PASSPORT program and the PASSPORT provider authorizes these services, the visit will be paid at the other ER/Clinic fee. However, if the PASSPORT provider does not authorize the emergency room visit then the service is paid at the $20 screening fee that was implemented on July 1, 1995. It is important to note that for all ER services the prospective rate does not include services for laboratory, imaging and other diagnostic services as these are paid in addition to the ER fee.

COMMENT #18: Two commentors raised objections to the inclusion and exclusion of specific diagnoses on the emergency list. One said that patients with similar complaints who use similar

amounts of hospital resources would be paid for at different amounts depending on whether their diagnosis corresponded to Group 92 (emergency) or Group 77 (other ER and clinic). Examples included unspecified seizure vs. alcohol withdrawal seizure, unspecified fever vs. fever due to viral syndrome, and unspecified GI bleed vs. GI bleed from acute gastritis. Both commentors objected to the removal of sprains and strains from the list. One asked the department to identify the list of diagnosis codes adopted by reference, and to hold public hearings on further amendments to the list.

RESPONSE: The department agrees that some cases that present to the emergency room will be ambiguous, as we noted in the previous response. Original development of a list of emergency diagnoses would be prohibitive for a state with Montana's population. We therefore drew on a list developed and in use by the Utah Medicaid program. This list was reviewed by the department's Peer Education Review Committee (PERC), which is comprised of six Montana physicians, who made only one change, the deletion of sprains and strains. We expect the ER diagnosis list to be updated to reflect the changing needs of the medicaid beneficiaries and new diagnosis codes as they are proposed by the ICD-9-CM Coordination and Maintenance Committee, and as adopted by HCFA. The department will incorporate the ER diagnosis list by reference in the final rules and will make future changes through the rule hearing process.

COMMENT #19: A commentor said the list of critical care procedures was never provided to hospitals for their comment, and asks that this be done.

RESPONSE: The list of critical care procedures was included as Appendix D of the Abt Associates report that was provided to the Montana Hospital Association in November 1994 and that the association subsequently provided to its members. The department also included a copy of this list in our January 26, 1996 mailing to all hospitals. If the commentor did not receive a copy of this list in their package, we apologize.

COMMENT #20: A commentor noted that the department has used only 11 procedure codes to define critical care visits, and that diagnosis codes (such as traumatic brain injury) are not used.

RESPONSE: Almost all critically ill and injured patients, such as those with traumatic brain injury, would be admitted to the hospital and their care would be paid for under the inpatient payment system. The exceptions would be patients who died and those transferred for inpatient care elsewhere. In both circumstances, the case would qualify as a critical care visit. The 11 critical care procedures mentioned in the proposed rule are those that also indicate a critical care visit. The source of this list was an article in the journal *Medical Care*.

COMMENT #21: A commentor said the emergency room codes, and specifically the critical care codes, are too broad and vague. It said that a critically ill patient, such as one with angina, might require one-on-one care but payment would be only $84 unless a critical care procedure were performed.

RESPONSE: Critically ill patients are likely to be admitted as inpatients and therefore their care would not be paid through the outpatient payment system. A patient with angina might be treated as an outpatient. If a diagnostic or therapeutic procedure included in the day procedure group list were performed, then payment would be at the corresponding rate. For example, non-sole community hospitals would be paid $2,161 if a cardiac procedure in group 19 were performed and $1,218 if one in group 20 were performed. If a qualifying procedure were not performed, then payment would be $92 *plus* separate payments for lab, imaging and other diagnostic procedures, which could be substantial for such a patient. Note that while the hospital's cost for this case might be more than its payment, those losses would be balanced by simple cases where the payment would be more than the hospital's cost. The hospital also would be eligible for stop-loss protection. If its charges, except for lab and imaging, exceeded $369 (i.e., four times the payment rate of $92), then the hospital would be paid 67% of its usual and customary charges.

COMMENT #22: A commentor asks that the department clarify the language in ARM 46.12.508(5)(e) about emergency room and clinic visits with procedure codes.

RESPONSE: The rule has been reworded to make clear that visits that would otherwise have been classified as emergency visits (group 92) or other ER/clinic visits (group 77) under ARM 46.12.508(5)(a)(ii) or (iii) will instead be classified as day procedure group visits (groups 1 to 66) or as deliveries (group 75) if a qualifying procedure is listed as the primary procedure.

