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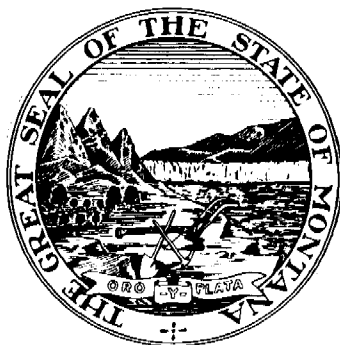
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**MONTANA
ADMINISTRATIVE
REGISTER**

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1997 ISSUE NO. 14
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.60.413 FEE SCHEDULE
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 20, 1997, the Board of Sanitarians proposes to amend the above-stated rule.

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

"8.60.413 FEE SCHEDULE

- | | | |
|-----------------------------------------------|------|-----------|
| (1) Application fee | \$50 | <u>25</u> |
| (2) and (3) will remain the same. | | |
| (4) Renewal | 35 | <u>30</u> |
| (5) Late renewal (in addition to renewal fee) | 35 | <u>25</u> |
| (6) and (7) will remain the same." | | |

Auth: Sec. 37-1-134, 37-40-203, MCA; IMP, Sec. 37-1-134, 37-1-304, 37-40-302, 37-40-303, 37-40-304, MCA

REASON: The Board currently has a higher cash balance than the legislature recommends, so the Board is lowering the fees to make them commensurate with program area costs.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Sanitarians, 111 N. 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., August 18, 1997.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Sanitarians, 111 N. 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., August 18, 1997.


5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who 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 18 based on the 180 licensees in Montana.

BOARD OF SANITARIANS
MELISSA TUEMMLER, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, July 7, 1997.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of Rule 36.22.1231)	AMENDMENT AND REPEAL
pertaining to notice of)	
application and objections,)	
and Rule 36.22.1432 pertaining)	
to injection fee and well)	
classification, and the repeal)	
of Rules 36.22.1228,)	
36.22.1230, 36.22.1233 and)	
36.22.1234 pertaining to)	
disposal by injection,)	
application--contents and)	
requirements, board)	
authorization, notice of)	
commencement of discontinuance)	
--plugging of abandoned wells,)	NO PUBLIC HEARING
and records required)	CONTEMPLATED

TO: All Interested Persons.

1. On August 20, 1997, the Board of Oil and Gas Conservation of the Department of Natural Resources and Conservation proposes to amend Rule 36.22.1231, which pertains to notice of application and objections, and Rule 36.22.1423, which pertains to injection fee and well classification, and to repeal Rules 36.22.1228, 36.22.1230, 36.22.1233 and 36.22.1234.

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

36.22.1231 NOTICE OF APPLICATION - OBJECTIONS (1) Notice of application for ~~water injection~~ enhanced recovery or gas repressuring shall be given by the applicant by mailing or delivering a copy of the application to each operator of drilling or producing wells or of wells which have produced within one-half mile radius of the proposed input well or wells. Such notice shall be mailed or delivered on or before the application is mailed to or filed with the board.

Subsection (2) remains the same.

AUTH: 82-11-111, MCA;

IMP: 82-11-123 and 82-11-124, MCA.

36.22.1423 INJECTION FEE - WELL CLASSIFICATION Subsections (1) through (3)(a) remain the same.

(b) it has been re-completed or converted to other approved uses, but not simply idled or shut-in; ~~OR~~

~~(c) the injection or disposal zone has been effectively isolated in a manner approved by the board;~~

~~(d) (c) the work proposed under an approved permit was not done or could not be accomplished.~~

AUTH: Sec. 82-11-111, MCA

IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124,
82-11-127 and 82-11-137, MCA

3. Rules 36.22.1228, 36.22.1230, 36.22.1233 and 36.22.1234, the rules proposed to be repealed, are on pages 36-4994 through 36-4996 of the Administrative Rules of Montana.

AUTH: 82-11-111, MCA IMP: 82-11-123 and 82-11-124, MCA

4. Rule 36.22.1231 is being amended to provide consistency with the underground injection control program. Rule 36.22.1423 is being amended to avoid a conflict in the classification of wells between the underground injection control program and the regulatory program. The repeal of Rules 36.22.1228, 36.22.1230, 36.22.1233, and 36.22.1234 is necessary because they have been replaced by underground injection control rules.

5. Interested parties may submit their data, views or arguments concerning the proposed actions in writing to Jim Halvorson, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana 59102. Any comments must be received no later than August 18, 1997.

6. If a person who is directly affected by the proposed actions wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jim Halvorson, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana 59102. A written request for hearing must be received no later than August 18, 1997.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 11 persons based on the 105 owners and operators of injections wells in Montana.

BOARD OF OIL AND GAS CONSERVATION


THOMAS P. RICHMOND, ADMINISTRATOR


DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State July 7, 1997.

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

In the matter of the repeal of	)	NOTICE OF PROPOSED REPEAL
rule 46.12.539 pertaining to)	
the fee schedule for audiology	)	NO PUBLIC HEARING
services	)	CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1997, the Department of Public Health and Human Services proposes to repeal rule 46.12.539 pertaining to the fee schedule for audiology services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on August 4, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rule 46.12.539 AUDIOLOGY SERVICES, FEE SCHEDULE as proposed to be repealed is on page 46-1285 of the Administrative Rules of Montana.

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

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


3. The adoption of ARM 46.12.502A pertaining to the resource based relative value scale (RBRVS) system of Medicaid reimbursement, which will be effective on August 1, 1997, has rendered Rule 46.12.539 pertaining to the fee schedule for audiology services obsolete. The repeal of ARM 46.12.539 is necessary because audiology services will now be reimbursed in accordance with the RBRVS methodology rather than according to the old fee schedule. The Department inadvertently failed to repeal ARM 46.12.539 when it adopted ARM 46.12.502A and amended ARM 46.12.538 pertaining to audiology services. The Department is now correcting that oversight.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than August 18, 1997.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in

writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than August 18, 1997.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be three based on the number of audiologists affected by rules covering the fee schedule for audiology services.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 7, 1997.

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

In the matter of the repeal of	)	NOTICE OF PROPOSED REPEAL
rules 20.3.401 through 20.3.413)	
and 20.3.416 through 20.3.421	)	NO PUBLIC HEARING
pertaining to chemical	)	CONTEMPLATED
dependency counselor)	
certification rules)	

TO: All Interested Persons

1. On August 25, 1997, the Department of Public Health and Human Services proposes to repeal rules 20.3.401 through 20.3.413 and 20.3.416 through 20.3.421 pertaining to chemical dependency counselor certification rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on August 4, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rule 20.3.401 SYSTEM OVERVIEW as proposed to be repealed is on page 20-63 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA

IMP: Sec. 53-24-204, MCA

The rule 20.3.402 POINT SYSTEM as proposed to be repealed is on page 20-63 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-105 and 53-24-204, MCA

IMP: Sec. 53-24-204, MCA

The rule 20.3.403 WORK EXPERIENCE as proposed to be repealed is on pages 20-63 and 20-64 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA

IMP: Sec. 53-24-204, MCA

The rule 20.3.404 ACADEMIC WORK as proposed to be repealed is on page 20-65 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.405 WORKSHOP TRAINING as proposed to be repealed is on pages 20-65 through 20-67 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-105, 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.406 WRITTEN EXAMINATION as proposed to be repealed is on page 20-67 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204, MCA
IMP: Sec. 53-24-204 and 53-24-208, MCA

The rule 20.3.407 TAPED WORK SAMPLE as proposed to be repealed is on page 20-68 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.408 ORAL EXAMINATION as proposed to be repealed is on page 20-68 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.409 BASIC CERTIFICATION as proposed to be repealed is on page 20-69 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-105, 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.410 REGISTRY PROCESS as proposed to be repealed is on pages 20-69 and 20-70 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.411 PERFORMANCE ON WORK SAMPLE as proposed to be repealed is on page 20-70 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.412 ORAL EXAMINATION PANEL as proposed to be repealed is on page 20-71 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.413 CONTINUING EDUCATION as proposed to be repealed is on page 20-71 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.416 REQUIREMENT FOR HIRING PERSONNEL as proposed to be repealed is on page 20-71.1 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.417 CONTINUOUS EFFORT as proposed to be repealed is on page 20-70.1 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-215 MCA
IMP: Sec. 53-24-215, MCA, and Ch. 507, sec. 14, L. 1997

The rule 20.3.418 APPLICABILITY as proposed to be repealed is on page 20-71.2 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-215, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.419 MINIMUM ELIGIBILITY REQUIREMENTS as proposed to be repealed is on pages 20-71.2 and 20-71.3 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.420 APPLICATION PROCEDURE as proposed to be repealed is on pages 20-71.3 and 20-71.4 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-215, MCA
IMP: Sec. 53-24-204, MCA

The rule 20.3.421 PROFESSIONAL ETHICAL STANDARDS as proposed to be repealed is on pages 20-71.4 and 20-72 of the Administrative Rules of Montana.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-217, MCA, and Ch. 507, sec. 14, L. 1997

3. Repeal of the above rules is necessary because, effective July 1, 1997, the 1997 Legislature transferred the authority to set standards for certification of chemical dependency counselors from the Department of Public Health and Human Services to the Department of Commerce (Senate Bill 399). The facts that the Department of Commerce is currently developing and will soon be proposing new certification standards of its own, that DPHHS' standards do not conform to the revised statutory standards for certification, and that DPHHS no longer has the authority for such regulation, necessitate that the above rules be repealed.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than August 18, 1997.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than August 18, 1997.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 50 based on the 500 certified chemical dependency counselors.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 7, 1997.

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

In the Matter of Proposed	)	NOTICE OF PROPOSED
Adoption of Rules Pertaining	)	ADOPTION OF RULES ON
to the Montana Interim	)	MONTANA INTERIM UNIVERSAL
Universal Access Program.	)	ACCESS PROGRAM
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On August 22, 1997 the Department of Public Service Regulation proposes to adopt rules relating to the Montana Interim Universal Access Program.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The rules proposed to be adopted provide as follows.

RULE I. DEFINITIONS For the implementation and administration of the Montana interim universal access program, the following definitions apply:

(1) "Administrator" means the Montana public service commission or its designee.

(2) "Library" includes:

(a) a public library;

(b) a public elementary school or secondary school library;

(c) an academic library;

(d) a research library which makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public and is not an integral part of an institution of higher education; and

(e) a private library, but only if the Montana state library determines that the library should be considered eligible for participation in state-based plans for library funding.

(f) A library's eligibility for universal access funding is dependent on the library's funding as an independent entity. An academic library is eligible only if its funding is independent of the funding of any institution of higher education. "Independent" means that the budget of the library is completely separate from that of any institution of learning.

(3) "Elementary school" means a nonprofit institutional day or residential school that provides elementary education and satisfies the state requirements for compulsory education as determined under Montana law.

(4) "Secondary school" means a nonprofit institutional day or residential school that provides secondary education and satisfies the state requirements for compulsory education as determined under Montana law. The term does not include any education beyond grade 12.

(5) A "public access point" means a location that, at a minimum, provides the general public access to advanced telecommunications services that are not subscription-based. The access must be provided free of charge and at convenient hours on a walk-in basis. AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE II. DESIGNATION AS A PUBLIC ACCESS POINT (1) To be designated as a public access point an applicant must facilitate public access by being open a minimum of 30 hours a week, including 8 hours outside the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. The required minimum hours for public access may be waived by the administrator based on the special needs and circumstances of a community. The administrator may require additional information from the applicant in order to make a determination of special needs and circumstances.

(2) Schools, tribal colleges, libraries and health care providers may apply as public access providers, but such applications may not be filed in addition to any separate application as a school, tribal college, library or health care provider. AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE III. PRIORITY FOR FUNDING FROM THE MONTANA INTERIM UNIVERSAL ACCESS PROGRAM (1) The first priority is to provide funding for one public access point in each Montana community. Applications from public access points will be given first consideration for funding from the Montana interim universal access program. If more than one application is filed by public access points located within the same community, the decision for granting discounts to the applicants will be based on a determination of the specific needs of the community and how the applicants would meet those needs. If funds remain, after funding public access points, the administrator will consider applications from schools and tribal colleges, libraries, and rural health care providers. Preference in funding will be given to those entities not eligible for discounted telecommunications services from the federal universal service fund. AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE IV. DETERMINATION OF DISCOUNT AMOUNT (1) The discount amount will be 50 percent of the best cost rate available to any business customer for an equivalent of one 56 KBPS dedicated circuit to the nearest access point for the requested service. The cost to the eligible user for this service may not exceed \$100 a month if there are sufficient

funds in the Montana interim universal access program to fully reimburse for the authorized discount.

