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MONTANA ADMINISTRATIVE REGISTER

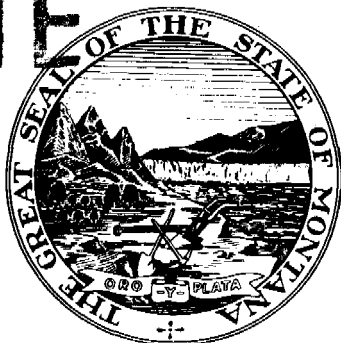
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF RULES PERTAINING TO HORSE
to parimutuel wagering, fees) RACING
and permissible medication)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 23, 1997, the Board of Horse Racing proposes to amend ARM 8.22.502, 8.22.503 and 8.22.1402 pertaining to parimutuel wagering, fees and permissible medication.

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

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (17)(e) will remain the same.

~~(f) one or more patrol judges;~~
(g) through (j) will remain the same, but will be renumbered (f) through (i).

(18) through (19)(a) will remain the same.

~~(b) a parimutuel manager or money room manager;~~

~~(e) (b) parimutuel employees; and~~

~~(d) a chief of security;~~

(e) will remain the same, but will be renumbered (c).

(20) through (50) will remain the same."

Auth: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA;
IMP, Sec. 23-4-104, 23-4-201, 23-4-202, MCA

REASON: The proposed amendment to (17)(f) will delete the requirement for the tracks to have a patrol judge in place at live meets. The current practice of having a video camera on that portion of the track has made this minor official unnecessary. This will eliminate an unnecessary expense for the tracks in not having to hire these officials.

The proposed amendment to (19)(b) and (d) will delete the requirements for simulcast sites to have a chief of security and parimutuel manager. The director of the simulcast facility is responsible for both these other positions as well, and is usually the same person handling all three jobs. The amendment will eliminate an unnecessary expense for the sites in not having to hire or license these officials separately.

"8.22.503 ANNUAL LICENSE FEES The following fees shall be charged annually:

(1) through (14)(d) will remain the same.

~~(e) Patrol judge~~

20-00

(f) through (p) will remain the same, but will be renumbered (e) through (o).

(15) through (16)(t) will remain the same.

~~(u) Parimutuel manager or money room 30.00~~
~~manager at simulcast facilities~~

~~(v) Chief of security at simulcast facilities 35.00~~

(w) through (aa) will remain the same, but will be renumbered (u) through (y).

(17) will remain the same."

Auth: Sec. 23-4-104, 23-4-201, 37-1-134, MCA; IMP, Sec. 23-4-104, 23-4-201, 37-1-134, MCA

REASON: The proposed amendment will implement changes described in 8.22.502 above.

"8.22.1402. PERMISSIBLE MEDICATION (1) through (6) will remain the same.

(7) A horse which, during a race or following a race, or which, during exercise or following exercise, is found to be hemorrhaging from one or both nostrils or is found to have bled into its trachea as determined by endoscopic examination is eligible to be placed on a bleeder the medication list and treated on race day to prevent bleeding during its race. In order to obtain authorization for race day treatment of the bleeder, the horse's trainer must obtain a certificate of examination from the state veterinarian or a practicing veterinarian and have the horse placed on the official bleeder medication list. The state veterinarian must establish that the horse did in fact hemorrhage from one or both nostrils or that an endoscopic examination showed observable amounts of free blood in the horse's respiratory tract. When confirmed by the state veterinarian, the horse ~~shall may~~ be placed on the bleeder medication list which is maintained by the state veterinarian and the stewards. Once on the medication list, a horse may be removed from the bleeder medication list by the trainer after 30 days. A horse removed from the bleeder medication list cannot be put back on ~~said the~~ list for a period of 30 days, and only then after being determined to bleed after a race or work as witnessed by the state veterinarian or a practicing veterinarian, or through endoscopic examination. Bleeder Medication lists will apply to horses listed at all tracks on a statewide basis.

(a) Horses on the current year's bleeder medication list leaving Montana to race in another jurisdiction which does not allow the use of furosemide (lasix) will assume their place back on the bleeder medication list upon returning to Montana.

(b) Horses certified as EIPH positive in another jurisdiction and not having run without furosemide (lasix) up until the time they race in Montana will automatically be placed on the Montana bleeder medication list, with the out-of-state certificate stating EIPH positive, year, and state name.

(8). Horses observed or certified to have bled during or after racing or exercise will be automatically put on a "bleeder's list." This list will be maintained by the state

veterinarian and steward and will require that a horse bleeding for the first time will be ineligible to enter a race for a period of 10 days after the bleeding incident. Horses which are placed on the bleeder's list following a second incident of bleeding will be ineligible to enter a race for a period of 20 days after the second incident. Horses which are placed on the bleeder's list following a third or greater incident of bleeding will be ineligible to enter a race for a period of 60 days after the third or greater incident. After the 60-day ineligibility period, a horse may become eligible to enter only after consultation with the state veterinarian and authorization by the state veterinarian.

~~(8)~~ (9) A horse on a bleeder medication list cannot be treated within four hours prior to post time with furosemide (lasix). No other medication may be administered for bleeder treatment. Bleeder medication must be administered in the manner approved by the state veterinarian. Oral administration of furosemide (lasix) is not permitted for such purpose. Permitted bleeder medication shall be administered by the horse's regular veterinarian. Such administration may be performed at the trainer's barn.

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

(9) through (12) will remain the same, but will be renumbered (10) through (13).

~~(13)~~ (14) If phenylbutazone or furosemide (lasix) are is not detected in the urine or in any other specimen taken from a horse authorized to be on limited medication, then the trainer of record shall be subject to such penalties deemed appropriate by the stewards as to protect the integrity of the racing industry.

(14) and (15) will remain the same, but will be renumbered (15) and (16).

~~(16)~~ If any horse is found to be unattended during the period between the time of medication and the time of the race or found to have been tampered with during that time, the trainer will be deemed negligent in performing his duties.

(17) through (19) will remain the same.

(20) A fee approved by the board will be assessed against each horse on the medication list before the horse is allowed to run. Phenylbutazone fees will be held by the board to be used for costs associated with annual organization and presentation of racing industry seminars put on by the board. All other medication fees will be retained by divided between the track and the board for administration and regulation of this rule. The fee will be used to offset additional testing costs, veterinarian costs and board regulation costs."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment to (7) will bring Montana in line with most other racing jurisdictions which require time off from racing when on the medication list.

The proposed amendment to (13) will also standardize the Montana rule with other jurisdictions which have no minimum

amount of bute which must be present in a horse's system, just a maximum. A level of bute which is too high will affect performance, but a level which is too low will not affect performance.

Subsection (16) will be deleted, as the current trainer responsibility rule already covers a trainer's responsibility for any problems with the horses. The current language imposes an undue hardship in requiring constant attendance with the horses. The rule is also difficult to enforce.

Other proposed amendments are to clarify language and delete the requirement of board-approved racing industry seminars which the board budget can no longer support.

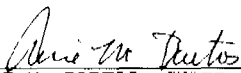
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Horse Racing, 1424 - 9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4305, to be received no later than 5:00 p.m., April 21, 1997.

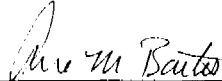
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Horse Racing, 1424 - 9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4305, to be received no later than 5:00 p.m., April 21, 1997.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 70 based on the 700 licensees in Montana.

BOARD OF HORSE RACING
JAMES SCOTT, DVM, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 10, 1997.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF ARM 8.39.512 LICENSURE -
to licensure - inactive and) INACTIVE AND 8.39.518
fees) LICENSURE--FEES FOR OUTFITTER,
) OPERATIONS PLAN AND GUIDE OR
) PROFESSIONAL GUIDE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 23, 1997, the Board of Outfitters proposes to amend the above-stated rules.

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

"8.39.512 LICENSURE - INACTIVE (1) and (2) will remain the same.

(3) Outfitters on inactive status may not book or serve clients, and are subject to all requirements applicable to outfitters licensed on active status, other than those relating to insurance and current basic first aid card."

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

REASON: The Board has determined that there is no risk to the public if outfitters on inactive status do not have a current first aid card, as they cannot provide outfitting services to clients while on inactive status.

"8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN AND GUIDE OR PROFESSIONAL GUIDE (1) through (f)(i) will remain the same.

~~(ii) late renewal penalty~~

25

(iii) will remain the same, but will be renumbered (ii)."

Auth: Sec. 37-1-131, 37-1-134, 37-47-201, 37-47-303, 37-47-304, 37-47-306; IMP, Sec. 37-1-134, 37-47-303, 37-47-304, 37-47-306, 37-47-307, MCA

REASON: Guides often do not know if they are going to need a license until after April 1. Therefore, to accommodate these individuals, the Board is providing an opportunity to apply at a later date and not be penalized.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Outfitters, 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., April 21, 1997.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Outfitters, 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., April 21, 1997.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 191 based on the 1914 licensees in Montana.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 10, 1997.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF ARM 8.57.411 CONTINUING
to continuing education) EDUCATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 23, 1997, the Board of Real Estate Appraisers proposes to amend the above-stated rule.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.57.411 CONTINUING EDUCATION (1) through (3) will remain the same.

(4) Licensees, upon every third renewal, shall provide evidence to the board of having completed at least 45 hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to the Uniform Standards of Professional Appraisal Practice.

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

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-210, 37-54-310, MCA

REASON: The amendment is being proposed to implement the standards established by the Financial Institution Reform, Recovery and Enforcement Act of 1989.

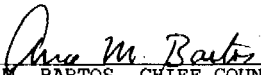
3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Real Estate Appraisers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., April 21, 1997.


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 Real Estate Appraisers, 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., April 21, 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 43 based on the 428 licensees in Montana.

BOARD OF REAL ESTATE APPRAISERS
A. FARRELL ROSE, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 10, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | | |
|----------------------------------|---|--------------|
| In the matter of the adoption of |) | SUPPLEMENTAL |
| new rule I regarding temporary |) | NOTICE |
| water standards for Daisy Creek, |) | |
| Stillwater River, Fisher Creek, |) | |
| and the Clark's Fork of the |) | |
| Yellowstone River. |) | |

(Water Quality)

To: All Interested Persons

1. On August 24, 1995, on page 1652 of the 1995 Montana Administrative Register, Issue No. 16, and October 26, 1995, on page 2211 of the 1995 Montana Administrative Register, Issue No. 20, the Board gave notice of a proposed rule to establish temporary water quality standards for four streams or stream segments near Cooke City. At the December 7, 1995, hearing, commenting parties disagreed whether the rule should be adopted. The Board requested several of the parties to engage in discussions to reach a mutually acceptable resolution of the issues. The parties negotiated with the goal of agreeing on a consent decree to be entered in an enforcement action filed by the Department of Environmental Quality. On April 25, 1996, on page 1049 of the 1996 Montana Administrative Register, Issue No. 8, and in anticipation that the parties would reach agreement on a consent decree, the Board published a notice of supplemental comment period. In that notice, the Board asked the public to comment on whether the Board should adopt temporary standards or allow the matter to be resolved by entry of the consent decree. However, the parties did not reach agreement on a consent decree before the close of the supplemental comment period on June 24, 1996.