COMMENT #23: A commentor asked that the department clarify that the "bundling" provisions in ARM 46.12.508(5)(c) of the proposed rule apply only to the services provided by the hospital and not to services provided by other entities. It also asked the Department to clarify that the policy in subsection (5)(a) (i) and (ii) extends to all emergency room service groups.

RESPONSE: The Department intends that payment for an emergency room or clinic visit cover all hospital services incident to that visit except for physician services, lab services, imaging procedures and specified other diagnostic procedures. The hospital is not expected to be financially responsible for services provided outside its control. The department will monitor hospital claims to ensure that services are not being

unbundled and inappropriately billed by a separate entity. The department appreciates the observation by the commentor regarding the language of the proposed rule. The department will amend the rule language to clarify the policy extends to all emergency room groups.

COMMENT #24: A commentor noted the department would pay major trauma providers just $432 for critical care visits even though the department's own data showed the average cost of these visits exceeded $722 and the most expensive cost $1,950.

RESPONSE: The department estimates that payment for these services will be higher under the proposed system than under the current method. Using 1993 data for comparison purposes, hospitals would have been paid about $409 per visit under the current system but would receive in the range of $525 to $550 under the proposed methodology. The misunderstanding stems in part from a change we made in the definition of the emergency room groups. In its report, Abt Associates recommended that separate emergency room groups be created for "critical ER visits" and "ER transfers." Hospitals' estimated cost in 1993, including charges for laboratory and imaging, was $712 for critical ER visits and $355 for transfers. In the proposed rule, the department proposes to combine the two groups into a single group called "critical care visits." Estimated cost for that group, again including lab and imaging, was $431. Our decision to combine the two groups was based upon prior discussions with the hospital association and their concern about setting rates on critical visits that had very few visits.

Under the current payment method, not all hospitals costs are reimbursed. The 1993 baseline payment for critical care visits is therefore about $409, or 95% of $431. In the proposed rule, payment in 1993 dollars would be $438 for sole community hospitals and $412 for other hospitals. In addition, hospitals could bill separately for lab and imaging services, which we estimate would add about $110 to the average payment for these services, bringing it into the range of $525 to $550 (or $580 to $610 in 1996 dollars).

COMMENT #25: A commentor said the proposed payment rates for critical care visits are at cross purposes with the department's efforts to improve trauma care, since participating in the Montana Trauma Plan will increases costs for hospitals.

RESPONSE: The proposed method increases payment rates for critical care and emergency visits while decreasing payments for ER visits without an emergency diagnosis. The increased payment rates and the creation of an incentive for appropriate use of the ER are entirely consistent with the Montana Trauma Plan.

COMMENT #26: A commentor requested an add-on payment for

administration of TPA, since the direct cost of the drug exceeds the proposed ER payment.

RESPONSE: Patients who receive TPA are likely to be admitted, since the drug is indicated for patients who have just suffered an acute myocardial infarction. Medicaid would therefore pay for that visit under its inpatient payment method. The importance of calibrating the dosage and of closely monitoring the drug's effects also imply that its administration to an outpatient is unlikely.

If a hospital administered TPA and then transferred the patient, it would receive $502 (i.e., the payment rate for a critical care visit at a sole community hospital) plus payment for lab, imaging and other diagnostic services, which could be substantial. The hospital would also be eligible for stop-loss payment if its charges (excluding the diagnostic work up) exceeded $2,008 ($502 times 400%). In that case, the hospital would receive its usual and customary charges times the statewide outpatient cost-to-charge ratio (67%) plus payment for lab, imaging and other diagnostic services.

COMMENT #27: A commentor asks for information on how the Canadian Institute for Health Information developed Day Procedure Groups and what purpose DPGs serve in Canada.

RESPONSE: Day Procedure Groups were originally developed by the Hospital Medical Records Institute (HMRI), a not-for-profit company that provided hospitals with comparative data on inpatient treatment patterns using a version of diagnosis related groups that HMRI developed. HMRI has since been merged into the Canadian Institute for Health Information. After analyzing existing outpatient classification systems, HMRI modeled DPGs after the Products of Ambulatory Surgery system developed and in use by the New York Medicaid program. One reason why Abt Associates recommended DPGs to the Department was that they were modeled on a Medicaid program's experience. As well, HMRI has updated and documented DPGs more thoroughly than New York Medicaid has updated and documented the PAS system, which is a critical consideration for a payment system being adopted in Montana.