(2) For example, if the cost of the dedicated circuit to reach a frame relay cloud is \$150 per month (transport cost) and the frame relay service is \$80 per month (service cost not eligible for the discount), the customer would pay \$155 per month ($\$150/2 + \$80 = \155) and the program would fund \$75 per month. If the cost of the dedicated circuit were \$350 per month and the cost of the frame relay were \$80 per month the customer would pay \$180 per month ($\$350/2 - \75 (because the cost to an eligible user cannot exceed \$100) = $\$100 + \$80 = \$180$) and the cost to the program would be \$250 ($\$350/2 + \$75 = \250). AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE V. APPLICATION FOR DISCOUNTED SERVICES

(1) Applications for discounted services authorized by the Montana interim universal access program may be filed annually on a form prescribed by the administrator.

(2) Applicants must include the following information:

(a) Applicant's business name, address, e-mail address, telephone number, fax number;

(b) Description of type of institution, including area served;

(c) Description of the services to be purchased and the use for the services (e.g., access to the internet, dedicated distance learning, dedicated circuit to a larger health care facility for telemedicine applications);

(d) Name, address, telephone number, and contact person for the telecommunications provider which will be providing the discounted services to the applicant;

(e) Explanation of how the nearest access point for the requested service was determined;

(f) Copy of any application filed for federal universal service discounts in the preceding 24 month period and a copy of the decision approving or denying the same application;

(g) Certification from the applicant that:

(i) the applicant qualifies as an eligible user for the Montana interim universal access program under Montana statutes and rules;

(ii) the applicant will not resell the discounted services;

(iii) the applicant filed an application for federal universal service discounts or the applicant is not eligible to apply for federal universal service funds;

(iv) the level of discounts approved for federal universal service fund is correctly identified;

(v) the discounts will not be applied retroactively for services rendered prior to an effective date determined by the administrator.

(h) A resolution of support from the governing body of the appropriate city, county, or tribal government in which the applicant is located.

(3) The telecommunications carrier which will be providing the discounted services must submit:

(a) Certification that the quoted telecommunications rate for which the applicant is seeking discounts from the Montana interim universal access program is the best cost rate available to any business customer for an equivalent of one 56 KBPS dedicated circuit to the nearest access point for the requested service;

(b) Name and address of the telecommunications carrier to which the discount funds will be mailed or a signed statement authorizing the transfer of discount funds to the Montana department of revenue as an offset of Montana interim universal access surcharges owed by the telecommunications carrier.

(4) Applications for discounted services by public access points under the Montana interim universal access program must additionally include the following:

(a) Statement that the applicant will provide access to the general public that is free-of-charge and at convenient hours, on a walk-in basis;

(b) Description of the hours open to the public per week for access;

(c) Description of the publicity of the availability of public access;

(d) Statement that the applicant will offer public access for the entire period for which discounted services are provided. AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE VI. APPLICATION DEADLINES AND DISBURSEMENT OF FUNDS

(1) Public access points, schools, libraries, and health care providers may apply for discounts from the FY98 Montana interim universal access fund on or before January 1, 1998. Applications must be filed with the Montana Public Service Commission, PO Box 202601, Helena, MT 59620-2601. Applicants will be notified of the approved discount amount by March 1, 1998. Discount funds will be disbursed no later than April 1, 1998.

(2) Public access points, schools, libraries, and health care providers may apply for discounts from the FY99 Montana interim universal access fund on or before January 1, 1999. Applications must be filed with the Montana Public Service Commission, PO Box 202601, Helena, MT 59620-2601. Applicants will be notified of the approved discount amount by March 1, 1999. Discount funds will be disbursed no later than April 1, 1999. AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE VII. REDUCTION OF DISCOUNTS (1) If funds from the Montana interim universal access account are not sufficient to fully reimburse for authorized discounts, the amount of the discounts to each eligible user will be reduced proportionally.

(2) Qualifying discounts under the Montana interim universal access program will be reduced by an amount equal to any discount received on the same telecommunications service from the federal universal service fund. AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE VIII. AUDITING (1) Applicants receiving discounts under the Montana interim universal access program, as well as involved carriers, are required to maintain records necessary to assist in future audits. Applicants must produce such records at the request of any auditor appointed by the Montana public service commission, office of public instruction, Montana state library, or any other state or federal agency with jurisdiction. AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

RULE IX. MONTANA INTERIM UNIVERSAL ACCESS PROGRAM SURCHARGE RATE (1) The universal access program will be funded by a surcharge on the total retail revenue as defined in [Ch. 349, Sec. 37, L. 1997 (SB89, section 30(7))] for all intrastate telecommunications services in the state of Montana. The surcharge will be based on the rate necessary to raise the program's required funding (\$250,000 for the fiscal year ending June 30, 1998 and \$500,000 for the fiscal year ending June 30, 1999).

(2) The surcharge rate for FY98 will be calculated according to the following formula:

\$250,000 divided by an amount equal to the total retail revenue as defined in [Ch. 349, Sec. 37, L. 1997 (SB89, section 30(7))] for all intrastate telecommunications services in the state of Montana.

(3) The surcharge rate for FY99 will be calculated according to the following formula:

\$500,000 divided by an amount equal to the total retail revenue as defined in [Ch. 349, Sec. 37, L. 1997 (SB89, section 30(7))] for all intrastate telecommunications services in the state of Montana.

AUTH: Sec. 69-3-822, MCA and Ch. 349, Sec. 37, L. 1997; IMP, Ch. 349, Secs. 20-25, L. 1997

4. Rationale: An interim universal access program was established by the 1997 Montana legislature. The legislature designated the Public Service Commission as administrator of the program. These rules are reasonably necessary to describe the implementation of the program and the manner in which eligible persons may be awarded discounts under the program.

5. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing (original and 10 copies) to Robin McHugh, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena,

Montana 59620-2601 no later than August 22, 1997. (PLEASE NOTE: When filing comments pursuant to this Notice please use Docket No. L-97.6.2-RUL.)

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Robin McHugh, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than August 22, 1997.

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

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


DAVE FISHER, Chair

CERTIFIED TO THE SECRETARY OF STATE JULY 7, 1997.


Reviewed By Robin A. McHugh

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

In the Matter of Proposed	)	NOTICE OF PROPOSED
Adoption of Rules Pertaining	)	ADOPTION OF RULES
to Unauthorized Changes of	)	PERTAINING TO "SLAMMING"
Primary Interexchange Carrier)	
or Local Exchange Carrier	)	NO PUBLIC HEARING
("Slamming").	)	CONTEMPLATED

TO: All Interested Persons

1. On August 22, 1997 the Department of Public Service Regulation proposes to adopt new rules pertaining to unauthorized changes of primary interexchange carrier or local exchange carrier.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The rules proposed to be adopted provide as follows.

RULE 1. CHANGE IN TELECOMMUNICATIONS PROVIDER (1) A telecommunications carrier may not initiate or effect a change in a customer's primary interexchange carriers or local exchange company except:

(a) When the carrier initiating the change has obtained the customer's written authorization in a form that meets the letter of agency form and content requirements (as referenced below); or

(b) When the carrier initiating the change has obtained a customer's electronic authorization placed from the telephone number(s) on which the carrier is to be changed, to submit the order that confirms the information described in the letter of agency form and content (as referenced below). Carriers electing to confirm customer authorizations electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the carrier change, including automatically recording the originating ANI (automatic number identification); or

(c) When a qualified and independent third party operating in a location physically separate from the carrier's telemarketing representative has obtained a customer's verbal authorization to submit the carrier change, providing the third party verification includes:

(i) A statement that the purpose of the call is to verify the customer's intent to switch to the newly requested telecommunications carrier. The newly requested interexchange

or local exchange telecommunications carrier must be clearly identified to the customer. Reference to use of another telecommunications carrier's network or facilities, if stated, must be secondary in nature to the prominent identification of the interexchange or local exchange carrier which will be providing service and setting the rates with the customer's consent for the customer's service.

(ii) Confirmation that the person whose authorization for a carrier change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of the subscriber.

(iii) Verification data unique to the customer (e.g., the customer's date of birth or social security number);

(iv) The name, address, and toll free telephone number of the newly requested telecommunications carrier.

(d) Any letter of agency, electronic authorization or verbal authorization verified by an independent third party that does not conform with this rule is invalid. Documentation of valid verbal authorization must demonstrate compliance with each element required by (c) above. AUTH: HB431, Sec. 4; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE II. LETTER OF AGENCY FORM AND CONTENT (1) A telecommunications carrier initiating a change in a subscriber's primary interexchange carrier or local exchange carrier shall obtain any necessary written authorization from a subscriber by using a letter of agency as specified in this rule. Any letter of agency that does not conform with this rule is invalid.

(2) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in (5) of this rule) whose sole purpose is to authorize a telecommunications carrier to initiate a primary interexchange carrier or local exchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the change in carrier.

(3) The letter of agency shall not be a part of any sweepstakes, contest or similar promotional program.

(4) Notwithstanding (2) and (3) of this rule, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in (5) of this rule and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier change or local exchange carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(a) The subscriber's billing name and address and each telephone number to be covered by the change order;

(b) The decision to change the primary interexchange carrier or local exchange carrier from the current interexchange carrier or local carrier to the prospective carrier;

(c) That the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier or local exchange carrier change;

(d) That the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier and that only one local exchange carrier may be designated as the subscriber's local telecommunication provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intraLATA, intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier or local exchange carrier must be the carrier directly setting the rates for the subscriber. One carrier can be a subscriber's interLATA primary interexchange carrier, a subscriber's intraLATA primary interexchange carrier, and a subscriber's local carrier; and

(e) That the subscriber understands that any primary interexchange carrier selection or local exchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier or local exchange carrier.

(6) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current primary interexchange carrier or local exchange carrier.

(7) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. AUTH: HB431, Sec. 4; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE III. COMPLAINTS OF UNAUTHORIZED SWITCH IN CARRIERS

(1) Upon receipt of a complaint alleging an unauthorized switch in a customer's telecommunications carrier, either orally or in writing, from the customer, the customer's original pre-subscribed telecommunications carrier, the customer's local exchange company, or from the commission or its staff on behalf of a customer or applicant, the telecommunications carrier that initiated the change shall make a suitable investigation and advise the party requesting the investigation of the results. When advising the customer or party requesting the investigation of the results, the carrier that initiated the change shall provide documentation

in accordance with these rules that confirms the customer's valid authorization to switch telecommunications carriers. The burden is on the carrier that initiated the change to produce documentation that valid authorization was obtained from the customer. If a carrier fails to provide the documentation, the carrier change will be deemed invalid. A telecommunications carrier, upon receipt of a complaint from the commission or its staff alleging unauthorized switching, shall issue an initial response within five working days. AUTH: HB431, Sec. 4; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE IV. TELECOMMUNICATIONS CARRIER LIABILITY (1) An entity that is not the customer and that initiates a change in the customer's telecommunications carrier in violation of these rules, or cannot provide documentation that the change was initiated in compliance with these rules, is liable:

(a) to the customer for all intrastate long distance charges, interstate long distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer. AUTH: HB431, Sec. 4; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE V. REFUND OF CHARGES (1) A telecommunications carrier which initiates a carrier change without authorization from the customer in accordance with these rules shall issue to the customer full credit or refund the entire amount of such customer's telephone charges attributable to telephone service from the telecommunications carrier for up to six continuous months of unauthorized service and any charges from another telecommunications carrier to re-establish service or to change the customer's pre-subscribed carrier. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date of the initial complaint from the customer, commission, or staff. AUTH: HB431, Sec. 4; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE VI. VIOLATIONS (1) The commission may refer violations of the prohibition against unauthorized change of a customer's telecommunications carrier to the office of the Montana attorney general. AUTH: HB431, Sec. 4; IMP, Secs. 69-3-102 and 69-3-201, MCA


4. Rationale: These rules are promulgated pursuant to the direction of the 55th Legislature in House Bill 431.

5. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing (original and 10 copies) to Karen Hammel, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than August 22, 1997.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Karen Hammel, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than August 22, 1997. (PLEASE NOTE: When filing comments pursuant to this notice please use Docket No. L-97.6.3-RUL.)

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

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



DAVE FISHER, Chair

CERTIFIED TO THE SECRETARY OF STATE JULY 7, 1997.