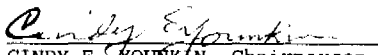
On August 12, 1996, Crown Butte Mines, Inc., the United States Department of Justice, and a number of public interest groups entered an agreement whereby the parties agreed to pursue an exchange of Crown Butte's mining property, which is located in the drainages to which this rulemaking pertains, for federal land at another location or locations. In the agreement the parties also committed to negotiate in good faith the terms of a consent decree, to be entered in a federal court action, that would require environmental response and/or restoration actions on these drainages. The parties anticipate that temporary standards could be beneficial to allow the remediation or restoration to occur.

On October 3, 1996, at page 2502 of the 1996 Montana Administrative Register, Issue No. 19, the Board, in anticipation that a consent decree would be negotiated in early 1997, reopened the comment period

to allow the public the opportunity to comment on whether the consent decree eliminates the need for temporary standards. That comment period closed on March 20.

Although negotiations have been ongoing, a consent decree has not been negotiated. It is not possible to predict when agreement will be reached. The Board is therefore suspending action in this matter pending completion of the negotiations. When negotiations have been completed, the Board will issue another supplemental notice and reopen the comment period. The Board anticipates that a supplemental notice will be issued no later than September 22, 1997.

BOARD OF ENVIRONMENTAL REVIEW


CINDY E. YOUNKIN, Chairperson

Reviewed by:


JOHN F. NORTH
Rule Reviewer

Certified to the Secretary of State March 10, 1997.

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

| | | |
|-----------------------------|---|--------------------|
| In the matter of the |) | NOTICE OF PROPOSED |
| amendment of rule 23.14.801 |) | AMENDMENT |
| to include a definition of |) | |
| "Uncertifiable Officer" |) | NO PUBLIC HEARING |
| |) | CONTEMPLATED |

TO: All Interested Persons

1. On May 1, 1997, the Montana Board of Crime Control proposes to amend rule 23.14.801 to include a definition of "uncertifiable officer".

2. The rule proposed to be amended will provide as follows:

23.14.801 DEFINITIONS (1) through (10) will remain the same.

(1) "Uncertifiable officer" means a peace officer, as defined in 7-32-303, MCA, detention officer, detention center administrator, or public safety communications officer, who:

(a) has completed the basic course or basic equivalency referred to in 7-32-303(5), MCA, but does not possess his or her basic certificate, as described in ARM 23.14.405;

(b) has been the object of a complaint filed pursuant to ARM Title 23, Chapter 14, Sub-Chapter 8;

(c) has been afforded the process which is due under law; and

(d) has been found to be subject to suspension or revocation pursuant to ARM Title 23, Chapter 14, Sub-chapter 8.

AUTH: 44-4-301, MCA IMP: 44-4-301 & 7-32-303, MCA


3. RATIONALE: The board finds this rule necessary in order to prevent certain persons from continuing in law enforcement after they have been found subject to suspension or revocation of their Montana Peace Officers' Standards and Training (POST) certification. Because there is no scheme for automatically identifying law enforcement officers who have been decertified, unscrupulous persons may continue to seek employment in law enforcement after being decertified. This defeats the purpose of 1993 Mont. Laws, Ch. 437, which authorized the Board to develop procedures for revoking or suspending the certification of Montana peace officers, with the aim of proscribing those persons from law enforcement in Montana.

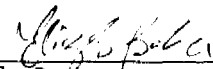
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Rob Smith, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620, to be received no later than May 1, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Rob Smith, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620. A written request for hearing must be received no later than May 1, 1997.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5 persons, based on the post council's estimate of the number of peace officers that do not possess basic POST certificates.

MONTANA BOARD OF CRIME CONTROL:

By: 
Ellis E. Kiser, Executive Director


Rule Reviewer

Certified to the Secretary of State March 10, 1997.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) NOTICE OF AMENDMENT, REPEAL
repeal and adoption of rules) AND ADOPTION OF RULES PER-
pertaining to the practice of) TAINING TO THE PRACTICE OF
psychology) PSYCHOLOGY

TO: All Interested Persons:

1. On January 16, 1997, the Board of Psychologists published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of psychology, at page 3, 1997 Montana Administrative Register, issue number 1.

2. The Board has amended ARM 8.52.402, 8.52.603A, 8.52.701 and 8.52.702; repealed ARM 8.52.401, 8.52.403, 8.52.404, 8.52.405, 8.52.406, 8.52.601, 8.52.612, 8.52.614 and 8.52.615 and adopted new rules I (8.52.622) and II (8.52.623) exactly as proposed. The Board has amended ARM 8.52.609 and 8.52.617 as proposed, but with the following changes:

"8.52.609 LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS (1) will remain the same as proposed.

(2) Persons seeking a license on the basis of having been examined and then issued a license by another state or Canadian jurisdiction shall submit to the board information concerning the nature of the prior examination with their completed application forms. The information shall be evaluated by the board, which may request additional information before making a decision to waive the written examination. The qualifications of the candidate must be verified by the board as at least substantially equivalent to the current requirements of the state of Montana.

(3) through (5) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-1-304, 37-17-304

"8.52.617 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of ~~37-17-311(e)~~ 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) through (2)(a) will remain the same as proposed.

(b) engaging in sexual intimacies with a former professional services patient or client ~~for at least~~ within two years after termination of professional services. The psychologist who engages in such activity after the two years following termination of professional services bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors including:

(b)(i) through (21) will remain the same as proposed."

Auth: Sec. ~~37-1-131~~, ~~37-1-319~~, ~~37-17-202~~, MCA; IMP, Sec. ~~37-1-316~~, ~~37-1-319~~, ~~37-17-311~~, MCA

3. The Board accepted written comment through February 13, 1997. No written comment from the public was received. The Board noted the following comments:

COMMENT: The Board noted that ARM 8.52.609(2) did not contain consistent language with the previous subsection, and thus could be confusing or misleading to the endorsement applicants. The Board therefore added the word "current" to subsection (2) to make the rule language internally consistent.

RESPONSE: The Board has amended the rule as shown above.

COMMENT: The Board noted that ARM 8.52.617(2) (b) contained language which was not clear in its intent, and could be misinterpreted in disciplinary actions under this unprofessional conduct rule. The Board therefore changed the phrase "for at least" to "within."

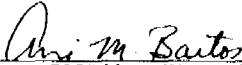
RESPONSE: The Board has amended the rule as shown above.

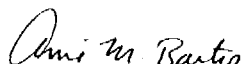
COMMENT: The Board noted that ARM 8.52.617 contained an incorrect citation to 37-17-311, MCA, in its introductory sentence. Section 37-17-311, MCA, has been repealed. The correct citation should be 37-1-316, MCA. The implementing sections should also be changed to add 37-1-316 and delete another reference to 37-17-311, MCA.

RESPONSE: The Board has amended the rule and the implementing sections as shown above.

BOARD OF PSYCHOLOGISTS
JEFF OLSGAARD, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 10, 1997.

| | |
|------------------------------------|-----------------------------|
| In the matter of the amendment,) | NOTICE OF AMENDMENT, REPEAL |
| repeal and adoption of rules) | AND ADOPTION OF RULES PER- |
| pertaining to public accountants) | TAINING TO PUBLIC |
|) | ACCOUNTANTS |

1. On November 21, 1996, the Board of Public Accountants published a notice of proposed amendment, repeal and adoption of rules pertaining to public accountants at page 3018, 1996 Montana Administrative Register, issue number 22.

2. The Board has amended ARM 8.54.402, 8.54.403, 8.54.408, 8.54.410, 8.54.411, 8.54.415, 8.54.416, 8.54.617, 8.54.702, 8.54.703, 8.54.809, 8.54.904 and 8.54.906; repealed ARM 8.54.615, 8.54.704 and 8.54.705; and adopted new rules I (8.54.706), II (8.54.707) and III (8.54.418) exactly as proposed. The Board has amended ARM 8.54.802 as proposed, but with the following changes:

(3) ~~As of July 1, 1998, at least four hours a portion of~~
the 120 hours of acceptable continuing education credit must
consist of knowledge and the application of board rules and how
board unprofessional conduct rules may compare and contrast
with the codes of professional conduct of certified public
accountant and licensed public accountant primary professional
organizations. These ~~four~~ hours are not considered subjects
related to the reporting on financial statements required in
(2) above.

Auth: Sec. 37-1-319, 37-50-201, MCA; IMP, Sec. 37-1-306,
MCA

3. The Board accepted written comment received by December 19, 1996. The Board has thoroughly considered all comments received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Two comments were received stating ARM 8.54.802, which proposes to mandate four hours of ethics for each three-year continuing education cycle overlooks the potential problem with accessibility to a course that meets the requirements. Instead, the comment suggested modification of the proposed language to include self-study or seminars on the Board's professional conduct rules in general if no changes have been made to the professional conduct rules in the preceding year.

RESPONSE: The Board noted that it is desirable to have knowledge of Board rules and professional conduct available to all licensees. The Society of Certified Public Accountants'

proposed changes are not appropriate changes, as they are too lengthy for the rule format, and create further administrative work for the Board staff in notification, tracking, etc. All licensees, if they are licensed in Montana, should review the Montana unprofessional conduct rules, as they are representing to the public they are knowledgeable on Montana laws and rules. Courses will be available to all licensees, no matter where they are located. The Board will, however, delete the "four hour" language, and allow only some portion of the CPE credits to be in the unprofessional conduct area.

COMMENT NO. 2: One comment was received stating CPE is acquired through the Journal of Accounting, which should be acceptable to the Board, but will not include unprofessional conduct CPE.

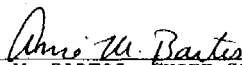
RESPONSE: The Board noted that all licensees will have to obtain Montana rules and unprofessional conduct courses from providers offering these courses. The rule change for reporting CPE on unprofessional conduct rules will not be in effect until the year 2000 reporting period. This will give each licensee three full years to have courses created and accessible to all licensees, wherever they are located.

COMMENT NO. 3: Three comments were received stating ARM 8.54.802(3) on CPE in ethics should not require four hours of CPE on Board rules, unless the Board will be offering the courses annually.

RESPONSE: The Board noted it does not provide CPE courses, and the proposed rule language did not state the courses would only be offered annually. Also, the Board has deleted the "four hour" language, which will make obtaining CPE hours on Board unprofessional conduct rules easier.

BOARD OF PUBLIC ACCOUNTANTS
JAMES SMRCKA, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 10, 1997.

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


In the matter of the amendment,) NOTICE OF AMENDMENT, REPEAL
repeal and adoption of rules) AND ADOPTION OF RULES PER-
pertaining to respiratory care) TAINING TO RESPIRATORY CARE
practitioners) PRACTITIONERS

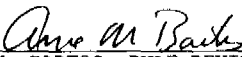
TO: All Interested Persons:

1. On January 16, 1997, the Board of Respiratory Care Practitioners published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of respiratory care at page 8, 1997 Montana Administrative Register, issue number 1.
2. The Board has amended ARM 8.59.402, 8.59.501, 8.59.502, 8.59.503, 8.59.505, 8.59.506, 8.59.602 and 8.59.702; repealed ARM 8.59.401, 8.59.504, 8.59.701 and 8.59.703; and adopted new rule I (8.59.507) exactly as proposed.
3. No comments or testimony were received.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICH LUNDY, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 10, 1997.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF
ARM 17.36.110 relating to the) EMERGENCY AMENDMENT
certification of plat approval.)