HMRI categorized procedures into groups designed to be similar both clinically and in terms of their resource use. The grouping logic is maintained using a database of 1.5 million outpatient visits. In contrast, Montana medicaid pays for just 6,000 such visits per year. Clinical coherence is maintained through review by an advisory committee of well respected physicians. Resource use is measured using charges from Maryland's all-payor hospital system. Maryland is believed to be the only source in the world of case-specific data on the hospital resources used by an entire population (i.e., not just

the medicare population).

Although HMRI developed the grouping logic using Maryland data, in almost all cases the department has based the relative payment rates on Montana hospitals' experience with medicaid patients for these same groups. That is, the groups were formed using Maryland data but the payment rates for those groups were set using Montana data. The only exceptions were for certain groups in which there were too few cases on which to base payment rates.

In Canada, the Province of Ontario pays hospitals based on their case mix as measured by DPGs for ambulatory surgery and by the Canadian version of DRGs for inpatient care. DPGs are also used in some funding formulas in the provinces of Alberta and New Brunswick. As well, hospitals across Canada pay CIHI to provide them with comparative data on ambulatory care that is categorized by DPG.

COMMENT #28: A commentor asked how new procedures and diagnosis codes would be included in the fee system, suggesting that a rule change would be needed to accommodate new surgical procedures and coding changes.

RESPONSE: The department intends to update the grouping methods annually to include new diagnosis and procedure codes. In fact, the payment rates included in this final rule reflect minor changes that result from more recent Maryland data that have become available since publication of the draft rule. The department will utilize the administrative rule making process when we propose changes to the ER diagnosis list, although we do not believe it will be necessary to amend the rule to keep the grouper logic current with regard to new procedure and diagnosis codes.

COMMENT #29: Several commentors noted the inclusion in the same group of dissimilar procedures, such as brain surgery and carpal tunnel release (group 1), pharyngoscopy and open biopsy of the lung (group 17), traditional cholecystectomy and laparoscopic cholecystectomy (group 25), closed biopsy of the breast, unilateral mastectomy or bilateral mastectomy (group 55), or removal of a foreign body without incision and skin grafts (group 59).

RESPONSE: By definition, any grouping method combines procedures that are dissimilar to some extent. The reason why few grouping methods exist is that the effort to categorize procedures so that they are not "too dissimilar" can be prohibitively expensive. HMRI made these judgements based on an iterative and extensive process of statistical analysis and clinical review.

As do Diagnosis Related Groups, Ambulatory Patient Groups and

other classification systems, the DPG system includes within the same group procedures that are more costly than the average and procedures that are less costly. Although group 1 does include brain biopsies, any such cases must be simple enough to be done on an outpatient basis. Brain surgery of any complexity would, of course, be done on an inpatient basis. The same principle applies in other cases. In 1993, for example, the number of brain biopsies, traditional cholecystectomies, open biopsies of the lung and bilateral mastectomies performed on Montana medicaid patients in an outpatient setting was zero. There were four visits for skin grafts, which represented 0.2% of the 1,696 visits in DPG 59. Since the average charge for these visits ($1,030) was more than the prospective payment rate for DPG 59, these visits would qualify for stop-loss payment.

COMMENT #30: A commentor said it was not convinced that the rates derive from "statistically sound samples." It also said the study was done before ACL knee surgery and "many other complex procedures" were moved to an outpatient setting.

RESPONSE: In basing rates on actual outpatient claims, the department faced a choice between using a large number of non-Montana claims and a small number of claims from within the state. Wherever possible, we chose to base rates on the actual experience of Montana hospitals with medicaid patients. Since our results were based on all claims from 1993, there was no sampling employed and therefore no question that the results were significant in a statistical sense. But the department accepts the broader point that some procedures are performed so infrequently that payment rates may be based on particular cases that are not representative. We therefore based payment rates on Montana data for groups in which there were at least 30 Montana visits. If there were fewer visits, we based rates on the much broader base of Maryland claims. As a result, we estimate that 91% of payments for ambulatory surgery visits will be made using rates based on Montana experience.