Reviewed By Robin A. McHugh

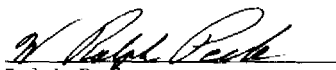
BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

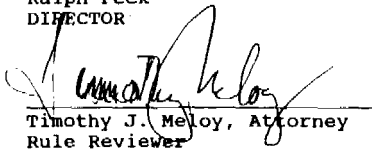
In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 4.5.109 and 4.5.112;) AND REPEAL
repeal of ARM 4.5.113; relating)
to the Noxious Weed Trust Fund)
procedures.)

TO: All interested persons:

1. On June 2, 1997, the Department of Agriculture published a notice of proposed amendment and repeal of the above-stated rules pertaining to the Noxious Weed Trust Fund procedures. The notice was published at page 974 of the 1997 Montana Administrative Register, issue number 11.
2. The department has amended ARM 4.5.109 and 4.5.112 exactly as proposed and repealed ARM 4.5.113.
3. No written comments were received.

DEPARTMENT OF AGRICULTURE


Ralph Peck
DIRECTOR


Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State this 7th Day of July
1997.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT AND
of rules pertaining to inactive)	ADOPTION OF RULES PERTAINING
to active status licenses for)	TO DENTISTS, DENTAL
dentists and dental hygienists,)	HYGIENISTS AND DENTURISTS
general standards, denturist)	
examination and denturist)	
inactive to active status)	
license and the adoption of a)	
new rule pertaining to)	
reinstatement of denturist)	
licenses)	

TO: All Interested Persons:

1. On May 19, 1997, the Board of Dentistry published a notice of public hearing on the proposed amendment and adoption of rules pertaining to dentists, dental hygienists and denturists at page 848, 1997 Montana Administrative Register, issue number 10. The public hearing was held on June 10, 1997, in Helena, Montana.

2. The Board has amended ARM 8.16.408, 8.16.607, 8.16.719, 8.17.404 and 8.17.709 exactly as proposed. The Board has adopted new rule I (8.17.710) as proposed, but with the following changes: (the authority and implementing sections will remain the same as proposed)

"8.17.710 DENTURIST LICENSE REINSTATEMENT (1) through (1)(b) will remain the same as proposed.

(c) provides evidence the applicant is not the subject of an unresolved or adverse decision based on a complaint, investigation, review procedure or other disciplinary proceeding undertaken by a state, territorial, local or federal dental/denturist licensing jurisdiction, or law enforcement agency that relates to criminal or fraudulent activity, ~~dental~~ denturist malpractice or negligent ~~dental~~ denturist care;

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

(f) takes and passes the jurisprudence examination if the license was revoked for ~~three~~ five years or longer; and

(g) will remain the same as proposed."

3. No testimony was received at the hearing. Written comments were accepted through June 16, 1997. The Board has thoroughly considered all comments received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: One comment was received in support of the amendment of 8.16.607 to change the inactive status for dental hygienists from three years to five years.

RESPONSE: The Board acknowledged receipt of the comment in support.

COMMENT NO. 2: One comment was received stating ARM 8.17.404 (3) should include the phrase "in which case shall be national, regional or state regulated denturist examiners."

RESPONSE: The Board noted this subsection was for the purpose of adding the phrase "or the board's designee," which was precisely to allow an appropriate denturist examiner to conduct the grading of the exam. This phrase will also allow flexibility by the Board, who will remain responsible for an appropriate choice of examiner. The Board did not see a need to add further language, as this would only confuse the issue. Finally, the Board did not want to include the comment's proposed language, as it would make the rule inconsistent with other Board rules on reinstatement of a license.

COMMENT NO. 3: One comment was received stating ARM 8.17.404 (4) should make the same change as noted in Comment No. 2 above.

RESPONSE: See response to Comment No. 2 above.

COMMENT NO. 4: One comment was received stating New Rule I(1)(a)(iii) and (g) should delete the requirement that an applicant for reinstatement must pay past renewal and penalty fees if the applicant has been required to take a board-approved examination as a condition for reinstatement.

RESPONSE: The Board noted the rule language requirement is parallel to the reinstatement procedures for both dentists and dental hygienists under statutory language for those groups of licensees. Both the exam charge, and the late fees would be required for reinstatement of either other type of license. In the interest of consistency, this reinstatement procedure requiring past renewal and penalty fees must be retained as well.

COMMENT NO. 5: One comment was received stating New Rule I(1)(a) should add a (iv) allowing any applicant for reinstatement to provide proof of passing the initial licensing exam with a score of at least 90 percent, along with no previous disciplinary action, and a showing of practical experience to qualify for reinstatement. The comment stated it doesn't make sense that only a denturist has to take a practical examination for removable prosthetics for relicensure. Instead, this amendment would rectify this situation for highly qualified denturists. A statutory change could also be considered to require all three license groups to take the same practical exam to provide removable prosthetic services.

RESPONSE: The Board noted that the dentist and dental hygienist reinstatement rules do not allow a person with a previous exam score of 90 percent to waive the exam for reinstatement. The issue is whether an applicant who has spent five years without practicing can show competency without re-taking an exam. The Board will leave the current rule language as proposed for consistency with the other reinstatement rules.

The Board also noted it would be difficult to document "previous practice," as the phrase the comment suggests using.

COMMENT NO. 6: One comment was received stating New Rule I(1)(c) should change the word "dental" to "denturist." The comment stated this change would reflect the fact that this rule is regulating denturists, and not dentists. The comment further stated a denturist regulatory body should be the legal entity with authority over a denturist license, whereas the current rule language may be interpreted as a dental board having jurisdiction, when they may not.


RESPONSE: The Board noted it had discussed this wording before proposing the rule. The Board left the wording as "dental" in referring to the "dental licensing jurisdiction" to allow flexibility to deal with whatever entity regulates denturists in the various states and jurisdictions. The wording cannot be perfect, due to variations among the states. The current wording will allow interpretations for both "dental" and "denturist" language for each regulatory entity.

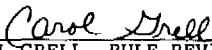
The Board will change the phrase "dental malpractice" to "denturist malpractice," and change "dental care" to "denturist care" in the same subsection.

COMMENT NO. 7: One comment was received stating New Rule I(1)(f) should change the reference from "three" years to "five" years, to make the language consistent with existing and proposed dental and dental hygienist rule language.

RESPONSE: The Board concurred with the comment, and will change the rule as shown above.

BOARD OF DENTISTRY
DONALD NORDSTROM, DDS, PRESIDENT

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, July 7, 1997.

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

In the matter of the amendment) NOTICE OF
of Rules 36.17.601, 36.17.602, and) AMENDMENT
36.17.606 pertaining to the renewable)
resources grant and loan program)

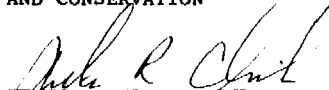
To: All Interested Persons.

1. On June 2, 1997, the Department of Natural Resources and Conservation published notice of the proposed amendment of rules 36.17.601, 36.17.602, and 36.17.606 pertaining to the renewable resources grant and loan program, at page 983 of the 1997 Montana Administrative Register, Issue No. 11.

2. The department has amended the rules as proposed.
AUTH: 85-2-225, MCA
IMP: 85-2-225, MCA

3. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE, RULE REVIEWER

Certified to the Secretary of State July 7, 1997

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

In the matter of the adoption	)	NOTICE OF ADOPTION,
of rule I, amendment of rules	)	AMENDMENT AND REPEAL
46.12.507, 46.12.522,	)	OF RULES
46.12.528, 46.12.538,)	
46.12.901, 46.12.902,)	
46.12.905, 46.12.911,)	
46.12.912, 46.12.915,)	
46.12.1441 through)	
46.12.1449, 46.12.2003,)	
46.12.2013, 46.12.2102,)	
46.12.4810 and 46.12.5007 and)	
the repeal of rule 46.12.529)	
pertaining to medicaid)	
reimbursement methodology)	

TO: All Interested Persons

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed adoption of rule I, amendment of rules 46.12.507, 46.12.522, 46.12.528, 46.12.538, 46.12.901, 46.12.902, 46.12.905, 46.12.911, 46.12.912, 46.12.915, 46.12.1441 through 46.12.1449, 46.12.2003, 46.12.2013, 46.12.2102, 46.12.4810 and 46.12.5007 and the repeal of rule 46.12.529 pertaining to medicaid reimbursement methodology at page 775 of the 1997 Montana Administrative Register, issue number 9.

2. The Department has amended rules 46.12.507, 46.12.522, 46.12.1441 through 46.12.1449, 46.12.2102, 46.12.4810 and 46.12.5007 and repealed rule 46.12.529 as proposed.

3. The Department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

[RULE I] 46.12.502A RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) "Anesthesia units" means time and base units used to compute reimbursement under RBRVS for anesthesia services. Base units are those units as defined by the medicare program. Time units are 15 minute intervals during which anesthesia is provided.

(a)(b) "By report" means a rate of payment for a procedure which does not have a fee assigned to it. For all procedures for which no fees have been set, reimbursement will be based on the percentage derived by dividing the previous state fiscal year's total medicaid billings for RBRVS providers covered services by the previous state fiscal year's total medicaid

reimbursement for RBRVS providers covered services. For state fiscal year 1998, the "by report" rate is 58%;

(b)(c) "Conversion factor" means a dollar amount by which the relative value units, or the base and time units for anesthesia services, are multiplied in order to convert the units to a fee for a service. The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year 1998 is:

(i) ~~\$34.85 for medical and surgical services;~~

(ii) ~~\$15.01 for anesthesia services.~~

(c)(d) "Policy adjustor" means a factor by which the product of the relative value units and the conversion factor is multiplied to increase or decrease the fees paid by medicaid for certain categories of services. Subject to funding, a policy adjustor of up to 10% will be applied to:

(i) ~~maternity related services; and~~

(ii) ~~family planning services.~~

(d)(e) "Relative value unit (RVU)" means a numerical value assigned in the resource based relative value scale to each procedure code used to bill for services provided by a health care provider. The relative value unit assigned to a particular code expresses the relative effort and expense expended by a provider in providing one service as compared with another service.

(e)(f) "Resource based relative value scale (RBRVS)" means the most current version of the medicare resource based relative value scale contained in the physicians' medicare fee schedule adopted by the health care financing administration of the U.S. department of health and human services and published in the Federal Register annually, as amended through July 1, 1997 which is hereby adopted and incorporated by reference. A copy of the medicare fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in estimates of the actual effort and expense involved in providing different health care services.

(g) "Usual and customary" means those charges that the medicaid provider would charge for a particular service in a majority of cases including medicaid and non-medicaid patients.

(2) Services covered by the medicaid program and provided by the following health care professionals will be reimbursed in accordance with the RBRVS methodology set forth in (3):

- (a) physicians;
- (b) mid-level practitioners;
- (c) podiatrists;
- (d) physical therapists;
- (e) occupational therapists;
- (f) speech therapists;
- (g) audiologists;
- (h) optometrists;
- (i) opticians;

(j) providers of clinic services;

(k) providers of EPSDT services;

(l) psychologists;

(m) dentists providing medical services;

(1)(n) providers of oral surgery services; and

(1)(o) providers of pathology and laboratory services.

(3) Except as set forth in (4)(7), and (5)(8) and (9), the fee for a covered service provided by any of the provider types specified in (2) will be determined by multiplying the relative value units by the conversion factor specified in (4), and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (5), if any; provided, however, that rates for procedure codes included in the conversion to the RBRVS reimbursement methodology shall be:

(a) for state fiscal year 1998, no less than 85% of and no more than 140% of the medicaid fee for that procedure in state fiscal year 1997;

(b) for state fiscal year 1999, no less than 80% of and no more than 145% of the medicaid fee for that procedure in state fiscal year 1997.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year 1998 is:

(a) \$34.14 for medical and surgical services, as specified in (2); and

(b) \$26.51 for anesthesia services.

(5) Subject to funding, a policy adjustor of up to 10% may be applied to maternity related services and family planning services.

(a) The department's list of specific maternity related services and family planning services as amended through July 1, 1997 is hereby adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Policy Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) The RVUs for most services will be adopted from the resource based relative value scale (RBRVS). For most services for which the RBRVS does not specify RVUs, the department will set those RVUs.