(Subdivisions)

To: All Interested Persons

1. On February 20, 1997, the Montana Supreme Court in Skinner Enterprises, Inc. et al. v. Lewis and Clark County Board of Health, et al., No. 96-043, held that county boards of health and county health officers have no authority to inspect or regulate the design or installation of septic systems that are subject to regulation under the Sanitation in Subdivision Act, Title 76, Chapter 4, Part 1, MCA. Prior to this ruling, most county health departments had required permits for and inspected septic systems during construction to ensure that they were installed correctly, and consequently the Department of Environmental Quality did not inspect these systems.

Although sections 76-3-501 and 76-3-504(6)(c), MCA, authorize county governing bodies to adopt sewage system regulations, which presumably could include inspection requirements, many counties have not done so. Although the Department has authority to inspect these systems, it does not have a budget or personnel to do so. Therefore, septic systems in those counties that have not adopted regulations pursuant to the Subdivision and Platting Act are not inspected by the state or local government before they are put in service.

Without inspections, some systems will not be installed in accordance with approved plans and specifications. Operation of septic systems that are not installed in compliance with approved plans and specifications may cause pollution of groundwater that is used as a source of drinking water. Construction season begins in March in some areas of the state. A permanent rule could not be effective until May 20. This creates an imminent peril to public health and welfare.

Therefore, in order to require inspections during the early part of the 1997 construction season, the department adopts the following emergency rule amendments. The amendments change ARM 17.36.110(1) to reflect the Supreme Court ruling. New section (2) requires a certification of proper installation to be filed with the Department for all parcels not subject to county regulation and inspection. This requirement provides the Department a means of monitoring compliance in lieu of state or local inspections.

2. The emergency rule amendments are effective March 18, 1997.

3. The text of the emergency rule amendment is as follows (new material is underlined; material to be deleted is interlined):

17.36.110 CERTIFICATION OF APPROVAL (1) A certificate of plat approval will be issued when ~~an approval statement from the local health officer or his designated representative has~~

been received, the requirements of the Montana Environmental Policy Act have been met and the department is satisfied that the following conditions will be met:

(a) sewage will not pollute water or endanger public health;

(b) the water supply will be adequate;

(c) solid waste disposal will be in accordance with applicable state laws and rules; and

(d) storm drainage will have proper drainage ways and the drainage will not pollute state waters.

(2)(a) Except as provided in (b), a person who owns or controls a parcel that has been created by a subdivision of land approved pursuant to Title 76, chapter 4, part 1, MCA, with an individual or multiple family sewage system shall cause the system to be inspected by a county sanitarian, registered sanitarian, or registered professional engineer during installation and shall, before commencing operation of the system, file with the department a certification by that sanitarian or engineer that the system has been installed in compliance with the plans and specifications approved by the department and any conditions of approval imposed by the department.

(b) Subsection (a) does not apply to a parcel in a county if:

(i) the county governing body has adopted sewage disposal regulations in compliance with 76-3-504, MCA;

(ii) those county regulations apply to the parcel; and

(iii) the county inspects the parcel and determines that the sewage system was installed in compliance with those county regulations.

AUTH: 76-4-104, MCA; IMP: 76-4-104, 76-4-125, MCA

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

5. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Bonnie Lovelace, Chief, Water Protection Bureau, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by 

CURT WHISHOLM, Deputy Director

Reviewed by


John F. North, Rule Reviewer

Certified to the Secretary of State March 10, 1997.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA


| | | |
|--------------------------------|---|--------------------|
| In the matter of the amendment |) | NOTICE OF |
| of rules 17.40.201 through 214 |) | AMENDMENT OF RULES |
| revising water and waste water |) | |
| operator certification rules |) | |

(Operator Certification)

To: All Interested Persons

1. On December 19, 1996, the department published notice of the proposed amendment of the above-captioned rules at page 3182 of the 1996 Montana Administrative Register, Issue No. 24.
2. The rules were amended as proposed with no changes.
3. No comments were received.

DEPARTMENT OF ENVIRONMENTAL QUALITY


CURT CHISHOLM, Deputy Director

Reviewed by


John F. North, Rule Reviewer

Certified to the Secretary of State March 10, 1997.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules 18.8.509 and 18.8.1101)
concerning the Motor Carrier)
Services program)

TO: All Interested Persons.

1. On November 7, 1996, the Department of Transportation published notice of the proposed amendment of the above-noted rules at page 2964 of the 1996 Montana Administrative Register, issue number 21.

2. A hearing was held on December 20, 1996, wherein comments were received by the Department. The Department also received written comments. Those comments and the Department's responses are set out below.

3. The department has amended rule 18.8.509 as proposed.

4. The department has amended rule 18.8.1101 with the following changes:

18.8.1101 MOVEMENT OF HOUSES, BUILDINGS, EXTREMELY HEAVY MACHINERY, AND OTHER LARGE AND UNUSUAL OBJECTS

(1) through (12) remain the same as proposed.

(13) Class two dimensions and moving requirements consist of the following:

(a) Dimensions exceed ~~32~~ 34 feet wide, 24 feet high or if height of building and/or route requires utilities to cut power lines, 120 feet overall length;

(13)(b) through (g) remain the same as proposed.

AUTH: 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

5. The Department, as noted above, received both written and oral comments. Those comments, in summary, and the Department's responses follow:

Comment No. 1: There were comments received stating that the 32-foot width, which is found in rule 18.8.1101(13) should be increased from 32 feet wide to 34 feet wide.

Response: The Department agrees with the comments and the change will be made increasing the width from 32 feet to 34 feet.

Comment No. 2: A comment was also received recommending that the flag vehicle requirement found in the proposed amendment to rule 18.8.1101(12)(d), suggesting that the flag vehicle requirements be increased for class one moving.

Response: The Department must supply rules on a statewide basis, and the class one requirements for the number of flag vehicles are minimum requirements only. If safety, route of travel, or other factors warrant, additional restrictions may be applied on a case-by-case basis.

Comment No. 3: There were also comments received that the 10-day turnaround time for class two clearance was too long. See rule 18.8.1101(13)(e).

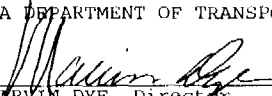
Response: The 10-day time is a maximum and the Department will attempt to provide such approval in less than 10 days in the majority of cases. There are, however, some circumstances, such as the need to seek approval for bridge crossings, where the 10-day period will be needed. For these reasons, the 10-day maximum time will be retained.


Comment No. 4: The Department received a letter which requested that the length change be made from 75 feet to 80 feet for nighttime travel.

Response: A previous rule change in July of 1996 already changed the length to 80 feet in ARM 18.8.509.

MONTANA DEPARTMENT OF TRANSPORTATION

By:


MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State March 10, 1997

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

| | | |
|------------------------------|---|----------------------|
| In the matter of the |) | NOTICE OF ADOPTION, |
| adoption, amendment and |) | AMENDMENT AND REPEAL |
| repeal of rules in Titles 11 |) | |
| and 46 pertaining to mental |) | |
| health managed care services |) | |
| for medicaid recipients and |) | |
| other eligible persons |) | |

TO: All Interested Persons

1. On January 27, 1997, the Department of Public Health and Human Services published notice of the proposed adoption, amendment and repeal of rules in Titles 11 and 46 pertaining to mental health managed care services for medicaid recipients and other eligible persons at page 147 of the 1997 Montana Administrative Register, issue number 2.

2. The Department has amended rules 11.13.101, 11.13.116, 11.13.201, 11.13.203, 11.13.205, 11.13.207, 11.13.211, 11.13.219, 46.12.202, 46.12.202, 46.12.204, 46.12.501, 46.12.502, 46.12.506, 46.12.507, 46.12.508, 46.12.509, 46.12.509A, 46.12.514, 46.12.516, 46.12.517, 46.12.570, 46.12.571, 46.12.572, 46.12.573, 46.12.1701, 46.12.1902, 46.12.2011, 46.12.4810, 46.12.5007 and repealed rules 11.13.102, 11.13.112, 11.13.213, 11.13.217, 46.12.314, 46.12.580, 46.12.581, 46.12.582, 46.12.587, 46.12.588, 46.12.589, 46.12.590, 46.12.591, 46.12.592, 46.12.593, 46.12.595, 46.12.597, 46.12.599, 46.12.620, 46.12.622, 46.12.624, 46.12.1107, 46.12.1108, 46.12.1109, 46.12.1110, 46.12.1111, 46.12.1112, 46.12.1113, 46.12.1114, 46.12.1925, 46.12.1926, 46.12.1927, 46.12.1928, 46.12.1929, 46.12.1930, 46.12.1945, 46.12.1946, 46.12.1947, 46.12.1948, 46.12.1949, 46.12.1950 and 46.12.1951 as proposed.

3. The Department has adopted rules V (46.20.117) MENTAL HEALTH ACCESS PLAN, PROVIDER REIMBURSEMENT, VIII (46.20.126) MENTAL HEALTH ACCESS PLAN, TRANSITION FROM RULES IN EFFECT PRIOR TO APRIL 1, 1997 and IX (11.13.103) THERAPEUTIC YOUTH GROUP HOME, APPLICABILITY AND PARTICIPATION as proposed.

4. The Department has adopted the following rules as proposed with the following changes from the original proposal. New language being added is underlined. Language to be deleted is interlined.

[RULE 11.13.103 MENTAL HEALTH ACCESS PLAN, DEFINITIONS
(1) through (3)(h) remain as proposed.
(i) a juvenile detention center; ~~or~~
(j) a city or county criminal detention facility; or

(3)(j) remains the same in text but is renumbered (3)(k).

(4) "Covered diagnosis" means a diagnosis that is one of the ICD-9-CM diagnosis codes numbered 290.0 through 291.0, 291.2 through 291.3, 291.5 through 291.9, 292.1 through 292.89, 293, 293.0 through 302, 302.2, 302.4, 302.6, 302.84 through 302.89, 306, 306.0 through 307, 307.1 through 307.3, 307.46, 307.5 through 312.30, 312.32 through 314.9 or 316, or DSM-IV diagnoses identified and indicated as covered in attachment B to the department's managed mental health care request for proposals number 9709-K (October 1996). The department hereby adopts and incorporates by reference attachment B to the department's managed mental health care request for proposals number 9709-K (October 1996). A copy of the attachment may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(5) remains as proposed.

(6) "Family" means a group of two or more persons related by birth, marriage or adoption who live together. Family members are considered to live together even though a family member may reside temporarily in a residential treatment setting.

(7) through (9) remain as proposed.

(10) "Medically necessary" or "medically necessary services" means services and supplies which are required for diagnosis, prevention or treatment of mental health conditions illness and which are:

(a) appropriate and consistent with the member's diagnosis;

(b) consistent with treating the symptoms of a mental illness or treating a mental condition illness; and

(10)(c) through (15) remain as proposed.