Surgery on the anterior cruciate ligament is categorized within group 50, knee procedures. About a half-dozen such operations were performed on Montana medicaid patients in 1993. The payment rate for that group is based on those operations and on about 80 other knee operations performed on Montana medicaid patients. It is conceivable that rapid changes in medical practice would cause noticeable changes if payment rates were based on, for example, 1995 data instead of 1993 data, but it is also impossible for any prospective payment system to be completely up to date. The Canadian Institute for Health Information updates DPGs every year to reflect changes in medical practice and in the relative use of resources in Maryland. The department intends to keep its payment system current and will use information from CIHI, Maryland and Montana claims to do so.

COMMENT #31: A commentor expressed concern that not all ICD-9-CM codes are included in the Day Procedure Group logic and said hospitals are "suspicious" that such cases will not qualify for payment because of claims processing problems. The commentor added the rule should be amended to specify that procedures not included in the Day Procedure Group list will be paid based upon costs.

RESPONSE: The grouping logic is designed to include major procedures, not every procedure. The department prepared a list of procedures that were performed on Montana medicaid patients but were not included in the grouper and had that list reviewed by the grouper's developers. In some cases the procedure is now included in the updated grouping logic that the department proposes to adopt. In other cases, the grouper's developers confirmed that they did not believe the procedure was appropriate for inclusion, for various reasons. The most significant example is outpatient labor and delivery, which the department will pay for using a percentage of actual hospital charges. The department expects such anomalies in the grouping logic to be rare. When they occur, payment will be based on cost unless information on the claim means the visit is assigned to another group. The grouping logic will also be updated annually.

The department appreciates the commentor's observation regarding the rule language and will amend the rule language to specify that outpatient visits that are not paid for using the ambulatory surgery, emergency room and clinic groups described in this proposed rule will be paid for using the payment methodology now in place. That methodology is largely one of cost reimbursement, except for laboratory services, imaging services, other diagnostic services, dialysis visits and psychiatric partial hospitalization.

COMMENT #32: Several commentors raised concern about the department's decision to use ICD-9-CM procedure coding rather than the CPT-4 codes that are becoming increasingly commonplace. One said ICD-9-CM codes were "never designed for reimbursement purposes, nor do these codes accommodate being used as a basis for reimbursement." It added that no other payor uses these codes for reimbursement, thereby placing a costly burden on providers to keep the system current.

RESPONSE: The department certainly appreciates the difficulties caused by the different coding requirements of different payors. We used ICD-9-CM codes for two reasons. First, hospitals already are required to use this method for coding claims submitted to medicaid, medicare, Blue Cross and CHAMPUS. This requirement is identified in the UB-92 manual as well as the Uniform Hospital Discharge Data Set promulgated by the Secretary of the Department of Health and Human Services. We sought to

minimize any disruption to hospital coding and billing procedures. Under the proposal, hospitals are expected to submit exactly the same claims data which they are required to do now. Second, the historical claims data base that we used to design and model the payment system contained only ICD-9-CM procedure codes. One of our principal goals was to design a Montana-specific method to the greatest extent possible, and if we had used CPT-4 codes that would not have been possible. As for the appropriateness of ICD-9-CM codes for payment purposes, we note that Medicare and many other payors base payment for inpatient care on ICD-9-CM procedure codes.

COMMENT #33: A commentor said Day Procedure Groups are similar to the existing DRG system in that they will require a grouper to aid medical record coders in translating medical records into codes for billing purposes but that there is no true grouper software for DPGs. The commentor said the system will pose a major burden on coding, billing and cash application processes.

RESPONSE: The DRG system is far more complex than DPGs. The DRG grouper takes into account multiple diagnoses and procedures to assign visits to different DRGs that vary depending on the presence of comorbidities and complications. Ambulatory Patient Groups are similarly complex and would be a major burden for hospitals to implement. DPGs, by contrast, are simple. As the commentor noted, there is no complex grouping logic but rather a simple mapping of primary procedure to group. Any hospital staff member can look up the appropriate group for a given visit without regard to diagnosis or other procedures. No changes need be made in the information the hospital puts on the claim form.