(4)(7) The fee for a medicaid covered service provided by any of the provider types specified in (2) will be reimbursed in the following manner:

(a) if medicare sets RVUs, then reimbursement will reflect a medicare RVU;

(b) if medicare does not set RVUs but medicaid sets an RVU, then reimbursement will reflect a medicaid RVU set in the following manner:

(i) convert the existing dollar value of a fee to an RVU value;

(ii) evaluate the RVU of similar services and assign an RVU value; or

(iii) convert the average by report dollar value of a fee to

an RVU value; or

(c) if neither medicare nor medicaid sets RVUs, then reimbursement will be by report. For state fiscal year 1998, the "by-report" rate is 58% of the providers usual and customary charges, which medicare pays by report because no fees have been set will be paid by medicaid by report.

(5)(B) For clinical laboratory services;

(a) the department will pay the lowest lower of the following for procedure codes with fees:

(i) the provider's usual and customary charges for the service; or

(b) 60% of the medicare fee for the service.

(ii) the medicare fee schedule established at 60% of the prevailing charge for physician offices and independent labs and hospitals functioning as independent labs.

(b) the department will pay the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the service; or

(ii) the by report rate.

(9) For anesthesia services the department will pay the lower of the following for procedure codes with fees:

(a) the provider's usual and customary charges for the service;

(b) a fee determined by multiplying the anesthesia conversion factor by the sum of the applicable base and time units, and then multiplying the product by a factor of one plus or minus the applicable policy adjuator, if any.

(c) the department will pay the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the services; or

(ii) the by report rate.

(10) Subject to the provisions of (10)(a), when billed with a modifier, payment for procedures established under the provisions of (7) will be a percentage of the rate established for the procedures.

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

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

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

(iii) The department's list of the specific percents for the modifiers used by medicaid as amended through July 1, 1997 is hereby adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Policy Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) (11) In applying the RBRVS methodology set forth in this rule, medicaid will make reimbursement in accordance with medicare's policy on the bundling of services, as set forth in the physicians' medicare fee schedule adopted by the health care financing administration of the U.S. department of health and human services and published in the Federal Register annually, whereby payment for certain services constitutes payment for certain other services which are considered to be included in those services.

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

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

4. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.528 THERAPIES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana medicaid program will pay the ~~lowest~~ of the following for therapy services:

(a) ~~the provider's usual and customary charge for the service; For patients who are eligible for medicaid, the lower of:~~

(i) the provider's usual and customary charge for the service; or

(ii) 90% of the reimbursement for physicians provided in accordance with the methodology described in ARM 46.12.502A.

~~(b) the department's fee schedule maintained 90% of the reimbursement for physicians provided in accordance with the methodology described in ARM 46.12.529 (RULE 1); or For patients who are eligible for both medicare and medicaid, reimbursement will be made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

~~(c) the amount allowable for the same service under medicare, if the therapy services are also covered by medicare for the recipient.~~

~~(3) remains the same. For all purposes under this rule and ARM 46.12.529, the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.~~

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

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

46.12.538 AUDIOLOGY SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana medicaid program will pay the ~~lowest~~ of the following for audiology services:

~~(a) the provider's usual and customary charge for the service; For patients who are eligible for medicaid, the lower of:~~

~~(i) the provider's usual and customary charge for the service; or~~

~~(ii) 90% of the reimbursement for physicians provided in accordance with the methodology described in ARM 46.12.502A.~~

~~(b) the department's fee schedule maintained 90% of the reimbursement for physicians provided in accordance with the methodology described in ARM 46.12.529 [RULE 1]; or For patients who are eligible for both medicare and medicaid, reimbursement will be made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

~~(3) For all purposes under this rule, the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.~~

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

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

46.12.901 OPTOMETRIC SERVICES, DEFINITIONS

(1) "Optometric services" means services provided by a licensed optometrist that are within the scope of practice. Optometric services include visual training.

(2) "Usual and customary" means those charges that the billing optometrist would charge for a particular service in a majority of cases, including medicaid and non-medicaid patients.

AUTH: Sec. 53-6-113, MCA

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

46.12.902 OPTOMETRIC SERVICES, REQUIREMENTS (1) These requirements are in addition to the rule provisions generally applicable to medicaid providers.

(2) The department hereby adopts and incorporates by reference the definitions found in the introduction of Physicians Current Procedural Terminology, fourth edition (CPT 4), published by the American medical association of Chicago, Illinois. These materials set forth meanings of terms commonly used by the Montana medicaid program in implementation of the program's optometric schedule. A copy of the definitions herein incorporated may be obtained through the Department of Public Health and Human Services, Health Policy Services Division, P.O. Box 202951, 1400 Broadway, Helena, MT 59620-2951. Providers must bill for services using the procedure codes, and modifiers set forth, and according to the definitions contained in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Health Policy and Services Division at the address stated above.

(3) A medicaid recipient age 21 and over is limited to one eye examination for determination of refractive state per 730 day period unless one of the following circumstances exist:

(a) following cataract surgery more than one examination during the 730 day period is necessary; or

(b) the provider determines by screening that a loss of one line acuity has occurred with present glasses.

~~(4) A medicaid recipient under age 21 is limited to one eye examination for determination of refractive state per 365 day period unless one of the following circumstances exist:~~

~~(a) following cataract surgery, more than one examination during the 365 day period is necessary; or~~

~~(b) the provider determines by screening that a loss of one line acuity has occurred with present glasses.~~

~~(4) Visual training is retrospectively reviewed by the department.~~

AUTH: Sec. 53-6-113, MCA

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

46.12.905 OPTOMETRIC SERVICES, REIMBURSEMENT

~~(1) The department pays the lowest of the following for optometric services:~~

~~(a) the provider's usual and customary charge for the service; or~~

~~(b) the amount allowable for the same service under medicare, if the services are also covered by medicare for the recipient; or~~

~~(c)(b) reimbursement for physicians provided the department's fee schedule maintained in accordance with the methodology described in ARM 46.12.502A.~~

~~(1) Subject to the requirements of this rule, the Montana medicaid program will pay the following for optometric services:~~

~~(a) For patients who are eligible for medicaid, the lower of:~~

~~(i) the provider's usual and customary charge for the service; or~~

~~(ii) the reimbursement for physicians provided in accordance with the methodology described in ARM 46.12.502A.~~

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement will be made for the medicare deductible and coinsurance. However, total reimbursement for medicare and medicaid shall not exceed the medicaid fee for the service.~~

AUTH: Sec. 53-6-113, MCA

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

46.12.911 EYEGLASSES, DEFINITIONS

(1) Eyeglasses mean corrective lens and/or with frames prescribed by an ophthalmologist or by an optometrist, to aid and improve vision.

(a) Corrective lenses also include contact lenses.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

46.12.912 EYEGLASSES, SERVICES, REQUIREMENTS, AND RESTRICTIONS (1) These requirements are in addition to the rule provisions generally applicable to medicaid providers.

(2) Providers dispensing eyeglasses or contact lenses must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (5)(a) remain as proposed.

(b) The dispensing provider must receive prior authorization from the department for contact lenses and with dispensing fee.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

46.12.915 EYEGLASSES, REIMBURSEMENT (1) Reimbursement is not available for eyeglasses. Eyeglasses are prepaid by the department through a single volume purchase contract.

(2) Reimbursement for prosthetic eyes and contact lenses is as follows:

(a) The department pays the lowest lower of the following:

(1)(a)(i) through (1)(b) remain as proposed.

(c) The department's fee schedule for contact lenses and prosthetic eyes includes fees set and maintained according to the following methodology:

(1)(c)(i) through (1)(c)(v) remain as proposed.

(3) The department may contract for coverage of contact lenses through a volume purchasing arrangement with a supplier of materials.

(4) The department may adjust the fee schedule to implement increases or decreases in reimbursement by the amount or percentage authorized or directed by the legislature.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT GENERAL REQUIREMENTS AND MODIFIERS (1) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the medicaid services health policy services division at the address stated in ARM 46.12.2001(3).

~~(2) remains as proposed. The department will pay the lowest of the following for physician services:~~

~~(a) the provider's usual and customary charge for the service; or~~

~~(b) the department's fee schedule maintained in accordance with the methodology described in (3) and [RULE 1]ARM 46.12.502A.~~

~~(2) Subject to the requirements of this rule, the Montana medicaid program will pay the following for physician services:~~

~~(a) For patients who are eligible for medicaid, the lower of:~~

~~(i) the provider's usual and customary charge for the service; or~~

~~(ii) the department's fee schedule maintained in accordance with the methodology described in (3) and ARM 46.12.502A.~~

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement will be made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

~~(3) Subject to the provisions of (3)(b), when billed with a modifier, payment for a procedure for which a fee has been established under the provisions of (2) will be a percentage of the fee established for the procedure under (2).~~

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

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

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

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

~~(b) The department will periodically review and update the modifier percentages established under (3)(a).~~

~~(d) Subsection (3) shall not apply to any procedure for which no fee has been established under (2).~~

~~(4) Subject to the provisions of subsection (4)(b), when billed with a modifier, payment for a procedure for which a fee has been established under the provisions of subsection (3)(b) will be a percentage of the fee established for the procedure under subsection (3)(b).~~

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

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

~~(ii) The department will obtain information from medicare~~

and other third party payers regarding the comparative value utilized for payment of procedures billed with modifiers.

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

~~(b) Regardless of the provisions of subsections (3)(b), (4) and (4)(a), when a procedure-modifier combination is so unusual as to prevent the department from gathering sufficient data to set a fee, payment for procedures billed with a modifier will be as provided in subsection (9)(c).~~

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

~~(d) Subsection (4) shall not apply to any procedure for which no fee has been established under subsection (3)(b).~~

~~(5)(i) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "J" and "Q" codes will be either according to a fee schedule established by the department and updated at least annually based upon the Montana estimated acquisition cost or maximum allowable cost, as defined in ARM 46.12.102 or the provider's usual and customary charge, whichever is lower. No dispensing fee will be paid to physicians.~~

(a) The maximum allowable cost limitation shall not apply in those cases under ~~subsection (4)~~ where the physician certifies in their own handwriting that in their medical judgment a specific brand name drug is medically necessary for a particular patient. Acceptable certification statements are "brand necessary" or "brand required." A check-off box on a form or a rubber stamp is not acceptable.

AUTH: Sec. 53-6-113, MCA

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

46.12.2013 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT (1) remains as proposed.

(2) Medicaid coverage of mid-level practitioner services is limited to these services listed in ARM 46.12.2003 available according to the requirements, procedures, and fees specified for physicians under ARM 46.12.2003.

(3) through (5) remain as proposed.

(a) billed charges usual and customary, or

(5)(b) through (9)(g) remain as proposed.

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

IMP: Sec. 53-6-101, MCA

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: What are the benefits of the policy adjustments

made to family planning and other providers, and how can those benefits be measured? When will that information be available?

RESPONSE: Policy adjustors are measures that increase or decrease reimbursement for procedure codes. The Medicaid program has included policy adjustors for family planning and obstetrical services no matter which provider specialty provides the services. The anticipated benefit is that the Medicaid program will increase or at least maintain the level of participation in these services, which in turn should reduce the number of Medicaid births and high cost babies. The Department will attempt to measure the outcomes associated with the policy adjustor but it may not be possible to exactly measure the impact of policy adjustor since there are other factors which can affect participation.

COMMENT #2: The organizations representing family physicians and optometrists indicated their support for the proposed RBRVS reimbursement system. They indicated they consider it to be equitable and noted that the compromise implementation of the RBRVS payment system was reached after much debate in the Legislature. They recommend that implementation proceed as spelled out by the Legislature.

RESPONSE: The Department agrees. Provider types affected by the proposed changes in Medicaid's reimbursement system were afforded opportunities to express their views both prior to and during the 55th Legislative Session. After hearing all points of view, the Legislature arrived at a compromise plan, which the Department believes is equitable and mandated.

COMMENT #3: Several physician specialties such as anesthesiology, neurosurgery, and orthopedic surgery, strongly objected to the proposed RBRVS rules. They noted that the specialists reluctantly agreed to a compromise under which the reduction in fees experienced by specialists under the RBRVS system would be limited to 15% in Fiscal Year 1998 and 20% in Fiscal Year 1999. That compromise also imposed limitations on the increases received by general physicians, namely 40% in FY 1998 and 45% in FY 1999. Although the specialists are still willing to abide by that compromise position, they suggest that there is no guarantee that the generalists will receive increases in reimbursement of the magnitude promised. The specialists therefore urge the Department to implement an alternative plan to the reimbursement system described in the RBRBS rule as proposed.

The specialists' proposal is that the new RBRVS system be phased in more gradually, with the generalists receiving the new increased fees based on the proposed RBRVS system now, while the specialists would continue to be reimbursed at the current

rates. The 200 most frequently used codes would be updated over the FY 98-99 biennium, and other codes would be adjusted over time.