(16) "Serious emotional disturbance" or "SED" means a serious emotional disturbance as defined in attachment A to the department's managed mental health care request for proposals number 9709-K (October 1996). The department hereby adopts and incorporates by reference the definition of serious emotional disturbance set forth in attachment A to the department's managed mental health care request for proposals number 9709-K (October 1996). A copy of the attachment may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(16) "Serious emotional disturbance" or "SED" means with respect to a youth that the youth:

(a) is identified as having an emotional disturbance as defined in 20-7-401(8), MCA with respect to which the youth is currently receiving special education services;

(b) presents an imminent risk of suicide as determined by a licensed mental health professional; or

(c) meets all of the following 3 requirements:

(i) the youth demonstrates a need for specialized services to address serious problems related to emotional disturbance in

at least 2 of the 4 areas of family relationships, peer relationships, school performance, and delinquent behavior;

(ii) the youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe: attention deficit/hyperactivity disorder (314.00, 314.01, 314.9); childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90); oppositional defiant disorder (313.81); pervasive developmental disorder not otherwise specified (299.80); separation anxiety disorder (309.21); reactive attachment disorder of infancy or early childhood (313.89); schizoaffective disorder (295.70); mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.82, 296.90); psychotic disorder not otherwise specified (298.9); dysthymic disorder (300.4); depressive disorder not otherwise specified (311); cyclothymic disorder (301.13); generalized anxiety disorder (overanxious disorder) (300.02); posttraumatic stress disorder (chronic) (309.81); dissociative identity disorder (300.14); sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89); anorexia nervosa (severe) (307.1); bulimia nervosa (severe) (307.51); kleptomania (312.32); pyromania (312.33); trichotillomania (312.39); intermittent explosive disorder (312.34); and personality disorder (301.4, 301.5, 301.81); or conduct disorder (312.8) when accompanied by at least one of the diagnoses listed above; and

(iii) for a period of at least 6 months (or for a predicted period over 6 months), the youth consistently and persistently:

(A) has failed to establish or maintain interpersonal relationships appropriate to the youth's developmental stage and cultural environment;

(B) has displayed behavior inappropriate to the youth's developmental stage and culture;

(C) has failed to demonstrate a range of emotion or mood appropriate to the youth's developmental stage and culture;

(D) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic or recreation settings; or

(E) has displayed behavior considered seriously detrimental to the youth's growth, development or welfare, or to the safety or welfare of others.

(17) "Severe disabling mental illness" means a severe disabling mental illness as defined in attachment A to the department's managed mental health care request for proposals number 9709-K (October 1996). The department hereby adopts and incorporates by reference the definition of severe disabling mental illness set forth in attachment A to the department's managed mental health care request for proposals number 9709-K

(October 1996). A copy of the attachment may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(17) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person:

(a) presents an imminent risk of suicide as determined by a licensed mental health professional; or

(b) meets the requirements that:

(i) the person has a severe mental illness as indicated by:

(A) on at least one occasion, the person has been hospitalized at Montana State Hospital (Warm Springs campus) for at least 30 consecutive days because of a mental disorder;

(B) the person has a DSM-IV diagnosis of schizophrenic disorder (295); other psychotic disorder (295.40, 295.70, 297.1, 297.3, 298.9, 293.81, 293.82); mood disorder (296.2x, 296.3x, 296.40, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90, 301.13, 193.83); amnestic disorder (294.0, 294.8); disorder due to a general medical condition (310.1); or pervasive developmental disorder not otherwise specified (299.80) when not accompanied by mental retardation; or

(C) the person has a DSM-IV diagnosis of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full-time basis or to be unable to maintain a residence without assistance and support by family or a public agency; and

(ii) the person has ongoing functioning difficulties because of the mental illness, as indicated by one of the following:

(A) medication has been prescribed to control the symptoms of mental illness;

(B) the person is unemployed or does not work in a full-time competitive situation because of mental illness;

(C) the person receives SSI or SSDI payments due to mental illness; or

(D) the person maintains or could maintain a living arrangement only with the ongoing supervision and assistance of family or a public agency.

(18) and (19) remain as proposed.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113 and 53-6-701, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-6-113, 53-1-601, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202, MCA

[RULE II] 46.20.106 MENTAL HEALTH ACCESS PLAN. MEMBER ELIGIBILITY (1) through (2)(a) remain as proposed.

(b) except as excluded by definition in [Rule I (18)(a)], the family of which the individual is a member has a total family income, without regard to other family resources, at or

below 200% of the most recently published federal poverty level (FPL).

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

(b) ~~all cash receipts are considered as income, regardless of source;~~

~~(c)~~ family debts, expenses and other financial circumstances are not considered; and

~~(d)~~ (c) the most recently published federal poverty level (FPL) is the FPL most recently published in the federal register as of the end of the month immediately preceding the month in which the application is submitted to the MCO.

(4) through (6)(d) remain as proposed.

(e) An individual is liable to the MCO and the MCO may collect from the individual the amount of actual cost of MCO payments to providers for any services furnished to the individual, including any additional copayment amount that may be due, because of misrepresentation of income or a failure to notify the MCO of material changes in income or family composition.

(7) through (8)(a) remain as proposed.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131,
53-6-701, and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-2-201, 53-1-601, 53-6-113,
53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705,
53-6-706, 53-21-139 and 53-21-202, MCA

[RULE III] 46.20.110 MENTAL HEALTH ACCESS PLAN, PROVIDER PARTICIPATION (1) through (2)(l) remain as proposed.

(m) therapeutic ~~foster~~ family care providers;

(n) transitional living group homes;

(o) federally qualified health centers (FQHCs) which currently provide mental health services; and

(p) home health agencies;

(q) personal care providers; and

(r) other categories designated by the MCO.

(3) through (4)(a) remain as proposed.

(b) The provisions of ARM 46.12.308 regarding maintenance of records and related issues applies to providers of mental health services provided under the plan.

(4)(b)(i) and (4)(b)(ii) remain as proposed.

(c) For all members, the MCO and providers must comply with confidentiality requirements that apply to information regarding medicaid recipients.

(5) through (6)(b) remain as proposed.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, MCA

IMP: Sec. 41-3-1103, 53-1-601, 53-2-201, 53-6-113,
53-6-116, 53-6-701 and 53-6-705, MCA

[RULE IV] 46.20.114 MENTAL HEALTH ACCESS PLAN, COVERED SERVICES (1) through (2)(n) remain as proposed.

(o) the therapeutic component of therapeutic youth group

home care and therapeutic ~~foster~~ family care services for children and adolescents;

(2)(p) through (2)(v) remain as proposed.

(w) appropriate educational services for youths in covered stays in a child psychiatric hospital or residential treatment facility; and

(x) lab services; and

(y) other services, including consumer-operated alternatives, designated by the MCO.

(3) through (11) remain as proposed.

(12) The plan covers ~~appropriate~~ medically necessary mental health services for any covered diagnosis for a member with a primary diagnosis of mental retardation or developmental disability, but does not cover treatment, habilitation or other services required by the member's mental retardation or developmental disability.

(13) through (13)(c) remain as proposed.

(14) The services described in (13)(a), (b) and (c), even if medically necessary with respect to a mental health condition, will be covered for medicaid recipients under the medicaid program to the extent provided under applicable medicaid requirements.

(15) through (15)(a)(i) remain as proposed.

(ii) a member who is a prisoner in ~~the Montana correctional system~~ a correctional or detention facility;

(15)(a)(iii) through (15)(b) remain as proposed.

AUTH: Sec. 41-3-1103, 52-1-103, 53-6-706, and 53-2-201, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-1-405, 53-1-601, 53-2-201, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, MCA

[RULE VI] 46.20.120 MENTAL HEALTH ACCESS PLAN, MEMBER COPAYMENTS (1) through (3)(a) remain as proposed.

(b) a copayment of \$50.00 per day for each day in any 24-hour out-of-home service, including but not limited to inpatient hospitalization, residential treatment, therapeutic group care, and therapeutic ~~foster~~ family care; and

(c) a copayment of \$50.00 for each hospital emergency room visit.

(3)(d) through (7) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-131, MCA

IMP: Sec. 53-1-405, 53-1-601, 53-2-201, 53-6-113 and 53-6-131, MCA

[RULE VII] 46.20.123 MENTAL HEALTH PLAN, MEMBER NOTICE AND APPEAL RIGHTS (1) Subject to the requirements of this rule, a member has the right to a fair hearing as provided for claimants at ARM 46.2.201, et seq., regarding: ~~denials of eligibility or service coverage for mental health services under the plan.~~

(a) a denial or termination of plan eligibility;

(b) a denial of service coverage;

(c) a copayment determination, including a refusal by the MCO to provide services under ARM 46.20.120(5) based upon unpaid copayments;

(d) a determination that a member is liable to the MCO as provided in ARM 46.20.106(6)(e) based upon a misrepresentation or failure to notify the MCO of material changes in income or family composition; and

(e) a determination that a member is liable to the MCO as provided in ARM 46.20.106(7) based upon failure to apply for plan eligibility within 60 days following completion of emergency treatment.

(2) and (3) remain as proposed.

(4) The MCO will provide a written procedure for resolution of grievances and appeals brought by a member or the member's representative. A member may submit a grievance or appeal to the MCO within ~~10~~ 30 days after mailing of notice of the decision to the member or the member's designated representative. A member must exhaust the MCO's grievance or appeal procedure before exercising the administrative review panel procedure specified in (5).

(5) If the MCO in whole or in part denies a member's grievance or appeal ~~regarding a denied request for approval of services~~, the member or the member's representative may request that the department conduct an administrative panel review of the MCO's decision. The request must be submitted in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The request must be received by the division within 30 days of the date of the mailing of the notice of the MCO's denial of the grievance or appeal.

(5)(a) remains as proposed.

(b) The department will convene a panel of 3 members, selected by the department with due consideration of the necessary qualifications for the case at issue, to consider and decide the matter. The panel proceeding will be conducted informally. The panel will consider the written materials submitted, and the rationale for the decision provided by the MCO. In its discretion, if the department panel finds that resolution of the issues would be aided, the panel or members of the panel may contact persons involved in the case, interested agencies or mental health professionals and may request that the member, the member's representative, a mental health professional, a representative of the MCO, a provider representative or other appropriate persons ~~to~~ appear in person or by telephone conference to discuss the case.

(5)(c) and (6) remain as proposed.

(7) A member has the right of appeal as provided at ARM 46.2.201, et seq., to contest an adverse administrative review panel decision regarding an action described in (1)(a) through (e) of this rule, but must exhaust the administrative review

panel procedure before a fair hearing may be requested from the department under the provisions of ARM 46.2.201, et seq. A member does not have a right of appeal under ARM 46.12.201, et seq. to contest an adverse panel decision regarding a matter not described in (1)(a) through (e) of this rule.

(8) A member that does not timely submit a grievance or appeal or a request for an administrative panel review will be deemed to have accepted the agent's determination and is not entitled to any further notice or appeal opportunity.

(9) through (13) remain as proposed.

AUTH: Sec. 2-4-201, 53-2-201, 53-6-113 and 53-6-706, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-1-601, 53-6-113 and 53-6-706, MCA

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

COMMENT #1: The definition of "correctional or detention facility" in Rule I (3) (46.20.103) does not include county or city detention facilities. Instead it refers entirely to state operated detention facilities. Considering that the request for proposals (RFP) at section 317 excludes all incarcerated persons, it should not be necessary to exclude these persons under this definition. This is particularly true as prisoners are held at these facilities awaiting transport to, or openings at, the Montana State Prison. In addition, private prisons have been authorized by this legislature, making this definition short sighted. This definition should be expanded to include any detention facility, whether operated by the state or otherwise.

RESPONSE: The department will add city and county criminal detention facilities to the definition. In fact, private prisons are already included in the definition under Rule I (3)(j)(46.20.103) as "any privately operated or out-of-state facility that the state of Montana may choose to utilize in place of one of the above facilities or categories of facilities."

COMMENT #2: The definition of "covered diagnosis" in Rule I (4) (46.20.103) is simply a reference to Attachment B of the RFP for managed care. Most people referring to these rules will not have the RFP available to them in their ARMs, either in book or CD-ROM form. It is better practice to actually recite the definition, especially considering that these rules may survive the RFP.