We do agree that the system for assigning visits to an emergency room/clinic group or to a Day Procedure Group does require use of a relatively simple flow chart that depends on diagnosis, revenue code, disposition and procedure. The department will provide hospitals with a flow chart as well as the flow chart criteria. The proposed system, nevertheless, is far simpler than DRGs. The department will not require hospitals to apply the grouping logic in claims they submit to Consultec. For hospitals that want to model the logic themselves, the grouper documentation plus the simple DPG table (which we can provide on a disk without charge) should be sufficient. The department will send a package to all hospitals that will contain the DPG information as soon as possible.

COMMENT #34: A commentor said that the system is based on 1993 data, when "very few hospitals were coding outpatient transactions," which raises concerns about the accuracy and appropriateness of the data base.

RESPONSE: Since the primary procedure field is among the most

important fields on the hospital bill, we would expect hospitals to code it completely, especially for major procedures. Nevertheless, we can understand that hospitals are now more thorough in completing outpatient hospital bills. Abt Associates therefore took into account other information from the bill to infer the presence of a procedure wherever possible. For example, if a claim showed revenue code 790 (lithotripsy) without a primary procedure code, Abt inferred the presence of code 98.51, lithotripsy of kidney, ureter or bladder. Appendix A of the Abt report provides details.

COMMENT #35: A commentor said the problem with the methodology used to derive the proposed rates is that it was an attempt to "force fit Maryland data to Montana." It said common procedures such as lithotripsy, cardiac catheterization, angiography and cholecystectomies are relatively high cost in rural areas because of the low number of procedures and low population density.

RESPONSE: One of the department's principal goals was to base a prospective payment system on Montana experience to the greatest degree possible. This consideration is the chief reason why we have recommended the payment methods in the proposed rule. If we had chosen other methods, such as Ambulatory Patient Groups, we would not have been able to "calibrate" the relative payment rates on Montana experience, since our claims database contains ICD-9-CM procedure codes rather than the CPT-4 codes used by APGs. What we have done, therefore, is the exact opposite of force fitting another state's data to Montana.

We estimate that 91% of payments for Day Procedure Group visits to be made under the proposed method would be based on the specific experience Montana hospitals have had with medicaid patients.

We used Maryland experience in two ways. First, the actual grouping logic for Day Procedure Groups reflects the similarity of resources used for the different procedures in Maryland's all-payor hospital system. This is unavoidable. The fundamental design of a grouping method cannot be based on the very small number (in relative terms) of cases paid for by the Montana medicaid program. After adopting the Maryland-based grouping logic, we then applied it to Montana medicaid cases so that relative payment rates (group 1 compared with group 2, for example) would be based on Montana experience. There were a number of groups for which there were simply too few Montana cases for the results to be reliable, however, and in those instances we did base the relative payment rates on Maryland experience.

COMMENT #36: A commentor objected to the statement in ARM 46.12.508(11)(b) that the proposed payment for each group

reflects the estimated cost of hospital resources used to treat cases in that group. The commentor asked that the language state that the rates were based upon old data, inflated at the DRI inflation rate, that they have been reduced for a stop-loss pool and that they have been further reduced to 98.8% for sole community hospitals and 93% for other hospitals.

RESPONSE: The department believes the payment rates were based on the most up-to-date data available, that wherever possible they reflect the particular experience of Montana hospitals in treating medicaid recipients, that they protect hospitals against excessive losses and that they bear the same relationship to costs as do the current payment rates. The department believes that the rule language accurately describes the methodology.

COMMENT #37: A commentor asked that ARM 46.12.508(11)(c) be amended to state that the bundled payment only applies to services delivered by hospitals. It also asked the department to explain how the claims processing system will determine whether services provided on the day before or the day after a day procedure are related to that procedure.

RESPONSE: The department intends that payment for an ambulatory surgery visit cover all hospital services incident to that visit except for physician services. The hospital is not expected to be financially responsible for services provided outside its control. The department will monitor hospital claims to ensure that services are not being unbundled and inappropriately billed by a separate entity.

Hospitals are requested to submit one claim for an ambulatory surgery visit, including services provided the day(s) of the visit. The department will amend the proposed rule to remove the one day window after the ambulatory surgical visit. The department will however retain the one day window for services provided before an ambulatory surgery visit. This change is being made based upon discussions with providers and our review of the billing practices used by medicare with regard to ambulatory surgery visits.