RESPONSE: The language of House Bill 2 authorizing implementation of the RBRVS system states: "It is the intent of the legislature that the implementation of the resource based relative value scale (RBRVS) physician provider rate system be phased in over the 1999 biennium. The department shall ensure that in fiscal year 1998, the reimbursement for each procedure included in the RBRVS system did not decrease more than 15% or increase more than 40% compared with the reimbursement rate used in fiscal year 1997. The department shall ensure that in fiscal year 1999, the reimbursement for each procedure included in the RBRVS system not decrease more than 20% or increase more than 45% compared to the reimbursement rate used in fiscal year 1997. If the proposed minimum and maximum reimbursement parameters yield insufficient funds to implement the RBRVS system, funds must be taken first from the 1.5% provider rate increase and second from the RBRVS policy adjuster to achieve the percentages of increase or decrease".

This language does not address decreases or increases for groups or specialties, although it was known the certain specialties would be adversely affected and that others would experience significant increases. Nor does the language of HB 2 allow the Department to leave rates for certain providers alone and change rates for all other providers.

COMMENT #4: When the Legislature agreed to the reduction of reimbursement for specialists of up to 15% in FY 1998, had the Legislature been informed and did they know that the 15% projected cuts were statewide projections, and some individual doctors would experience reductions of more than 15% in their Medicaid payments? Is it the Department's position that the Legislature agreed to a plan under which some doctors will have reductions in payments of more than 15%?

RESPONSE: As quoted in the Response to Comment #3 above, the language of House Bill 2 authorizing implementation of the RBRVS system imposes limits on increases and decreases in rates for each procedure or service. HB 2 does not discuss limits on increases or decreases for particular provider types or specialties or individual Medicaid providers.

The procedure codes in the RBRVS system are shared by many providers, although the individual protocols of the different provider types restrict which codes a provider uses. The overall increase or decrease in reimbursement experienced by a specific provider group or an individual provider will be determined by the mix of codes used and the number of times each code is billed over time. The Department emphasized repeatedly

during the legislative hearings that it was impossible to guarantee that Medicaid payments to individual practitioners would not increase or decrease more than the limits agreed upon and adopted by the Legislature.

COMMENT #5: It is currently the Department's policy in the case of persons dually eligible for Medicare and Medicaid, that Medicaid reimburses the Medicare deductible and coinsurance. The total reimbursement from both Medicare and Medicaid can not exceed the Medicaid rate for the service provided. The new rule on Medicaid reimbursement does not address this policy. Does it still apply?

RESPONSE: Yes. There has been no change in the Department's policy on reimbursement for dually eligible recipients. Additional language has been added to 46.12.528, 46.12.538, 46.12.905, and 46.12.2003 to make this clear.

COMMENT #6: It appears rule 46.12.539 is unnecessary with the implementation of Rule 46.12.502A as audiology services will be reimbursed using the RBRVS methodology and payment "by report" where RVUs are unavailable.

RESPONSE: The Department agrees. Refer to MAR Notice No. 37-68 in this issue of the Montana Administrative Register which proposes the repeal of rule 46.12.539.

COMMENT #7: The current billing system used for anesthesia has a major difference from the proposed RBRVS billing system. The present reimbursement system for anesthesiologists has been "by report". This has generally resulted in the following payment system: An anesthesiologist will generate a bill that is the result of industry standard units specific to a particular patient and procedure. These units are multiplied by a conversion factor and this amount has been paid at 65.2%. Overall, this industry standard of relative value anesthesia units (the ASA relative value study) has been adopted by commercial payers and the Medicare-RBRVS system with one major exception. The current Medicaid billing system, which is the same as the commercial third party payor billing system, includes modifiers. When Medicare terminated the payment of modifiers, the conversion factor was raised significantly to adjust for the decreased payment.

RESPONSE: The Department's RBRVS contractor made its estimate of time units (and therefore of the conversion factor implicit in the current method) using two separate methods. One method was to analyze the Medicaid claims in detail using algorithms to screen out claims with anomalous data before estimating time units so that they were comparable from claim to claim. The second method was to apply national-level estimates of average time units for specific codes to individual claims. Both methods yielded essentially the same answer of an implicit

conversion factor of \$26.71 and therefore an average charge per unit of \$40.97 (i.e., $\$40.97 \times 0.652 = \26.71). This result also corresponded to the approximate average charge level of \$40 a unit that several providers mentioned during the consultative process.

The issue has been raised as to the impact on the contractor's estimation process of physical status modifiers which would not affect payment under the new method. In the 1995 claims data there were 57 claims with a P3 modifier (severe systemic disease, which adds one unit under the ASA guidelines) and 27 claims with a P4 modifier (severe systemic disease that is a constant threat to life, which adds two units). Since these will not affect payment in the future, the contractor did not take them into account in the historical data. The result is the 'apples-vs-apples' comparison that is appropriate. If the contractor had taken the modifier units into account during the estimation process, the sum of units would have been higher and the conversion factor lower, which would not be in the providers' interest.

In response to questions raised during the rule hearing on RBRVS, the Department and representatives from the Montana Society of Anesthesiologists met to discuss RBRVS implementation. During the meeting, anesthesiologists expressed concerns about the accuracy of the proposed conversion factor for anesthesiology. To gather further information, the Department agreed to survey anesthesiologists and Certified Registered Nurse Anesthetists (CRNAs). The survey was conducted to obtain Montana specific usual and customary anesthesia billing practices. The Department also agreed to delay implementation of the RBRVS program until August 1, 1997 (originally scheduled for July 1, 1997). As a result of the survey, and further analysis of Abt's anesthesia data, the Department raised the anesthesia conversion factor from \$23.73 to \$26.51 in ARM 46.12.502A (4)(ii).

COMMENT #8: "If mistakes are found at the Medicare rates during the interim, will the Department change the Medicaid rates to rectify the mistake, and, if so, when? If mistakes are found at the Medicare rates but there is no national change to fix those mistakes, will the Department nevertheless change the Medicaid rates to fix the mistakes? If evidence comes to the Department's attention after the RBRVS rule is adopted that the Medicare rates on which the Medicaid rates are based on are not very well factored into Montana, will the Department amend its rule to fix local Medicaid rates?"

RESPONSE: The Medicaid rates are not based on the Medicare rates. In adopting the Medicare RBRVS system, Montana Medicaid is accepting the Medicare relative value units (RVUs) assigned to the individual codes. The RVUs determine the relative

position of a code on the scale to other codes.

The Medicaid rate for an individual code is determined by multiplying the Montana specific conversion factor times the RVUs assigned to a code. The conversion factor for Medicaid is determined by computing the number of times all the codes will be billed during a year and dividing those figures into the Medicaid appropriation for the next state fiscal year. The result is the maximum amount Medicaid can have for a conversion factor.

Medicare rates are mentioned as a benchmark for Medicaid rates. But, Medicare's conversion factor and rates do not determine Medicaid's conversion factor and rates.

Clinical lab services with fees which are outside the RBRVS system will now have their rates based on "the lower of the Medicare fee schedule established at 60% of the prevailing charge for physician offices and independent labs and hospitals functioning as independent labs".

COMMENT #9: If the Department finds that specialists who experience rate cuts are no longer taking Medicaid cases, will the Department take action to raise their rates. How is the Department going to monitor providers to determine whether the cuts in reimbursement rates to some providers result in less or no service to Medicaid patients.

RESPONSE: The Department is often criticized for having rates that are too low. If Medicaid begins to experience access problems after conversion to the RBRVS, the Department will review the areas having such problems to determine if it was a result of the RBRVS conversion or other factors such as the cost of services, quality of services, or skill necessary for the delivery of services.

If the Medicaid program found an access problem in a geographic area, the department would meet with the providers in the area to see if access to Medicaid services could be negotiated. Of the twenty state Medicaid programs that converted to the HCFA RBRVS program, no access problems resulted that were attributed to the conversion.

COMMENT #10: Does the Department have the right and rulemaking authority to raise and change rates in between the legislative sessions? Does the Department have the authority to increase rates to providers or some providers while the legislature is not in session?

RESPONSE: Yes, the Department has such authority pursuant to section 53-6-101(7), MCA, which provides that the Department "may set rates for medical and other services provided to

recipients of Medicaid". The Department also has a mandate under section 53-6-113(3), MCA, to "establish by rule the rates for reimbursement of services provided under this part". The "part" referred to is Title 53, Chapter 6, part 1 relating to Medicaid. However, as a practical matter, there seldom are sufficient monies in the Medicaid budget to provide overall provider rate increases. Additionally, since the Legislature has mandated specific changes in the Medicaid reimbursement system in House Bill 2, the Department would not make system-wide changes in reimbursement rates which were contrary to the intent of House Bill 2.

COMMENT #11: What would be needed before the Department would change rates between legislative sessions. Will the Department consider other changes in the system of reimbursements in between legislative sessions and under what circumstances would the Department make minor changes in the reimbursement system?

RESPONSE: Section 53-6-113(3), MCA, provides that the department may consider, but is not limited to considering, the availability of appropriated funds, the actual cost of services, the quality of services, the professional knowledge and skills necessary for the delivery of services, and the availability of services. The department has taken into consideration the factors mentioned above in converting to the RBRVS system.

COMMENT #12: Will the Department consider negotiated rulemaking for these proposed rules or changes in the rules in the next two years and under what circumstances would they consider using the procedure of negotiated rulemaking for other changes to these rules?

RESPONSE: The Department did not use the formal negotiated rulemaking process. However, extensive effort has already been made to fully involve all affected providers in this process. During the RBRVS conversion project beginning in May 1996, the department met twelve times with provider groups affected by the conversion to RBRVS. This included three video conference meetings open to 13 communities across the state. Monthly newsletters were also sent to over 3,000 Medicaid providers and all reports generated by Abt were made available to providers and their associations.

The Department has delayed the implementation of this rule and the RBRVS system one month to August 1, 1997 to review additional Montana anesthesia data to verify the anesthesia conversion factor. Also, there was ongoing lobbying on behalf of the anesthesiology and other specialties which resulted in the legislative language on the "RBRVS phase in" in House Bill 2. Unfortunately but inevitably, some providers will be dissatisfied with the results when a new reimbursement system is implemented. The Department does not feel there is any further

benefit to be gained by conducting negotiated rulemaking.

The Department does not anticipate making major changes to the proposed RBRVS payment methodology between legislative sessions other than changes to the phase-in percentages authorized by the legislature. Minor changes may be made to add or modify individual procedure codes as necessary or to adapt changes made by the Medicare program.

COMMENT #11: If the procedure codes which we use to bill for our services were developed for use by our disciplines (physical therapy, occupational therapy, and speech therapy), why are we not being reimbursed the full relative value, as opposed to being reimbursed 90% of the amount physicians are reimbursed for the same procedure code, under the proposed Resource Based Relative Value Scale (RBRVS) reimbursement rule?

RESPONSE: The CPT codes in question can be used by many provider types, including physicians, mid-level practitioners, audiologists, and physical, occupational and speech therapists. The 55th Montana Legislature adopted the Department's recommendation that certain provider types, such as mid-level practitioners, audiologists, and physical, occupational, and speech therapists, be reimbursed at 90% of the physician's fee. The Department is not adjusting the relative values for the codes which will be billed by audiologists, and physical, occupational and speech therapists. Rather, we are applying a 10% reduction policy adjustment which, like other Medicaid policy adjustments, is separate from other reimbursers and is used to adjust overall payments.

COMMENT #14: What is the total amount of money that is going to be changed between providers due to these rules? What provider groups are going to receive increases and which are going to receive decreases and by how much. How many and which providers are going to see greater or smaller increases or decreases than the statewide average and by how many dollars are they going to receive increases or decreases?

RESPONSE: The department does not know the amount of dollars that will change between providers or provider groups. The department paid our consultant nearly \$20,000 to refigure the fees for the codes with the limits of no decrease of more than 15% and no increase of more than 40%. To compute the exact increase and decrease to each provider group or specialty would cost another \$10,000.

In most cases, some codes billed by a provider group will increase and some codes will decrease. The overall increase or decrease to a provider group will depend on what combination of codes is billed by that group.

Generally, conversion to the RBRVS system will mean an increase for family practice, pediatrics, dermatology, neurology, physical medicine, nephrology, neonatology, physician assistants and school-based services and a decrease for anesthesiology and surgical specialties such as general surgery, ENT, neurosurgery, orthopedic surgery, plastic surgery and thoracic surgery.