RESPONSE: Attachment B to the RFP is a convenient code table which lists and cross-references ICD-9-CM codes and DSM-IV codes. However, Attachment B is 16 pages long. The department

will revise the rule to refer to the included diagnosis codes by ranges. Attachment B will be available from the department upon request.

COMMENT #3: The definition of "family" in Rule I (6) (46.20.103) is very restrictive, and does not include non-traditional families, such as live-in partners or children living with a natural parent and that parent's spouse or partner. It appears that this definition is designed to mirror legal responsibility for payment, which does make sense when considering copayment responsibility. However, even though no legal responsibility for payment can attach, this definition should be expanded to recognize the reality that many families in Montana do not meet this definition. In addition, the requirement that these listed relatives "live together" may be interpreted to mean that ongoing commonality of residence is necessary for parents to come under this definition, which could cause problems in the case of residential treatment of children and adolescents.

RESPONSE: The commentor apparently misunderstands the function of the "family" definition. The definition serves to identify the persons whose income is considered in determining plan eligibility under the 200% of poverty level standard. If "family" were defined as broadly as suggested in the comment, the income of all included persons, such as live-in partners, would count against the income standard regardless of whether the person's income actually were available to meet the needs of the applicant. This would hurt rather than help needy individuals. With respect to children and adolescents in residential treatment facilities, the child or adolescent will still be considered to be living together with the family for purposes of the definition, and the family income will continue to be considered in determining non-medicaid eligibility for the plan. Language will be added to the definition to clarify this point.

COMMENT #4: The definition of "medically necessary" in Rule I (10) (46.20.103) adopts the language of the RFP, that services and supplies be "required" for diagnosis, prevention or treatment. It would be more appropriate to use the inclusive term "used" instead of "required." For instance, more than one antipsychotic drug may be used for the treatment of a mental disorder such as schizophrenia, but because there is a choice of drugs, none are "required."

RESPONSE: The department disagrees. The suggested language would in effect change the requirement to "medically appropriate" rather than "medically necessary." The suggested language would allow any medically appropriate service to be considered medically necessary. In addition to meeting other requirements, the service or supply must be medically necessary

and appropriate to be covered under the plan.

COMMENT #5: The definitions of "serious emotional disturbance" and "severe disabling mental illness" in Rule I (16) and (17) (46.20.103) simply refer to Attachment A of the RFP for managed care. Most people referring to these rules will not have the RFP available to them in their ARMs either in book or CD-ROM form. It is better practice to actually recite the definitions, especially considering that these rules may survive the RFP.

RESPONSE: The department will include the definitional language in the rule itself, rather than incorporating Attachment A of the RFP.

COMMENT #6: The definition of "total family income" in Rule I (18) (46.20.103) is different than that contained at proposed Rule II (3) (b) (46.20.106). Why bother to define it at this point if it is changed within the text of the rules? There is no reason stated for the different, and less generous definition that follows in Rule II (46.20.106). It would be better to have a single, uniform definition.

RESPONSE: The department will delete Rule II (3) (b) (46.20.106) entirely.

COMMENT #7: The determination of family income under Rule II (3) (46.20.106) is different than the definition of total family income at Rule I (18) (a) (46.20.103) which is more generous. Family income should be made uniform. This definition actually vitiates the prior definition. Also it is a rigid and unduly restrictive definition. Family expenses or debts should be taken into consideration, especially for families that are in debt or have substantial expenses related to treatment for illnesses covered by the MHAP. There should be flexibility in this rule.

RESPONSE: The department disagrees with the comment. Rule I (18) (46.20.103) defines total family income, whereas Rule II (3) (46.20.106) clarifies that for eligibility purposes, a "spend down" is not permitted and that debts and expenses are not considered. It should be noted that while debts and expenses are not considered, neither are assets. These rules assure that the eligibility process will remain simple and will ease the process of application and qualification. Moreover, many individuals with substantial debts and expenses will meet medicaid eligibility requirements and will be eligible under the plan as medicaid recipients.

COMMENT #8: There may be persons who qualify under the mental health access plan (MHAP) who will not have any documentary evidence to verify income as required under Rule II (5) (46.20.106). This is especially true for homeless persons.

A sworn statement should be satisfactory evidence of income in those cases where there is no documentary evidence, otherwise qualified individuals will not be able to participate under the plan.

RESPONSE: Documentation will be required to verify the amounts and sources of income reported on an application. The application, including the representations of truthfulness, accuracy, completeness, etc., may in appropriate cases serve as the documentation that a person has no income. The managed care organization (MCO) will not require documentary evidence that cannot be supplied.

COMMENT #9: The requirement in Rule II (6)(b)(46.20.106) that members must notify the MCO within 30 days of a change in circumstance should allow for exceptions. A plan member who is incapacitated by illness may not be able to comply with this rule, yet the language of the rule is mandatory. Exceptions should be made for those members who have reasonable explanations of their failure to notify the MCO. The rule should be flexible to further the purpose of managed care, which is to provide services to persons with mental health needs.

RESPONSE: The department believes it would be inappropriate to assume that mentally ill individuals lack capacity to take care of their own affairs. The department believes that 30 days is an adequate period of time in which to notify the MCO. A failure to notify the MCO is grounds for termination, but the department expects the MCO to take the circumstances into account before terminating an individual on this basis. Moreover, submission of the required information will allow services to continue, unless the information indicates that eligibility requirements are no longer met.

COMMENT #10: Rule II (6)(e)(46.20.106) holds that based on misrepresentation of income or a failure to notify the MCO of a change in income or family configuration, a person is liable to the MCO for actual costs of services provided. The MCO plans on subtracting the copayment from funds paid to service providers, and requiring all providers to collect the copayment themselves. As a result the MCO will not provide the "actual costs of service." Thus, allowing the MCO to collect on payments they have not made is a liquidated damage clause, and in this context, unlawful. This rule should be amended to reflect the MCO's cost and no more.

RESPONSE: The department will revise the language to allow the MCO to collect the amount of actual MCO payments to providers for any services furnished, rather than the actual cost of service.

COMMENT #11: Rule II (7)(46.20.106) allows the service provider

to charge its actual, private pay rate to those persons who have not completed an application within 60 days subsequent to treatment, or are found ineligible. Having contracted with the MCO to receive prescribed rates, the service provider would not expect usual private pay rates. Therefore, the service provider is not injured if they can collect at the MHAP rate. There should also be flexibility in the rule to allow for exceptional circumstances that would excuse the 60 day application requirement.

RESPONSE: Persons that have not been determined eligible for the plan are not plan members, but are private pay patients. The provider's contract with the MCO does not require the provider to accept the MCO rate for private pay patients. The department believes that 60 days is an adequate period of time in which to apply for eligibility.

COMMENT #12: Rule II (8) (46.20.106) states that MHAP plan members must comply with MCO procedures to obtain services. This important provision should be made the subject of a separate rule, rather than a subpart of Rule II (46.20.106). There is no clear reference as to what "procedures" are referred to and must be followed. If procedures are to be mandatory, they should be clearly articulated within these rules, and drafted by the department and not the MCO, to assure they are reasonable. Additionally, it should be sufficient if a consumer is in fundamental compliance with procedural requirements. The MCO should not be allowed to deny participation in the MHAP except for good cause.

RESPONSE: As the rule states, the MCO must inform members of the applicable procedures. These issues are addressed further in the contract between the MCO and the state, and the state will enforce the requirements of the contract. Adoption of these procedures in the rule is unnecessary. The department will not embed every aspect of the plan in administrative rule. The MCO will not be permitted to deny participation in the plan without cause, and members and applicants will have access to grievance and appeal procedures to challenge MCO actions.

COMMENT #13: In Rule III (2) (46.20.110), the MCO is granted authority to designate additional categories of providers not listed in the rule, which itself is permissive. Because of this grant of unlimited authority and the permissiveness of the rule itself, the list of providers is irrelevant.

RESPONSE: The list of provider categories in Rule III (46.20.110) states the categories in which the MCO must enroll providers that request enrollment and meet enrollment requirements. Coverage of these categories by the MCO is mandatory. In addition, the rule indicates that the MCO may enroll providers in additional categories. The coverage of

additional categories is addressed in detail in the contract between the MCO and the state, and this subject will not be addressed in detail in the rule.

COMMENT #14: In Rule III (3) (46.20.110), the MCO is allowed to terminate provider participation for "good cause," but this rule does not define "good cause." "Good cause" should be defined, especially when MCO's throughout the country have been accused, by service providers, of black-balling providers without cause. Also, denying providers a right to administrative due process is bad decision. Currently, providers may petition for a fair hearing and on nearly every occasion the petition benefits a consumer, although the provider is the party of interest. The purpose of these rules should not be to make it harder for plan members to obtain redress for their grievances.

RESPONSE: The department believes that the term "good cause" speaks for itself, and prevents the MCO from "black-balling providers without cause." If a provider believes that it has been denied enrollment inappropriately or unfairly, the provider may contact the department. If the department agrees, it will enforce the contract to require the MCO to enroll the provider. A provider may also seek redress against the MCO through internal procedures provided by the MCO and, if necessary, in an appropriate court. As explained in the notice of public hearing on these rules, providers who participate in the plan do so as contractors with the MCO rather than with the department, and resort to administrative remedies in the department is not the appropriate forum for resolution of disputes that arise in that contractual relationship. This rule does not deny due process, but merely indicates that the matter is not a subject of the agency's contested case procedures.

COMMENT #15: Rule III (4) (46.20.110) provides that certain medicaid program laws, rules and regulations do not apply to providers or services under the plan. In granting the 1915(b) waiver HCFA did not clearly exempt the state and the MHAP from all medicaid program laws, rules and regulations. It will be necessary for HCFA to review this proposed rule as part of its ongoing oversight responsibility.

RESPONSE: This rule language specifies certain state administrative rules that do and do not apply to providers and services under the plan. This does not mean that no requirements apply. This is simply one aspect of the arrangement under which plan providers will be contractors with the MCO rather than medicaid providers under contract with the department. For example, these administrative rules will not require a physician participating in the plan to be licensed to practice medicine. Instead, the MCO will require licensure as a condition of enrollment for plan participation and will enforce that requirement through its contractual relationship

with the physician. The department will not enforce that requirement through an administrative rule. Various issues that are addressed in medicaid rules applicable to medicaid providers will be addressed in the provider's contract with the MCO. Many of these issues are also addressed in the contract between the state and the MCO.

COMMENT #16: Rule III (4) (46.20.110) should make clear that the state, the MCO and service providers are all bound by requirements of confidentiality.

RESPONSE: The department will revise the rule to state that the MCO is also required to comply with confidentiality requirements.

COMMENT #17: In Rule III (6) (46.20.110), denying providers a right to administrative due process is a bad decision. Currently, when providers petition for a fair hearing, consumers are benefitted. The petition may in fact be on behalf of a consumer, although the provider is the purported party of interest. It does not serve the interests of the state to empower the MCO at the expense of service providers. The purpose of these rules should not be to make it harder to petition for redress, but that will be the result of this rule.

RESPONSE: The department disagrees that the current process for medicaid provider administrative review and contested case proceedings should be applied to providers under the plan. As explained in the notice of public hearing on these rules, providers who participate in the plan do so as contractors with the MCO rather than with the department, and resort to administrative remedies in the department is not the appropriate forum for resolution of disputes that arise in that contractual relationship. This rule does not deny due process, but merely indicates that the matter is not a subject of the agency's contested case procedures. Extensive grievance and appeal procedures are provided for members.