COMMENT #38: Two commentors raised concerns about the bundling of services into a single claim of the services provided the day of a procedure, the day before it and the day after it. One described bundling as "very difficult" because of the volume of outpatient services.

RESPONSE: As noted above the department has reconsidered this one day window bundling requirement and will amend the rules to require bundling only for the day of and the day before the ambulatory surgery visit.

COMMENT #39: A commentor said it found it difficult to believe the results of the Abt Associates study were not "preordained" because the average costs of a number of items are "ludicrously low" in comparison to the actual costs of items as incurred by the hospitals. It gave as an example group 18 (pacemakers) for which the hospital pays $5,200 to $6,200, plus several hundred dollars for leads, but the average cost is shown as $3,842. Another commentor expressed concern over the adequacy of payment for lithotripsy, observation beds used in conjunction with day surgery, and certain heart catheterizations.

RESPONSE: Pacemakers and lithotripsy are two instances where high cost services are rarely performed on an outpatient basis, which makes them much more sensitive to the particular circumstances of the visits. In 1993, for example, there were two pacemaker visits (group 18) and 11 lithotripsy visits (group 32). Because of the combination of low volume and high cost, the department has changed its policy so that payment for lithotripsy and pacemaker visits will now be made at the hospital usual and customary charges times the statewide average outpatient cost-to-charge ratio. This payment will be the final prospective payment and will not be subject to cost settlement. The proposed rule at ARM 46.12.508(11) will be modified to reflect this policy change. Regarding the rates for cardiac catheterizations, we have reviewed the payment rates and believe they are reasonable. Observation beds used in conjunction with day surgery are appropriately considered part of the day surgery visit and would not be paid separately.

COMMENT #40: A hospital enclosed a table showing that the proposed payment rates would mean that the hospital gave medicaid "an average discount of 62%" from charges.

RESPONSE: The department believes that the relevant comparison is not with a hospital's charges but rather with its payments under the current system. In 1993, for example, the average cost to Montana hospitals of treating medicaid patients equaled 67% of hospital charges, and medicaid payments equaled 95% of hospital costs. Payments therefore equaled 64% of charges, for an average "discount" of 36%. The proposed system is estimated to be budget-neutral, so the average "discount" will be unchanged. The department's estimates show that some hospitals (including the one that made this comment) will see payments fall but that others will see payments rise.

COMMENT #41: A commentor noted that since a single fee will be paid per visit, a physician performing carpal tunnel release on both wrists would have a clear incentive to do one wrist per visit rather than two.

RESPONSE: The physician will have no incentive to operate on one wrist at a time, since the proposed rule does not affect payment

for physician services. The proposed rule would give hospitals an incentive to encourage physicians to perform two operations rather than one, although the department expects all providers to schedule surgical procedures with the patient's best medical interest in mind.

COMMENT #42: A commentor asked how payment would be made for transfusions.

RESPONSE: If a transfusion was the principal procedure, then a sole community hospital would be paid $609 and a non-sole community hospital $574 (group 62). If the hospital's charges for the service were less than 75% or greater than 400% of these prospective rates, then payment would equal 67% of charges. If a transfusion were not the principal procedure, then the hospital would be paid according to what the principal procedure was.

COMMENT #43: A commentor recommended that the department provide additional payments for secondary and third unrelated surgical procedures. It noted that in these instances medicaid makes additional payments to physicians and other practitioners. It urged the department to reconsider implementation of the system because of its incentives to fragment care and to shift the site of service back to the inpatient setting.

RESPONSE: The simplicity of the ambulatory surgery grouping logic is both a strength and a weakness. We agree that additional payments for additional unrelated procedures would be desirable in cases where those procedures were substantive. Designing such a system would be highly complex, however. Ambulatory Patient Groups do include such additional payments, but medicare was not sufficiently confident in that APG feature to include it in its recommendations to Congress. In any case, Congress has taken no action to implement APGs. We do think cases where multiple procedures are performed are more likely to be done on an inpatient basis anyway, although we share the commentor's aversion to shifting care to the inpatient setting for reasons of maximizing payment. In unusually expensive outpatient cases, sole community hospitals will be eligible for stop-loss protection. In general, our expectation is that physicians, hospitals and other providers will schedule procedures with the patient's best medical interest in mind.