COMMENT #15: How much money was paid under the contract with Abt Associates, and will they continue as contractors in the future?

RESPONSE: The department contracted with Abt Associates to analyze the current Montana Medicaid primary care provider reimbursement system; recommend an alternative resource based relative value system to the current system; prepare necessary reports and documents; facilitate and attend public meetings; develop claims file for use by the department's claims processing contractor, Consultec, Inc.; develop a PC software program to annually modify the relative values in the system; and make additional computer runs of the data developed during the course of the contract. The total amount paid to Abt under this contract was \$151,000 through June 30, 1997.

The department will continue to contract for services in accordance with the state's contracting guidelines with contractors who in the department's opinion offer the best product and the most reasonable price. Abt's proposal was the lowest priced of the three proposals the department received for this project.

COMMENT #16: An association representing podiatrists objected to reducing the "by-report" rate to 58% and objects to removing the "by report" percentage of 70% from ARM 46.12.522. The association feels such changes could "...have the unintended effects of limiting access and harming those recipients in need of these services".

RESPONSE: The current "by report" percentage dates from the early 1980s and was set at that time to reflect average payment as a percent of charges. The current actual payment percentage as a percent of charges was determined by the RBRVS contractor to be 58%. The contractor further recommended the department reset the "by report" percentage each year to reflect the previous year's average payment as a percent of charges. The department agrees with both recommendations and feels it more properly reflects the intent of current actual payment as the average percent of charges.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 7, 1997.

VOLUME NO. 47

OPINION NO. 4

LAND USE - Role of zoning commission in city exercising self-government powers;

LOCAL GOVERNMENT - Conflicts between state zoning statutes and local zoning ordinances of city exercising self-government powers;

MUNICIPAL CORPORATIONS - Conflicts between state zoning statutes and local zoning ordinances of municipality exercising self-government powers;

MONTANA CODE ANNOTATED - Title 76, chapter 2, part 3; sections 7-1-114, 76-1-108, 76-2-307, -327,

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 57 (1987), 41 Op. Att'y Gen. No. 64 (1986), 38 Op. Att'y Gen. No. 98 (1980).

HELD: A city exercising self-government powers may not vest its municipal planning board with those powers vested in municipal zoning commissions by Mont. Code Ann. § 76-2-307.

July 1, 1997

Mr. Gary R. Thomas
Red Lodge City Attorney
201 South Broadway, Suite D
Red Lodge, MT 59068

Dear Mr. Thomas:

You have asked my opinion on the following question:

Whether a city exercising self-government powers may vest its municipal planning board with those functions and authority normally exercised by a municipal zoning commission described by Mont. Code Ann. § 76-2-307?

Several years ago the City of Red Lodge, a city of the third class which adopted self-government powers in 1986, initiated a land use planning process. This process led to the adoption of a Master Plan by the Red Lodge City Council on December 21, 1995. The formulation of the Master Plan was accompanied by the drafting of a Development Code which contains zoning regulations and enforcement ordinances and serves generally to implement the adopted Master Plan. The Development Code was adopted by the Red Lodge City Council April 8, 1997.

The Development Code establishes a Planning Board that will serve as the city's zoning commission for purposes of implementing municipal zoning authorized by Mont. Code Ann. title 76, chapter 2, part 3. In particular, Mont. Code Ann. § 76-2-307 provides:

Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

The Red Lodge Planning Board has been vested by the city with all the authority necessary to fulfill the duties of a zoning commission as detailed in the statute set forth above.

You ask whether the Red Lodge Planning Board may function as the municipal zoning commission described by Mont. Code Ann. § 76-2-307. The question in essence is whether a city with self-government powers may choose to combine the discrete functions and authorities of a planning board and zoning commission into one body, a planning board, thereby eliminating review by a zoning commission.

A city exercising self-government powers "may exercise any power or provide any service except those specifically prohibited by the Constitution, law or the local government's charter." D & F Sanitation Serv. v. City of Billings, 219 Mont. 437, 445, 713 P.2d 977, 982 (1986). This office has consistently recognized that Mont. Code Ann. § 7-1-114 prohibits local governments with self-government powers from adopting ordinances that modify procedures set forth in state planning and zoning statutes. See 42 Op. Att'y Gen. No. 57 (1987); 41 Op. Att'y Gen. No. 64 (1986); 38 Op. Att'y Gen. No. 98 (1980).

Montana Code Annotated § 7-1-114 provides in relevant part as follows:

Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(e) All laws which require or regulate planning or zoning;

(2) These provisions are a prohibition on the self-government unit acting other than as provided.

As was noted in 38 Op. Att'y Gen. No. 98 (1980), this statute applies to procedural zoning laws as well as substantive laws. In that opinion Attorney General Greely interpreted a Butte-Silver Bow self-governing ordinance that created a right of appeal from a Board of Adjustment decision, in addition to the appeal provided by Mont. Code Ann. § 76-2-327. Attorney General Greely found that the optional appeal right was "other than as provided" by statute and thus prohibited by § 7-1-114(2).

In 41 Op. Att'y Gen. No. 64 (1986) this office was asked whether it was appropriate for the Missoula County Commissioners to delegate authority for approving subdivision plats to a planning board. It was noted that no state statute provided for such a delegation and that § 7-1-114 prohibits a self-governing unit from modifying zoning and planning statutes. Attorney General Greely found that Missoula County could not delegate its subdivision review authority to staff or a planning board.

Finally, in 1987 the self-governing power of Butte-Silver Bow was again construed with regard to its subdivision review authority. 42 Op. Att'y Gen. No. 57. Consistent with the reasoning of the preceding Attorney General's Opinions, Butte-Silver Bow was found to not have the authority to review divisions of land consisting of parcels 40 acres or larger, because the Subdivision and Platting Act only contemplated review of 20-acre parcels.

You ask whether Red Lodge may transfer the functions of a zoning commission to a planning board. In light of the established meaning of § 7-1-114, Red Lodge is prohibited from creating a planning and zoning mechanism that is not provided by state statute. Section 76-2-307 states that cities "shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts." While § 76-1-108 allows a city to designate a **city-county** planning board as the city's zoning commission for purposes of § 76-2-307, no such authorization exists for the designation of a **city** planning board as the zoning commission. Had the legislature wanted to permit this practice, it easily could have drafted § 76-1-108 to say so. Since it did not, I find that a local

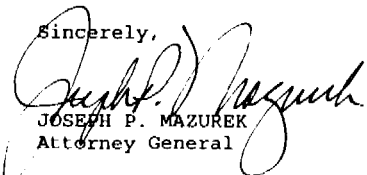
ordinance that establishes an alternative zoning system is prohibited by § 7-1-114.

In closing, I note that there is no statutory bar which prevents the city from appointing a planning board as required by statute and then naming the same persons to serve as the zoning commission. The two bodies would have to exercise their respective authorities in a manner that clearly identified which body was acting, but procedures could be adopted to achieve this result. Montana law only prevents a city from using a planning board to exercise both planning and zoning functions.

THEREFORE, IT IS MY OPINION:

A city exercising self-government powers may not vest its municipal planning board with those powers vested in municipal zoning commissions by Mont. Code Ann. § 76-2-307.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/gms/dm

VOLUME NO. 47

OPINION NO. 5

ADMINISTRATIVE LAW AND PROCEDURE - Discretion of agency to interpret statutes which it administers;
ARCHITECTS, BOARD OF - Regulation of practice of architecture;
BUSINESS REGULATION - Regulation of practice of architecture;
COMMERCE, DEPARTMENT OF - Regulation of practice of architecture;
MONTANA CODE ANNOTATED.--Title 37, chapter 65; sections 37-1-131, -131(1), 37-65-101, -102, -102(5), -103, -103(4), (4)(c), (4)(d), -204, -301, -303, -322, -323.

HELD: The Board of Architects has the authority to regulate the practice of architecture as well as the use of the title "architect" or use of other words implying the practice of architecture.

July 8, 1997

Ms. Pamela Hill, Chairman
Montana Board of Architects
Professional and Occupational
Licensing Bureau
Department of Commerce
P.O. Box 200513
Helena, MT 59620-0513

Dear Ms. Hill:

You have requested my opinion on the following question:

Do Mont. Code Ann. §§ 37-65-102 and -103 create a title act, a practice act, or a combination of both under which the Board of Architects may seek criminal prosecution or injunctive relief against unlicensed persons?

My review of the applicable statutes leads to the conclusion that the Board of Architects has the authority to regulate the practice of architecture as well as use of the title "architect" or similar words implying the practice of architecture.

Montana Code Annotated § 37-65-101 describes the purpose and legislative intent for enacting laws governing the practice of architecture and provides:

It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary . . . to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

By its express terms, the legislature set out to create a system to regulate the "practice" of architecture.

Montana Code Annotated § 37-65-301 requires each architect to be licensed and provides:

Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter.

By its plain terms, this section prohibits the unqualified "practice" of architecture as well as the unauthorized use of the title "architect" or similar words implying that the person engages in the practice of architecture.

Further, Mont. Code Ann. § 37-65-322, which imposes a penalty for violation of the chapter, provides:

Any person who uses the title "architect" or "licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor

This section, by its plain terms, also imposes a penalty for the unauthorized practice of architecture and the unauthorized use of

the title "architect" or similar words implying that the person engages in the practice of architecture.

It is a well-established rule of statutory construction that a statute is to be construed according to its plain meaning. Stratemeyer v. Lincoln County, 276 Mont. 67, 915 P.2d 175 (1996); State v. Martel, 273 Mont. 143, 902 P.2d 14 (1995); Clarke v. Massey, 271 Mont. 412, 897 P.2d 1085 (1995). By the plain terms of the above statutes, the legislature established a scheme for the regulation of the practice of architecture as well as the use of the title "architect." Therefore, in answer to your question, Montana law proscribes the unauthorized practice of architecture, as well as the unauthorized use of the title "architect" or similar words implying that a person is engaged in the practice of architecture.

You next state that it is unclear what constitutes the unauthorized practice of architecture and seek advice in this regard. The practice of architecture is defined broadly as

any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

Mont. Code Ann. § 37-65-102(5). All practicing architects are required to be licensed. Mont. Code Ann. § 37-65-301. The Board of Architects establishes the standards and qualifications for licensure. Mont. Code Ann. §§ 37-65-303, 37-1-131(1). A person who engages in the practice of architecture without being licensed is subject to conviction for a misdemeanor. Mont. Code Ann. § 37-65-322. The Board may also enjoin the unauthorized practice of architecture if it has reasonable grounds to believe that a person is violating any provision of title 37, chapter 65. Mont. Code Ann. § 37-65-323.

Certain persons and actions have been exempted from regulation. In particular, § 37-65-103(4)(c) exempts any person who plans, designs, alters, repairs, supervises or builds a residential building of less than eight living units. Section

37-65-103(4)(d) exempts the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner, "if the building is not intended for use or used as a public building."

You ask whether the exemption in § 37-65-103(4)(c) means that all commercial buildings must be designed by an architect. It is important to recognize that while the above statutes govern the practice of architecture, they do not purport to establish standards for construction of buildings. The penalties and enforcement provisions allow the Board to regulate only the unauthorized practice of architecture and unauthorized use of the title architect. These provisions do not address a situation where an individual or entity fails to hire a licensed architect.

Under § 37-65-103(4)(c), a person who designs and builds a residential building of less than eight units is exempted from the requirements of the chapter. This provision does not impose an affirmative duty upon a person to hire an architect if a residential building is built with eight or more units. Nor does it establish as a building code standard the requirement of an architect's seal. While the provisions of the chapter allow the prosecution and enjoining of individuals who engage in the unauthorized practice of architecture, the provisions do not proscribe penalties for anyone who fails to hire or use an architect. Thus, the Board's authority extends to the person performing the architectural services, not the person for whom those services are performed.

You also ask whether an owner who hires another person to design and build a building is subject to prosecution. Section 37-65-103(4)(d) exempts the planning, design, alteration, construction, repair or supervision of construction of a building by its owner if the building is not intended for public use.