COMMENT #18: Under Rule IV (3) (46.20.114), services can be restricted by the MCO and aside from the definition of medical necessity, there is no process or protocol prescribed by these rules. As cost is considered a criteria for service determination, it appears this rule will allow the MCO to make clinical determinations based on cost alone. The process and protocols of the MCO should be clearly articulated within these rules, to assure a fair deliberation and professional judgment.

RESPONSE: This rule allows for flexibility to determine services based upon consumer needs. The department will not establish rigid procedures and requirements in the rules. As the rule states, the restrictions on covered services must be based upon and consistent with medical necessity, availability of

appropriate alternatives, relative cost of services, treatment plan objectives and other relevant factors. This rule does not permit the MCO to make clinical determinations based on cost alone, although clearly the MCO necessarily must limit services to those that are not unnecessarily costly. The rule requires the MCO to make available to members and participating providers its criteria for restricting services. The department believes the rule language sufficiently limits the MCO's discretion in restricting services.

COMMENT #19: One of the major issues of the RFP was provider choice. Rule IV (3) (46.20.114) empowers the MCO to limit provider choice. Section 336.4 of the RFP states as an expectation that the MCO will allow members to have "optimal freedom" in the choice of providers. This rule appears to conflict with the spirit, if not the letter of the RFP.

RESPONSE: The department disagrees that this rule conflicts with either the letter or the spirit of the RFP. Optimal freedom of choice does not mean absolute freedom of choice. Some service restrictions are necessary. The plan does allow for much greater flexibility to meet consumer needs than exists with the rigid restrictions that apply under the current system.

COMMENT #20: Rule IV (4) (46.20.114) requires consumer compliance with procedures established by the MCO. There is no reference to what procedures must be followed. They should be clearly stated within these rules. In addition, fundamental compliance with procedural requirements should be sufficient under these rules to allow consumer participation under the MHAP. The purpose of the MHAP is to provide services to persons with mental health treatment needs and these rules should not empower the MCO to deny services on procedural technicalities.

RESPONSE: The rule requires the MCO to provide applicants and members with current, accurate and understandable information regarding prior authorization. The rule does not empower the MCO to "deny services based upon procedural technicalities." The rule does require members to follow the procedures established by the MCO for prior authorization.

COMMENT #21: The drug formulary definition in Rule IV (6) (46.20.114) is simply a reference to Attachment D of the RFP for managed care. Most people referring to these rules will not have the RFP available to them in their ARMs, either in book or CD-ROM form. It is better practice to actually recite the definition, especially considering that these rules may survive the RFP.

RESPONSE: The department disagrees. As stated in the rule, the attachment is the initial drug formulary. Flexibility is maintained to revise the formulary, subject to consultation

between the department and the MCO. The MCO must notify members of revisions to the formulary. The drug formulary information will be readily accessible by simply contacting the department or the MCO and requesting it.

COMMENT #22: Rule IV (7) (46.20.114) exempts the Montana State Hospital and the Montana Mental Health Nursing Care Center from its provisions. There is no reason to exempt these state operated institutions.

RESPONSE: The rule does not exempt the state institutions from anything, but merely indicates how services provided by these institutions will be funded. Rule IV (7) (46.20.114) provides that the plan will cover medically necessary mental health services for covered diagnoses for members who are nursing facility residents, as long as the services are not nursing facility services that the nursing facility would be required to provide to a medicaid recipient under the medicaid per diem rate. Currently, the Montana State Hospital participates in medicaid and receives medicaid reimbursement as an institution for mental diseases. The Montana Mental Health Nursing Care Center currently participates in medicaid and receives medicaid reimbursement as a nursing facility. These facilities are primarily serving the needs of persons with mental illnesses. The point of the rule is to provide that the MCO will cover all services provided to members by these two state facilities.

COMMENT #23: With regard to Rule IV (8) and (9) (46.20.114), why should the diagnosis of "voluntary" patients at MSH not be a requirement for participation under the plan, as it is everywhere else in the system?

RESPONSE: As noted in response to the previous comment, these rules indicate how services provided by these institutions will be funded. The state funding for these institutions has been included in the managed care budget and will be administered through the plan. The MCO will be obligated to serve all plan members who are residents in these institutions, except as noted in Rule IV (8)(a) through (d) (46.20.114). The diagnosis requirement does not apply here because the purpose is to require the MCO to serve all members in these institutions and to provide an incentive for the MCO to develop community placements whenever possible for all members who are institution residents.

COMMENT #24: In Rule IV (12) (46.20.114), the term "appropriate" precedes "medically necessary" for this population. As it is a part of the definition of medical necessity this is unnecessary, and serves only to add limiting language. And, if it is meant to be an additional requirement for these members, it violates the Americans with Disabilities Act. It should be removed.

RESPONSE: Use of the word "appropriate" was not intended to create additional requirements for persons with developmental disabilities. The appropriateness requirement is already contained in the definition of "medically necessary" in Rule I (46.20.103). Use of the word here is redundant, and it will be deleted.

COMMENT #25: Under Rule IV (13) (46.20.114), transportation and chemical dependency (CD) treatment, when necessary to effectively treat mental health issues, should be covered by the plan. CD treatment is cost effective, when dependency negatively impacts mental health treatment.

RESPONSE: The rule merely indicates that these services will not be reimbursed under the plan, but as indicated in Rule IV (14) (46.20.114) will continue to be reimbursed, to the extent covered, under the medicaid program.

COMMENT #26: In Rule IV (15) (46.20.114), there is no definition of "Montana Correctional System." It appears this rule includes persons in county or city detention, and expands the definition contained in Rule I (3) (46.20.103). The rules should be made uniform.

RESPONSE: The language of Rule IV (15) (a) (ii) (46.20.114) will be changed from "the Montana correctional system" to read "a correctional or detention facility." This will make the definition uniform with Rule I (46.20.103). As noted in response to comment #1, the definition of "correctional or detention facility" has been revised to include city and county criminal detention facilities.

COMMENT #27: In Rule VI (2) (46.20.120), the department has exempted the Montana State Hospital (MSH) and the Montana Mental Health Nursing Care Center (MMHNCC) from the provisions of this rule. There are persons in the state receiving long term residential care (e.g. under age 18) other than at MSH and MMHNCC. A fully integrated managed care system should not exempt these state operated institutions.

RESPONSE: The rule does not exempt the state institutions from the copayment requirement. Under state law codified in Title 53, chapter 1, part 4, MCA, residents of state institutions are liable to pay the state for the cost of their care to the extent they are determined able. This particular payment obligation does not apply to other plan members, who instead will be required to make copayments as provided in the rule. Under the plan, the state will continue to determine ability to pay and to collect payments from residents. These amounts will be deposited in the state treasury. The state will make a single payment to the MCO on a periodic basis to cover the copayments for all members at the two state institutions. Rule VI (6)

(46.20.120) provides that residents will be liable for the cost of care as provided in Title 53, chapter 1, part 4, MCA and implementing rules and may not be charged in addition for copayments. If these residents were liable for the copayments specified in Rule VI (46.20.120), they could be required to pay more than once for the cost of their care. Instead, the state will pay the copayments and apply collections from residents to offset the copayment amounts.

COMMENT #28: These amounts specified in Rule VI (3) (46.20.120) should not be rigidly fixed. Instead copayments should be flexible based on individual circumstances. The limit amounts, i.e., 5%, 10% or 15% of total monthly income, should not be rigid. This is especially true when nonpayment may disqualify a member from further participation under the MHAP.

RESPONSE: The rule provides reasonable flexibility by taking individual circumstances into account through the limit on total copayments established in Rule VI (4) (46.20.120). The limit varies based upon the member's total family income. Adoption of a more variable copayment approach would create an extreme administrative burden on providers. The department believes the copayments and maximum copayments established in the rule are reasonable.

COMMENT #29: There is no definition of "good faith effort" contained in Rule VI (5) (46.20.120), although it is very important in both payments and collections under these rules. A definition should be drafted by the state, and articulated in these rules. In addition, the rule should make clear that a determination of "good faith" can be brought to fair hearing.

RESPONSE: The department believes the term "good faith efforts" is sufficiently specific. Standards are further specified in the contract between the state and the MCO. A refusal to serve an individual under this rule provision is subject to fair hearing procedures under Rule VII (46.20.123).

COMMENT #30: It is unclear whether a termination based on nonpayment of copayments is covered by Rule VII (1) (46.20.123) under the "denial of eligibility" category. It should be made clear that it is.

RESPONSE: A termination based on nonpayment of copayments is subject to fair hearing procedures under Rule VII (1) (46.20.123). Language will be added to clarify the issues subject to a fair hearing under Rule VII (46.20.123).

COMMENT #31: Rule VII (2) (46.20.123) allows the MCO 10 days to notify the member after the MCO has made a decision. There is no limitation on the length of time the MCO may take to make the decision. Time limitations should be stated in the rules, and

they should be no longer than 10 days for MCO response.

RESPONSE: Applicable time frames are stated in the MCO's written procedures. The department expects that decisions typically will be made within a few days, and the timeliness of MCO decisions will be subject to state oversight. However, a failure by a provider to submit necessary documentation or other circumstances may prevent the MCO from making an earlier decision. The department will not adopt a specific limitation on the length of time the MCO may take to make a decision.

COMMENT #32: Rule VII (3) (46.20.123) provides that the remedy for failure of notice is a new notice. For those consumers aggrieved by the action of the MCO, this rule is very bad. This rule makes possible an endless series of flawed notices from the MCO, without any consequence. The provisions of a notice should not be allowed to take effect, if adverse to the plan member, if the notice is flawed.

RESPONSE: The department believes that the stated remedy is reasonable and adequate. If a member has requested authorization and a denial notice is flawed, the result of not allowing the notice to take effect would be that no decision has been made by the MCO. The appropriate remedy is to correct the notice and allow the member a new opportunity to appeal the decision. The apparent alternative remedy, i.e., granting authorization for a service because of a notice error, is not appropriate, as it would result in payment for unnecessary or other non-covered services. The department will exercise oversight regarding notices and will enforce the contract to address any recurring problems if they occur in this area.

COMMENT #33: Rule VII (4) (46.20.123) states that a member may submit a grievance to the MCO within 10 days after mailing of the notice of decision. The contract states that a member has 30 days to submit a grievance.

RESPONSE: The rule will be revised to provide for a 30-day period in which to submit a grievance.

COMMENT #34: Rule VII (4) (46.20.123) is silent as to the grievance process. It would be better if this rule would set forth an effective grievance process for plan members. Also, here a 10 day notice provision is a requirement for the member to proceed, although the MCO under the prior section, is exempted from time constraints. Finally, the requirement of exhaustion of MCO remedies may serve to exhaust the plan member by multiple proceedings. The plan member should be allowed to proceed directly to fair hearing.

RESPONSE: The rule is not silent as to the grievance process. The rule, and the contract between the state and the MCO,

require the MCO to provide a written grievance procedure. The contract addresses the required grievance process in detail. The MCO is required to notify members of the written grievance process. As noted in the previous comment and response, the time period for submission of a grievance is 30 rather than 10 days. The department will not establish a specific time limit for grievance decisions. A 30 day filing request is appropriate, because it is extremely easy to file a grievance.