COMMENT #44: A commentor expressed its concern that the implementation of the proposed payment method would cause it extreme hardship and confusion because a significant number of its patients have both medicare and medicaid and medicaid's proposed payment method is not used by medicare.

RESPONSE: When patients are eligible for both medicare part B and medicaid, hospitals are paid in accordance with the medicare

payment methodology, while medicaid is the secondary payor. This will continue to be true. Medicare and medicaid currently use different payment methodologies for outpatient services. Although hospitals have learned to live with the differences, the department has sought to make medicaid payment principles similar to medicare when appropriate (e.g., for dialysis, imaging services lab services and other diagnostic services.)

COMMENT #45: A commentor asked if the department will continue to consider each line of a claim for copayment purposes but count the entire claim as a single visit for payment purposes.

RESPONSE: The department will continue to apply copayment in the same manner as $1 per line on outpatient claims. In fact, for ambulatory surgery a single visit is defined as all services provided the day(s) of the surgery. For emergency room and clinic visits, the visit includes all services provided on the day of the visit regardless of the number of claims, except if the claims show separate admission times.

4. The proposed changes will become effective and will apply to services provided on or after July 1, 1996.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State May 28, 1996.

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

In the matter of the amendment of rules 46.12.1919 and 46.12.1920 pertaining to targeted case management for high risk pregnant women	)))))	NOTICE OF THE AMENDMENT OF RULES

TO: All Interested Persons

1. On February 22, 1996 the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.1919 and 46.12.1920 pertaining to targeted case management for high risk pregnant women at page 532 of the 1995 Montana Administrative Register, issue number 4.

2. The Department has amended rules 46.12.1919 and 46.12.1920 as proposed.

3. No written comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State May 28, 1996.

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

In The Matter of the Adoption of a Rule Pertaining to the Content of Certain Motor Carrier Receipts.	NOTICE OF ADOPTION OF RULE I

TO: All Interested Persons

1. On April 4, 1996 the Department of Public Service Regulation published notice of the proposed adoption of a rule pertaining to motor carrier receipt content at pages 896 through 897, issue number 7 of the 1996 Montana Administrative Register.

2. The Commission has adopted the rule as proposed:

RULE I. 38.3.124 RECEIPT CONTENT Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-11-421 and 69-12-203, MCA

3. No comments were received on the Commission's proposed adoption of this rule.

NANCY McGAFFREE, Chair

CERTIFIED TO THE SECRETARY OF STATE MAY 28, 1996.

Reviewed By Robin A. McHugh

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

In the Matter of the Amendment and Repeal of Rules Pertaining to Motor Carriers of Property	)	NOTICE OF AMENDMENT OF RULE 38.3.1101 AND REPEAL OF RULES 38.3.105, 38.3.122, 38.3.202, 38.3.203, 38.3.902 THROUGH 38.3.919, 38.3.1104, 38.3.1304, 38.3.1501, 38.3.1601 THROUGH 38.3.1603 AND 38.3.1901

TO: All Interested Persons

1. On March 7, 1996 the Department of Public Service Regulation published notice of the proposed amendment and repeal of rules pertaining to motor carriers of property at pages 663 through 666, issue number 5 of the 1996 Montana Administrative Register.

2. The Commission has amended the following rule as proposed:

38.3.1101 TRANSPORTATION OF HOUSEHOLD GOODS Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-101,MCA

3. The Commission has repealed rules 38.3.105, 38.3.122, 38.3.202, 38.3.203, 38.3.902, 38.3.904, 38.3.906, 38.3.908, 38.3.910, 38.3.911, 38.3.912, 38.3.914, 38.3.915, 38.3.917, 38.3.919, 38.3.1104, 38.3.1304, 38.3.1501, 38.3.1601, 38.3.1602, 38.3.1603 and 38.3.1901 as proposed.

4. No comments on the proposed amendment or repeal were received by the Commission.

NANCY MCCAFFREE, Chair

CERTIFIED TO THE SECRETARY OF STATE MAY 28, 1996.

Reviewed By Robin A. McHugh

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1996. This table includes those rules adopted during the period April 1, 1996 through June 30, 1996 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1996, 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 1995 and 1996 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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