This exemption does not encompass a situation where the owner hires another person to design and construct the building or where the owner hires someone to supervise the construction. As with the exemption in § 37-65-103(4)(c), this subsection does not impose an affirmative duty upon owners to construct all buildings with the service of an architect. It simply exempts such owners when they do the work themselves or supervise others in doing the construction. When an owner hires another person, then it is the person he hires who may be subject to regulation, depending upon

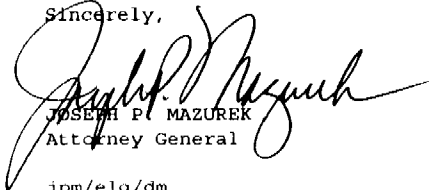
whether that person is engaged in the "practice of architecture" as defined in Mont. Code Ann. § 37-65-102(5).

I note that you have requested my opinion assuming that the Board of Architects "does not have the authority to interpret statutes within the rules of statutory construction" as would a court. Contrary to your assumption, under Mont. Code Ann. § 37-1-131, the Board is charged with the duty to "set and enforce standards and rules governing the licensing, certification, registration, and conduct" of the practice of architecture. The Board similarly has the ability to "adopt, amend, or repeal rules necessary for the implementation and enforcement" of title 37, chapter 65. Mont. Code Ann. § 37-65-204. These sections grant the Board the authority to interpret the statutes which they are to enforce through either rulemaking or the contested case process. Such rules and decisions are given deference by the courts. See Christenot v. State, Dep't of Commerce, 272 Mont. 396, 901 P.2d 545 (1995) (administrative agency's interpretation of statutes which it administers presumed controlling); Montana Dep't of Revenue v. Kaiser Cement Corp., 245 Mont. 502, 803 P.2d 1061, 1064 (1990) ("Reasonable constructions must be adopted if possible, with deference shown to the interpretation given to the statutes by the officers or agencies charged with its administration"); see also Chevron v. Natural Resources Defense, 467 U.S. 837 (1984) (the power of an agency to administer a program necessarily requires the formulation of policy). Agencies frequently construe the statutes they are charged with enforcing or administering. Such statutory construction is not the sole province of the courts or of this office.

THEREFORE, IT IS MY OPINION:

The Board of Architects has the authority to regulate the practice of architecture as well as the use of the title "architect" or use of other words implying the practice of architecture.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/elg/dm

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition) NOTICE OF PETITION FOR
for declaratory ruling on the) DECLARATORY RULING
application of sections)
37-19-301 and 37-19-101(13),)
MCA, to their pre-need funeral)
arrangement program in)
Montana)

TO: All Interested Persons:

1. On August 19, 1997, at 9:00 a.m., the Board of Funeral Service will hold a public hearing in the Professional and Occupational Licensing conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the petition for declaratory ruling on the matter of the sale of pre-need funeral arrangements by unlicensed persons.

2. Petitioners are seven funeral homes authorized to do business in the state of Montana. The seven Petitioners and their addresses are:

Livingston, Malletta & Geraghty
224 West Spruce
Missoula, MT 59802

Squire, Simmons & Carr
3035 Russell
Missoula, MT 59801

Sunset Memorial Funeral Home and Cemetery
7405 Mullan Road
Missoula, MT 59801

O'Connor Funeral Home
P.O. Box 2374
Great Falls, MT 59403

Chapel of Chimes
P.O. Box 3043
Great Falls, MT 59403

Gorder Funeral Home
P.O. Box 267
Choteau, MT 59422

Retz Funeral Home
315 East Sixth Avenue
Helena, MT 59601

3. The Petitioners are under common ownership and the pre-need program which is the subject of this Petition is substantially uniform with respect to each of the separate Petitioners.

4. As one segment of their funeral home operations, Petitioners offer "pre-need" funeral arrangement services to the general public. Under a pre-need arrangement, a person selects the type of funeral service, facilities, and merchandise he/she desires to be provided at death and may elect to pre-pay the cost of the arrangements chosen and thereby contractually bind the funeral home to provide the chosen arrangements at the time of his/her death.

5. All monies prepaid are held in trust according to the laws and regulations of the state of Montana.

6. The contractual pre-need arrangements are memorialized in two agreements denominated "Statement of Funeral Goods and Services Selected (Guaranteed Price)" and "American Funeral and Cemetery Trust Services Guaranteed Pre-Need Funeral Trust Agreement--Montana." True and correct specimens of these contracts are available at the office of the Board of Funeral Service, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513.

7. Under the specific "Cancellation and Refund" provision of the "American Funeral and Cemetery Trust Services Guaranteed Pre-Need Funeral Trust Agreement--Montana" either the Trustor or the Beneficiary may cancel the arrangement at any time and receive a refund of monies placed on deposit and accrued interest thereon. Further, upon the death of the Beneficiary, the next of kin retain the right to select a provider other than Petitioner's funeral home designated under the contract and have all monies in trust paid to the alternative provider.

8. In order to present and facilitate Petitioners' above-described pre-need program, Petitioners separately employ full-time professionals devoted exclusively to the pre-need program. Presently there are ten such professionals employed in Montana. These professionals are not licensed funeral directors. It is Petitioners' intent to fully present the nature, scope, and limits of these professionals' duties and authorities at hearing but for purposes of this Petition, set forth the following summary:

a. The background of prospective pre-need personnel are thoroughly investigated to determine fitness of character and general competence;

b. All pre-need personnel must complete Petitioners' initial training program and participate in continuing education programs thereafter;

c. The activities of all pre-need personnel are coordinated by Dennis Ralph, Advance Planning Group Sales Director, who is a licensed funeral director;

d. Each pre-need personnel is directly supervised by, and reports to, a designated licensed funeral director;

e. Inquiries from the public regarding pre-need services are generally directed to the pre-need personnel. Alternatively, the pre-need personnel may themselves initiate

contact with a prospective client of pre-need services. The meeting with the prospective client may take place either at the funeral home or at the client's home or office--whichever the client prefers;

f. All information and descriptions of services and merchandise to be presented by the pre-need personnel are formulated by Petitioners' licensed funeral directors;

g. All inquiries relating to matters outside the training and expertise of the pre-need personnel are directed to the supervising licensed funeral director; and

h. If a person states his/her desire to participate in a Petitioners' pre-need program, the pre-need personnel are trained and authorized to assist the client in selecting the services desired, filling out the agreements above-described and then having the client sign them. Thereafter all agreements are reviewed by a supervising licensed funeral director who, if he/she finds the agreement satisfactory, executes it on behalf of the funeral home. If, for any reason, the supervising, licensed funeral director is not satisfied with the services designated in the presented agreement then he/she follows up with the client before executing the agreement. The supervising licensed funeral director is, in all cases, responsible for and answerable to the client named on any agreement signed by that supervisor.

9. The issue presented by this Petition is:

a. Whether Petitioners' pre-need program complies with Montana law to the extent that it utilizes non-licensed personnel under the direct supervision of a licensed funeral director as above-described.

10. The relief requested is that the issue presented be answered in the affirmative.

11. Petitioners are aware of no Montana statute or regulation which prohibits Petitioners' activities as described in this Petition. To Petitioners' knowledge the relevant statutes are these:

Montana Code Annotated Section 37-19-301:

Funeral director's license -- renewal -- fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited.

Montana Code Annotated Section 37-19-101:

Definition. Unless the context requires otherwise, in this chapter, the following definitions apply:

(13) "Funeral directing" includes:

(a) supervising funerals, including the making of preneed or at-need contractual arrangements for funerals;

12. It is Petitioners' position that the above quoted statute's definition of "funeral directing" is clear on its face in permitting the activities described in this Petition provided they are performed under adequate supervision of a licensed funeral director.

13. It is further Petitioners' position that Petitioners' pre-need personnel are not, in any event, employed in "the making of pre-need ... contractual arrangements" because the pre-need personnel are not authorized to, and do not, execute the completed contract forms on behalf of Petitioners.

14. All funeral homes, cemeteries, and crematoriums in Montana may be affected by and therefore interested in this Petition.

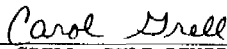
15. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., August 9, 1997, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Funeral Service, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5433; 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 Cheryl Smith.

16. 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 Funeral Service, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than the close of hearing, August 19, 1997.

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

BOARD OF FUNERAL SERVICE
DOUG LOWRY, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, July 7, 1997.

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, 1997. This table includes those rules adopted during the period April 1, 1997 through June 30, 1997 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, 1997, 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 1996 and 1997 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.

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(Board of Dentistry)

8.16.402 and other rules - Dentists - Dental Hygienists -
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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in June 1997, appear. Vacancies scheduled to appear from August 1, 1997, through October 31, 1997, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 1997.

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

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Oil and Gas Conservation (Natural Resources and Conservation)			
Mr. David Ballard	Governor	reappointed	6/11/1997
Billings			1/1/2001
Qualifications (if required):	represents oil and gas industry		
Mr. George Galuska	Governor	reappointed	6/11/1997
Billings			1/1/2001
Qualifications (if required):	represents oil and gas industry		
Mr. Allen C. Kolstad	Governor	Feiland	6/11/1997
Chester			1/1/2001
Qualifications (if required):	public member		
Mr. Stanley Lund	Governor	reappointed	6/11/1997
Reserve			1/1/2001
Qualifications (if required):	public member		
Board of Regents of Higher Education (Education)			
Mr. Jason Thielman	Governor	Green	6/1/1997
Missoula			6/1/1998
Qualifications (if required):	student representative		
Building Codes Advisory Council (Commerce)			
Ms. Linda Cockhill	Director	reappointed	6/1/1997
Helena			6/1/1999
Qualifications (if required):	public member		
Mr. Richard Grover	Director	reappointed	6/1/1997
Missoula			6/1/1999
Qualifications (if required):	Board of Plumbers		

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Building Codes Advisory Council (Commerce) Cont.			
Mr. Robert J. Karhu	Director	Whitney	6/1/1997
Helena			6/1/1999
Qualifications (if required): architect			
Mr. Robert C. McKenna	Director	Eberling	6/1/1997
Helena			6/1/1999
Qualifications (if required): engineer			
Ms. Kim Palmieri	Director	Kerzman	6/1/1997
Billings			6/1/1999
Qualifications (if required): municipal building officials			
Mr. Evan Peacock	Director	Todd	6/1/1997
Helena			6/1/1999
Qualifications (if required): building contractor			
Mr. Robert Ross	Director	reappointed	6/1/1997
Kalispell			6/1/1999
Qualifications (if required): home builder			
Mr. Mike Skinner	Director	Cape	6/1/1997
Helena			6/1/1999
Qualifications (if required): mobile homes			
Mr. Bruce Suenram	Director	reappointed	6/1/1997
Helena			6/1/1999
Qualifications (if required): state fire marshal			
Mr. Joe F. Wolfe	Director	Allen	6/1/1997
Helena			6/1/1999
Qualifications (if required): State Electrical Board			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Library Services Advisory Council (State Library)			
Ms. Peggy Bloom	Governor	not listed	6/20/1997
Missoula			6/20/1999
Qualifications (if required):	representing library users from western Montana		
Mr. Bill Cochran	Governor	not listed	6/20/1997
Billings			6/20/1999
Qualifications (if required):	representing the Montana Library Association		
Ms. Lynn Donvan	Governor	not listed	6/20/1997
Sidney			6/20/1999
Qualifications (if required):	representing school libraries		
Ms. Delores Drennen	Governor	not listed	6/20/1997
Miles City			6/20/1999
Qualifications (if required):	representing public libraries		
Mr. Duran DuBoise	Governor	not listed	6/20/1997
Butte			6/20/1999
Qualifications (if required):	representing persons unable to use traditional library services		
Ms. Lois Fitzpatrick	Governor	not listed	6/20/1997
Helena			6/20/1999
Qualifications (if required):	representing academic libraries		
Rep. Linda McCulloch	Governor	not listed	6/20/1997
Missoula			6/20/1999
Qualifications (if required):	representing the Montana Legislature		

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Library Services Advisory Council (State Library) Cont.			
Mr. Wes Plann	Governor	not listed	6/20/1997
Terry			6/20/1999
Qualifications (if required):	representing library users from eastern Montana		
Ms. Gloria Wahl	Governor	not listed	6/20/1997
Lewistown			6/20/1999
Qualifications (if required):	representing library users from central Montana		
Petroleum Tank Release Compensation Board (Environmental Quality)			
Mr. Tim Hornbacher	Governor	Tschache	6/30/1997
Helena			6/30/2000
Qualifications (if required):	service station dealer		
Ms. Mary Ann Sharon	Governor	Savage	6/30/1997
Dillon			6/30/2000
Qualifications (if required):	public member		
Western Interstate Commission on Higher Education (Education)			
Dr. Richard A. Crofts	Governor	reappointed	6/19/1997
Helena			6/19/2001
Qualifications (if required):	educator engaged in the field of higher education		
Youth Justice Council (Justice)			
Judge Gary Acevedo	Governor	not listed	6/10/1997
Pablo			6/10/1999
Qualifications (if required):	representing the judiciary and Native American concerns		
Mr. Craig Anderson	Governor	not listed	6/10/1997
Glendive			6/10/1999
Qualifications (if required):	representing probation services		