By contrast, a decision regarding the grievance may require a comprehensive review of complicated issues, review of numerous documents, and other activities. It is not nearly so easy to complete a decision and a standard time frame is not appropriate. Also, the department believes that allowing members to proceed directly to litigation would make the resolution of disputes more difficult rather than less difficult. The reason for providing the grievance and panel processes is to provide procedures to redress grievances that are less formal and more flexible than litigation, and that will avoid the need for litigation. The department believes that the MCO's grievance procedure and the state panel will provide an alternative that is highly preferable to litigation. Still, the member will have the right to litigate if these less formal processes do not resolve the matter. The commentor seems to assume that the MCO will deny services and force people to appeal to receive the services to which they are entitled. The department does not share this assumption. The contract provides incentives not to avoid providing necessary services. If the department determines that the MCO's performance is inadequate, the MCO will not make a profit. Further, if a denial of services leads to a need for more extensive and expensive services, it will cost the MCO more money to meet its requirements to serve the member.

COMMENT #35: Rule VII (5) (46.20.123) requires a plan member to request administrative panel review within 30 days. There should be exceptions allowed consumers based upon reasonable explanations, especially as the MCO is exempt under these rules from time constraints. In addition, the qualifications of panel members are not stated. It would be empowering to consumers of mental health services and their families if they made up the majority of this panel. Also, there are no time constraints placed on the decisions of the panel. There should be specific time constraints on their decision making process.

RESPONSE: The department believes that 30 days is an adequate time within which to request a panel review, considering that there are no formal requirements for the request beyond the requirement that the request be written. The department has not specified the panel makeup in rule, because the panel makeup will vary depending upon the particular case. One case may require a particular kind of expertise, while another case

requires a different specialization or focus. The department intends to involve consumers and/or consumer representatives on the panel, although it is doubtful that consumers will make up a majority of the panel. While majority representation on the panel would certainly empower consumers, the panel's task will require health care expertise, knowledge of providers and service systems and other specialized knowledge and training that family members or consumer representatives may not always have.

COMMENT #36: Rule VII (8)(46.20.123) curtails the rights of consumers to pursue a grievance or administrative review, unless they do so within the time allowed. The department does not place any time constraints on the appeals panel, nor does it provide any consequences to the MCO if they fail to comply with time constraints. The purpose of these rules should be to empower consumers to pursue their rights. If a consumer has a reasonable explanation for failing to comply with the time restraints, they should be allowed to proceed, even if they are not in absolute compliance with those time constraints.

RESPONSE: The department disagrees with the comment. The department believes that the time periods are adequate, especially considering the lack of formal requirements for submission of a grievance or panel request. It is extremely easy to invoke the right to a grievance or panel review. Rule VII (8)(46.20.123) merely states the consequence that routinely follows in any such legal process. The department will adopt the rule as proposed.

COMMENT #37: Rule VII (11)(46.20.123) will limit the department's knowledge of MCO actions. It also limits the oversight and control of the MCO by the Department.

RESPONSE: The department disagrees. While the department will not be a party to contested case proceedings, it will have a right to observe and monitor the proceedings and a right of full access to the records of the proceeding.

COMMENT #38: Regarding Rule VII (13)(46.20.123), it would be better for MHAP members to be able to continue in services, pending the outcome of a grievance or fair hearing. It would cost the state nothing to allow ongoing services under this rule. This rule appears to contradict the legal right of medicaid recipients to continue in services, pending procedural due process hearings.

RESPONSE: The department disagrees. The rule merely restates the continuation of benefits rights that are granted by federal medicaid regulations. Where an approval or authorization has already been granted but the MCO seeks to rescind it, a continuation may be available for medicaid recipients to the

extent permitted by federal regulations and ARM 46.2.206. But where an approval or authorization for a limited time or service was granted previously and a new approval or authorization is required to receive further coverage under the plan, the matter is considered a new request and continuation of benefits does not apply. Moreover, the rule suggested by the commentor would be extremely expensive and counterproductive. Members potentially could receive years of service before litigation was resolved. This would discourage the interested parties from following through currently to identify and institute the appropriate service, thereby resolving the issue quickly. Such a rule could lead to inappropriately lengthy institutionalizations. Moreover, if benefits were continued and the MCO later prevailed in the litigation, the MCO would then have to recover the payments from the provider or the member, which could require additional litigation.

COMMENT #39: Regarding Rule VIII (1)(46.20.126), the department should take care not to create a rule that terminates mental health service on a given date, when the managed care contract will almost surely be the subject of a court challenge. If an injunction is obtained, or the contract thrown out by a court, this rule may cause considerable distress. It is better that the state not assert a particular date for transition.

RESPONSE: The law does not permit the department to adopt these rule changes with an unspecified effective date. The department expects the program to commence as scheduled on April 1, 1997. The department recognizes that unsuccessful bidders for the MCO contract have protested the contract award and are threatening litigation to void the contract. The Department of Administration has received these protests and is investigating, but no decision has yet been made regarding these protests. However, if the contract is voided or if the contract or these rules are otherwise prevented by court action from remaining in effect, the department will act as expeditiously as possible following a court order to file an emergency rule notice to delay the effective date of these rule changes or to suspend these rule changes, and to reinstate the current rules that are being amended or repealed in this rule proceeding. In the interim, the department will continue services in effect under the pre-managed care processes and requirements until the matter is addressed by further rulemaking.

COMMENT #40: Regarding Rule IX (1)(11.13.103), what services does the state contemplate providing outside of the MHAP? This is unclear within the RFP or these rules

RESPONSE: The services referred to in this provision are therapeutic youth group home services. The state anticipates that there may be a few cases where payment for a placement in a therapeutic youth home for a child or adolescent in the

custody of the department must be authorized outside the services provided by the MHAP. Therapeutic youth group homes may accept children for placement and services even though the services are not paid for under the MHAP.

COMMENT #41: Rule IX (3)(11.13.103) uses the phrase "as determined by the department". This term is not defined anywhere. It should be clearly set out to avoid arbitrary or capricious decisions.

RESPONSE: We believe the commentor is referring to ARM 11.13.101 rather than Rule IX(3)(11.13.103). As set out in the previous response, the department, as custodian for a child or adolescent, may make arrangements for care of a child at a therapeutic youth group home. Montana law and department policies and procedures already provide protections to insure that services for children in state custody are not purchased arbitrarily or capriciously. As indicated by Rule IX (11.13.103), these Title 11 rules do not entitle any person to receive services. They merely provide the standards that apply where the state contracts with a provider to serve a child or adolescent in state custody.

COMMENT #42: In Rule I (46.20.103), the terms "emergency" and "medically necessary" are defined using the phrases "behavioral condition," "mental illness," "mental health condition," and "mental condition." These phrases are closely related, if not interchangeable, but they are not defined, and they are not consistently used throughout the rules.

RESPONSE: The department will revise the language in the definition of "medically necessary" in Rule I(10)(46.20.103) to replace the terms "mental health condition" and "mental condition" with the term "mental illness." The department believes that the use of the phrase "serious medical or behavioral condition resulting from mental illness" in the definition of "emergency" is sufficiently clear when read together with the other rule provisions. It should be noted that for services to be covered with respect to an emergency or non-emergency situation, the services must be medically necessary with respect to a covered diagnosis. The specific list of covered diagnoses should resolve any questions in this regard.

COMMENT #43: The definition of "emergency" speaks in terms of avoiding jeopardy to the life or health of the member. The definition seems overly broad and circuitous in that jeopardy to the health of a member could include mental health.

RESPONSE: The department agrees that jeopardy to the health of a member could be the basis for the emergency if the other requirements of the definition are present. Whether there is an

emergency depends largely upon the severity of the condition and the risk of jeopardy. The department does not believe that the definition is overly broad or circuitous. Again, when read together with the other provisions of the rule, this effect of this definition is clear.

COMMENT #44: Rule IV (4)(46.20.114) provides that emergency services are not subject to prior authorization and Rule VI (3)(c)(46.20.120) makes emergency services subject to a higher \$50.00 copayment when received from an emergency room. Does the department intend that emergency services may only be received in an emergency room (ER) setting? If not, are "emergency services" received in non-ER settings available without prior authorization, and without higher copays? Must emergency services still be provided by non-ER providers to members who have accumulated the levels of unpaid copayments that would otherwise be sufficient to allow the MCO to discontinue services to the member? (Rule VI (5)(46.20.120)). What recourse is there for a Medicaid HMO or other provider who provides emergency services to a patient for whom eligibility is presumed, and the patient is later determined by the MCO to be ineligible? Providers in this situation are liable if they don't provide care, but have little if any protection or opportunity for recovery if the presumptively eligible emergency patient is later determined ineligible.

RESPONSE: The department does not intend to limit provision of emergency services to emergency rooms only. Emergency services received in non-emergency room settings will be available without prior authorization and without the higher copayment. The department will add the word "hospital" before emergency room in Rule VI (3)(c)(46.20.120). The discontinuation of services to a member who accumulates the specified amount of unpaid copayments does not apply to emergency services. This rule does not address medicaid HMOs, which are addressed in other existing medicaid program rules. Under Rule II (7)(46.20.106), a patient who is presumed eligible but later determined ineligible is liable to the provider for the provider's usual and customary charges or to the MCO for the amount of any payments actually made to the provider.

COMMENT #45: Rule II(5)(46.20.106) considers "correspondence from attorneys" appropriate and persuasive documentation of income for eligibility. This rule may prove to be unworkable, particularly when the attorney's correspondence is written specifically to the MCO in an attempt to obtain eligibility for a client. It seems that the correspondence would still need to adequately document income with verified attachments in accordance with the rule.

RESPONSE: The department does not deem correspondence to be inherently credible simply because it is from an attorney. Such

documentation would be subject to question as would any other form of documentation. Attorney correspondence may be appropriate in some situations to document certain facts, such as the existence of a trust and the amount of income distributed from a trust, or to document the existence of court proceedings. As suggested in the comment, the applicant may still need to adequately document income with verified attachments.

COMMENT #46: In Rule V (4) (46.20.117) the term "third party resources" is not defined, and should be. The rules are also not clear on how the coordination of benefits and recovery issue will be handled between the MCO and entities such as HMOs or health plans. These entities are one source of the "third party resources" the MCO will attempt to recover against. This could lead to significant disputes over what is and is not a covered benefit under the state mental health managed care program, and an HMO or another health plan. This problem might also be exacerbated should the legislature pass a mental health parity bill.

RESPONSE: The department believes that the term "third party resource" is clear. It includes any person or entity other than the member (or a member of the members' family) or the MCO that has a legal obligation to pay for the services provided. The issue of third party resources may be addressed in additional detail in the provider contract if necessary. The rules define what is covered under the plan. As is true under the current system, there may be issues between various payors as to which payer is primary. These issues must be left to resolution based upon the terms of the coverages involved and the application of applicable law.

COMMENT #47: In Rule II (2) (g) (46.20.106), the term "primary care physician" is in need of a definition. Within the medical community and between managed care plans there is no consistency as to who may be a PCP.

RESPONSE: The department intends that the MCO may enroll physicians as primary care physicians depending upon the needs of the member population in the particular area of the state. The department believes that this concept must permit the MCO to establish appropriate qualifications for primary care physicians taking into account the availability of particular types of expertise within the particular service area and the need of members in the area. The department will not specifically define the term in the rule.