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) Cont.			
Rep. Ernest Bergsagel	Governor	not listed	6/10/1997
Malta			6/10/1999
Qualifications (if required):	representing the Montana legislature		
Judge Marc George Buyske	Governor	not listed	6/10/1997
Shelby			6/10/1999
Qualifications (if required):	representing the judiciary		
Captain Kevin Clader	Governor	not listed	6/10/1997
Missoula			6/10/1999
Qualifications (if required):	representing law enforcement		
Mr. Rick Day	Governor	not listed	6/10/1997
Helena			6/10/1999
Qualifications (if required):	representing correctional services		
Ms. Gail Gray	Governor	not listed	6/10/1997
Helena			6/10/1999
Qualifications (if required):	representing educational services		
Mr. Allen Horsfall, Jr.	Governor	not listed	6/10/1997
Hamilton			6/10/1999
Qualifications (if required):	representing a public agency concerned with detention services		
Mr. Hank Hudson	Governor	not listed	6/10/1997
Helena			6/10/1999
Qualifications (if required):	representing a public agency concerned with delinquency prevention		

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) Cont.			
Ms. Jani McCall	Governor	not listed	6/10/1997
Billings			6/10/1999
Qualifications (if required): representing non-profit organizations concerned with mental services			
Mr. Steven Nelsen	Governor	not listed	6/10/1997
Bozeman			6/10/1999
Qualifications (if required): representing private non-profit organizations concerned with delinquency prevention and treatment			
Ms. Ellin Nessel	Governor	not listed	6/10/1997
Bozeman			6/10/1999
Qualifications (if required): representing non-profit organizations concerned with youth development			
Mr. Nate Schwebber	Governor	not listed	6/10/1997
Missoula			6/10/1999
Qualifications (if required): representing youth			
Ms. Sally K. Stansberry	Governor	not listed	6/10/1997
Missoula			6/10/1999
Qualifications (if required): representing private non-profit organization concerned with delinquency prevention and alternatives to incarceration			

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Health Care Board (Commerce)		
Ms. Ollie Hamilton, Great Falls	Governor	9/1/1997
Qualifications (if required): direct entry midwife		
Dr. Nancy Dunne, Missoula		
Qualifications (if required): naturopath	Governor	9/1/1997
Ms. Dolly Browder, Missoula		
Qualifications (if required): direct entry midwife	Governor	9/1/1997
Apprenticeship Training Council (Corrections)		
Mr. Rick Day, Helena	Director	8/1/1997
Qualifications (if required): none specified		
Mr. Riley Johnson, Helena		
Qualifications (if required): none specified	Director	8/1/1997
Mr. Gary Curtis, Helena		
Qualifications (if required): none specified	Director	8/1/1997
Mr. Ed Leipheimer, Anaconda		
Qualifications (if required): none specified	Director	8/1/1997
Ms. Ingrid Danielson, Helena		
Qualifications (if required): none specified	Director	8/1/1997
Ms. Candace Neubauer, Deer Lodge		
Qualifications (if required): none specified	Director	8/1/1997
Mr. Alan Kuoppala, Deer Lodge		
Qualifications (if required): none specified	Director	8/1/1997

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Apprenticeship Training Council (Corrections) Cont. Mr. Jack Powers, Deer Lodge Qualifications (if required): none specified	Director	8/1/1997
Mr. Ray Lincoln, Butte Qualifications (if required): none specified	Director	8/1/1997
Mr. David Watkins, Deer Lodge Qualifications (if required): none specified	Director	8/1/1997
Board of Medical Examiners (Commerce) Dr. Catherine Anne MacLean, Bozeman Qualifications (if required): public member	Governor	9/1/1997
Mr. Randy L. Spear, Worden Qualifications (if required): licensed physician assistant-certified	Governor	9/1/1997
Ms. Linda Melick, Lewistown Qualifications (if required): licensed nutritionist	Governor	9/1/1997
Ms. Debby Barrett, Dillon Qualifications (if required): member of the public	Governor	9/1/1997
Dr. Daniel Charles Brooke, Miles City Qualifications (if required): doctor of medicine	Governor	9/1/1997
Board of Outfitters (Commerce) Mr. Robin Cunningham, Gallatin Gateway Qualifications (if required): representative of District 2	Governor	10/1/1997
Mr. Paul Roos, Helena Qualifications (if required): representative of District 1	Governor	10/1/1997

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Private Security Patrol Officers and Investigators (Commerce)		
Mr. Jeffrey "Jeff" T. Patterson, Missoula	Governor	8/1/1997
Qualifications (if required): licensed private investigator		
Mr. David C. Ward, Billings	Governor	8/1/1997
Qualifications (if required): represents city police department		
Sheriff Lee Edmisten, Virginia City	Governor	8/1/1997
Qualifications (if required): represents county sheriff's department		
Board of Psychologists (Commerce)		
Pastor Jeff Olsgaard, Rudyard	Governor	9/1/1997
Qualifications (if required): public member		
Flathead Basin Commission (Governor)		
Ms. Elna Darrow, Bigfork	Governor	10/1/1997
Qualifications (if required): public member		
Mr. Larry Wilson, Columbia Falls	Governor	10/1/1997
Qualifications (if required): public member		
Food and Nutrition Advisory Council (Health and Environmental Sciences)		
Ms. Nonie Woolf, Browning	Governor	8/30/1997
Qualifications (if required): Native American representative		
Ms. Bonnie McElroy, Helena	Governor	8/30/1997
Qualifications (if required): representative of the Department of Social and Rehabilitation Services		
Ms. Connie Townsend, White Sulphur Springs	Governor	8/30/1997
Qualifications (if required): representative of the public knowledgeable in food and nutrition		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Historic Preservation Review Board</u> (Historical Society) Dr. Arnold Olsen, Helena Qualifications (if required): represents federal land and water conservation interests	Governor	10/1/1997
Ms. Gloria J. Weisgerber, Missoula Qualifications (if required): public member	Governor	10/1/1997
<u>Indian Burial Preservation Board</u> (Commerce) Mr. David Schwab, Helena Qualifications (if required): representing the Montana Historical Preservation Office	Governor	8/22/1997
Dr. Randall Skelton, Missoula Qualifications (if required): anthropologist	Governor	8/22/1997
Mr. Francis Auld, Elmo Qualifications (if required): representing the Salish Kootenai Tribe	Governor	8/22/1997
Rep. Jay Stovall, Billings Qualifications (if required): representing the public	Governor	8/22/1997
Mr. Carl Fourstar, Poplar Qualifications (if required): representing the Assiniboine Tribe	Governor	8/22/1997
Mr. Clarence "Curly Bear" Wagner, Browning Qualifications (if required): representing the Blackfeet Tribe	Governor	8/22/1997
<u>Noxious Weed Seed Free Advisory Council</u> (Agriculture) Mr. Robert Carlson, Butte Qualifications (if required): weed districts	Director	9/17/1997
Ms. Marjorie Schuler, Carter Qualifications (if required): livestock/agriculture	Director	9/17/1997

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Forage Advisory Council	(Agriculture) Cont.	
Mr. Kerry Kovanda, Columbus	Director	9/17/1997
Qualifications (if required): forage producer		
Regional Correctional Facility Advisory Council	(Corrections)	
Mr. Robert W. Anderson, Helena	Governor	8/1/1997
Qualifications (if required): none specified		
Mr. John DeVore, Missoula	Governor	8/1/1997
Qualifications (if required): none specified		
Rep. Ernest Bergsagel, Malta	Governor	8/1/1997
Qualifications (if required): none specified		
Lieutenant Jim Cashell, Bozeman	Governor	8/1/1997
Qualifications (if required): none specified		
Mr. Myron Beeson, Deer Lodge	Governor	8/1/1997
Qualifications (if required): none specified		
Mr. Ralph DeCunzo, Helena	Governor	8/1/1997
Qualifications (if required): none specified		
Mr. John E. Kahl, Glendive	Governor	8/1/1997
Qualifications (if required): none specified		
Captain Dennis McCabe, Billings	Governor	8/1/1997
Qualifications (if required): none specified		
Mr. Mike Gersack, Great Falls	Governor	8/1/1997
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Regional Correctional Facility Advisory Council (Corrections) Cont.		
Ms. Ginger Faber, Havre	Governor	8/1/1997
Qualifications (if required): none specified		
Mr. John Strandell, Great Falls		
Qualifications (if required): none specified	Governor	8/1/1997
Captain Mike O'Hara, Missoula		
Qualifications (if required): none specified	Governor	8/1/1997
Swan River Correctional Training Center Advisory Council (Corrections)		
Ms. Diane Tripp, Missoula	Director	8/1/1997
Qualifications (if required): none specified		
Mr. Grant Holle, Bigfork		
Qualifications (if required): none specified	Director	8/1/1997
Ms. Nancy Brosten, Swan Lake		
Qualifications (if required): none specified	Director	8/1/1997
Ms. Terry McLeod, Swan Lake		
Qualifications (if required): none specified	Director	8/1/1997
Rep. Bob Keenan, Bigfork		
Qualifications (if required): none specified	Director	8/1/1997
Ms. June Smith, Swan Lake		
Qualifications (if required): none specified	Director	8/1/1997
Mr. George Field, Bigfork		
Qualifications (if required): none specified	Director	8/1/1997

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Swan River Correctional Training Center Advisory Council	(Corrections) Cont.	8/1/1997
Mr. Jefferson Jones, Swan Lake	Director	
Qualifications (if required): none specified		
Mr. Robert Parcell, Condon	Director	8/1/1997
Qualifications (if required): none specified		
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences)	Governor	10/16/1997
Mr. Robert Cottom, Dillon		
Qualifications (if required): water treatment operator		
Wheat and Barley Committee (Agriculture)	Governor	8/20/1997
Mr. Larry Barber, Coffee Creek	Governor	
Qualifications (if required): republican representing District V		
Mr. Stephen P. McDonnell, Three Forks	Governor	8/20/1997
Qualifications (if required): democrat representing District VI		
Mr. Duane Arneklev, Plentywood	Governor	8/20/1997
Qualifications (if required): democrat representing District I		
Workforce Preparation Coordinating Council (Labor and Industry)	Governor	9/7/1997
Ms. Jane DeLong, Helena		
Qualifications (if required): representing business		
Mr. David Owen, Helena	Governor	9/7/1997
Qualifications (if required): representing business		
Ms. Carol Murray, Browning	Governor	9/7/1997
Qualifications (if required): representing local education		
Ms. Barbara Campbell, Deer Lodge	Governor	9/7/1997
Qualifications (if required): representing business		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Workforce Preparation Coordinating Council (Labor and Industry) Cont.		
Ms. JoEllen Estenson, Columbia Falls	Governor	9/7/1997
Qualifications (if required): representing local education		
Rep. Bob Gilbert, Sidney	Governor	9/7/1997
Qualifications (if required): public member		
Ms. Diane R. Ruff, Billings	Governor	9/7/1997
Qualifications (if required): representing business		
Mr. Don Judge, Helena	Governor	9/7/1997
Qualifications (if required): representing organized labor		
Superintendent Nancy Keenan, Helena	Governor	9/7/1997
Qualifications (if required): representing state government		
Ms. Helen Kellicut, Deer Lodge	Governor	9/7/1997
Qualifications (if required): representing business		
Mr. Jim Hollenback, West Superior	Governor	9/7/1997
Qualifications (if required): representing community based organizations		
Mr. Dennis Lerum, Missoula	Governor	9/7/1997
Qualifications (if required): representing local education		
Mr. Bob Marks, Clancy	Governor	9/7/1997
Qualifications (if required): representing business		
Mr. Jon Oldenburg, Lewistown	Governor	9/7/1997
Qualifications (if required): representing business		
Ms. Felicity McFerrin, Helena	Governor	9/7/1997
Qualifications (if required): representing organized labor		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1997 through OCTOBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Workforce Preparation Coordinating Council (Labor and Industry) Cont. Mr. Gordon Morris, Helena	Governor	9/7/1997
Qualifications (if required): representing local government		
Sen. Mignon Waterman, Helena	Governor	9/7/1997
Qualifications (if required): public member		