COMMENT #48: Rule IV (13) (46.20.114) provides in part that drug, alcohol and rehab are not covered services "regardless of the member's diagnosis." Where there is a dual diagnosis, the MCO and providers will be faced with the chicken and egg conundrum between certain mental health problems, and drug and

alcohol abuse. Subsection (14) goes on to state that non-covered services in (13) "even if necessary with respect to a mental health condition" will be covered for medicaid recipients under the medicaid program to the extent provided under medicaid requirements. How does the department intend to coordinate these dual diagnosis and treatment issues with the Medicaid HMOs? Is the term "necessary" under (14) of this rule the same as "medically necessary"? Is it the intent of the department that non-medicad recipients who are eligible under the 200% of poverty rules not have access to drug or alcohol treatment when they have a dual diagnosis of a covered mental disease and drug/alcohol dependency?

RESPONSE: The MCO is required under its contract with the state to coordinate the member's mental health services with necessary CD and other services. The term "necessary" in Rule IV (14) (46.20.114) is the same as "medically necessary" and the word "medically" will be inserted in the rule. Plan members who are not medicaid eligible will not have access to medicaid services, but will retain access to other department programs to the same extent currently provided.

COMMENT #49: The proposed rules amend ARM 46.12.4810 by deleting the citations which by reference defined the non-covered mental health services. Although the rules still list the non-covered services under the Medicaid HMO program, we no longer have citations defining these services. This could lead to confusion in the Medicaid HMO program and disputes over what is or is not a service a Medicaid HMO is required to provide.

RESPONSE: ARM 46.12.4810 will continue to specify the services that must be provided. The mandatory services are defined by reference to medicaid rules that will continue in effect. Current ARM 46.12.4810 also provides that HMOs are not required to provide certain services unless its contract with the department provides otherwise. The proposed changes to ARM 46.12.4810 retains the list of excluded services, but deletes references to the current medicaid rules that define those services. Deletion of these references is necessary because the cited rules are being repealed. The department believes the definitions of the covered services that are retained in the rule will be adequate to specify what services must be provided by HMOs.

COMMENT #50: By reading the rules it is not clear that the non-medicad eligible (200% of poverty) members must also meet the definition of serious emotional disturbance (SED) or severe disabling mental illness (SDMI) in order to receive services under this program. The rules should explain the significance of these definitions, and how they relate to eligibility. Is it the department's intent that 200% of poverty eligible who meet the SED/SDMI definitions, and medicaid eligibles, are both

entitled to the same services under the program?

RESPONSE: The department believes it is very clear under Rule II (2)(a) (46.20.106) that for non-medicaid eligibles, a serious emotional disturbance is required for youths for eligibility and a severe disabling mental illness is required for adults for eligibility. These are the populations primarily served under the current general fund programs that are being included in the plan. Once a person is eligible, there is no distinction in the services provided to medicaid eligible and other members.

COMMENT #51: The emphasis on community services is not prevalent in the rules, as indicated in the summary. The Senior and Long Term Care (SLTC) Division transferred approximately \$500,000 to the Addictive and Mental Disorders Division to cover the cost of providing home health and personal assistance services to these individuals. Enrollment of these providers are not included in Rule III (46.20.110). This issue should be addressed immediately. There is no discussion regarding the potential duplication of services between the MHAP and the home and community based services (HCBS) program. An individual can require mental health services which may be available under the HCBS program. Who coordinates services, and who is responsible for the costs?

RESPONSE: All home and community based services (HCBS) clients will be eligible for the plan automatically, because they are medicaid eligible. See Rule II (1) (46.20.106). The plan will provide medically necessary mental health services, including personal care and home health services, to HCBS clients when the services are necessary because of a covered diagnosis. The rule will be revised to add home health agencies and personal care providers to the list of categories for which providers can be enrolled by the MCO. If a recipient seeks such services from the HCBS program, they should be referred to the MCO for a determination of the services medically necessary to treat a covered diagnosis. If a HCBS client has service needs resulting from a covered mental health diagnosis, the client's case manager should assist the client in accessing services under the plan. Medically necessary mental health service for a covered diagnosis will be reimbursed by the MCO under the plan. Other costs will continue to be the responsibility of the HCBS program to the extent provided in applicable laws and regulations governing the HCBS program.

COMMENT #52: Does an individual with a covered mental health diagnosis, who meets nursing facility level of care have a choice between HCBS and MHAP?

RESPONSE: No, because the two programs will cover different services. The MHAP will cover medically necessary services for covered mental health diagnoses, whereas the HCBS will cover

physical health services as provided in its rules.

COMMENT #53: In Rule IV (46.20.114), the list of covered services does not include diagnostic services, such as an MRI to find the cause of a disorder. Also, the rules do not appear to cover lab and other diagnostic or imaging services. Lab services may be necessary to evaluate a person's mental health.

RESPONSE: Inpatient and outpatient hospital services provided to members will be covered if medically necessary with respect to a hospital stay or visit for which the primary diagnosis is a covered diagnosis. The categories of community inpatient hospitalization and outpatient hospital care for psychiatric conditions, under Rule IV (2)(d) and (2)(i)(46.20.114), would include diagnostic and imaging services. The department will add lab services to the list of covered services in Rule IV (46.20.114).

COMMENT #54: In Rule III (2)(m)(46.20.110), Rule IV (2)(o)(46.20.114) and Rule VI (3)(b)(46.20.120), the term "therapeutic foster care" should be changed to "therapeutic family care."

RESPONSE: The department will make the suggested changes.

COMMENT #55: Rule VII (5)(46.20.123) provides that a member may request a panel review if the MCO denies a member's grievance "regarding a denied request for approval of services." Is panel review limited to service approval issues, or is it also available for other grievance issues, such as quality of care?

RESPONSE: Any issue for which the MCO's grievance procedure must be made available may be the subject of a panel review. The limiting language will be removed from the rule. However, not all issues that are subject to grievance and panel review may be grounds for a fair hearing. Fair hearings are limited to (a) a denial or termination of plan eligibility; (b) a denial of service coverage; (c) a copayment determination, including a refusal by the MCO to provide services under Rule VI (5)(46.20.120) based upon unpaid copayments; (d) a determination that a member is liable to the MCO as provided in Rule II (6)(e)(46.20.106) based upon a misrepresentation or failure to notify the MCO of material changes in income or family composition; and (e) a determination that a member is liable to the MCO as provided in Rule II (7)(46.20.106) based upon failure to apply for plan eligibility within 60 days following completion of emergency treatment. Language will be added to the rule to clarify the matters for which a fair hearing is available.

COMMENT #56: The MCO has two informal review processes, called grievances and appeals. Rule VII (46.20.123) refers only to grievances. Appeals concern medical necessity determinations,

and should be included in the rule provisions applicable to grievances.

RESPONSE: The department agrees and will add appropriate references to appeals.

COMMENT #57: The phrase "except as excluded by definition in [Rule I (18) (a)](46.20.103)" is awkward and unnecessary. The term "total family income" is already defined in Rule I (18)(46.20.103) and the exclusions stated in the definition apply without further reference.

RESPONSE: The department agrees and will delete the phrase "except as excluded by definition in [Rule I (18)(a)]". (46.20.103)

COMMENT #58: Rule VII (5)(b)(46.20.123) is missing a conjunction in the third sentence, after the word "submitted".

RESPONSE: The department agrees and has corrected the sentence.

COMMENT #59: ARM 46.12.202 and 46.12.509A are being amended to exclude residential treatment services. Residential treatment facilities also provide physical health services that will continue to be covered under the medicaid program, and these facilities should have a right of appeal regarding those services.


RESPONSE: The proposed changes to ARM 46.12.202 and 46.12.509A exclude appeals only with respect to residential treatment services, and not with respect to physical health services when provided under the medicaid program by a residential treatment facility. For example, if a residential treatment facility has enrolled in the medicaid program as a provider of physician services and provides physician services to a medicaid recipient for a physical health condition, the facility would be entitled to appeal, as a physician services provider, from an adverse department determination regarding such services.

6. The proposed changes will apply to services and items provided on or after April 1, 1997. The department expects the program to commence as scheduled on April 1, 1997. The department recognizes that unsuccessful bidders for the managed care contract have protested the contract award and are threatening litigation to void the contract. The Department of Administration has received these protests and is investigating, but no decision has yet been made regarding the protests. In the event that the contract is voided or if the contract or these rules are otherwise prevented by court action from remaining in effect, the department will act as expeditiously as possible following a court order to file an emergency rule notice to delay the effective date of these rule changes or to

suspend these rule changes, and to reinstate the current rules that are being amended or repealed in this rule proceeding. In the interim, the department will continue services in effect under the processes and requirements in effect prior to the Mental Health Access Plan until the matter is addressed by further rulemaking.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State March 10, 1996.

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

| | | |
|-------------------------------|---|---------------------|
| In the matter of the |) | NOTICE OF AMENDMENT |
| amendment of rules 11.14.106, |) | |
| 11.14.601, 11.14.602, |) | |
| 11.14.604, 11.14.605, and |) | |
| 11.14.607 through 11.14.610 |) | |
| pertaining to excluding care |) | |
| of children of a single |) | |
| family from day care facility |) | |
| licensing and registration |) | |
| rules, and state payment for |) | |
| registered or licensed day |) | |
| care and unregistered day |) | |
| care |) | |

TO: All Interested Persons

1. On January 27, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 11.14.106, 11.14.601, 11.14.602, 11.14.604, 11.14.605, and 11.14.607 through 11.14.610 pertaining to excluding care of children of a single family from day care facility licensing and registration rules, and state payment for registered or licensed day care and unregistered day care at page 135 of the 1997 Montana Administrative Register, issue number 2.

2. The Department has amended rule 11.14.106 as proposed. Rules 11.14.601, 11.14.602, 11.14.604, 11.14.605, and 11.14.607 through 11.14.610 were amended as proposed with the following changes:

IMP: Sec. 52-2-721, 52-2-722, 52-2-723, and 52-2-731, MCA.

3. The Department has thoroughly considered the comment received. The comment received and the Department's response to the comment follow:

COMMENT: In regard to the amendments following the amendment to ARM 11.14.106, the Administrative Code Committee commented that additional implementing citations from the Montana Child Care Act should have been included, and that the final notice should contain citations to the additional statutes.

RESPONSE: The Department believes that the citations in the original notice to 52-2-704 and 52-2-713, MCA were correct and that these statutes most directly implement the rules. However, the department agrees that additional citations to statutes within the Montana Child Care Act may be appropriately cited as implementing authority, and hereby includes the additional citations as part of this rulemaking:

Dana Klein
Rule Reviewer
Human Services

Mark E. Kinner
Director, Public Health and

Certified to the Secretary of State March 10, 1997.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of 16.10.1507 pertaining to)
area requirements, deck areas,)
handholds for swimming pools)
and spas)

TO: All Interested Persons

1. On January 27, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of ARM 16.10.1507 pertaining to area requirements, deck areas, handholds for swimming pools and spas at page 145 of the 1997 Montana Administrative Register, issue number 2.

2. The Department has amended rule 16.10.1507 as proposed.

3. The Department has thoroughly considered all commentary received. The comment received and the department's response follow:

COMMENT #1: One commentor stated that deck carpeting was installed around the indoor pool in her bed and breakfast establishment noting various reasons for its use, including that of safety and cleanliness.

RESPONSE: The department agrees with the commentor that certain circumstances may justify use of deck carpet within 6 feet of a pool or spa. The amendment of 16.10.1507(3)(d) will allow the department to grant a deviation from 16.10.1507(3)(b) if the applicant, submitting the deviation request, shows that public health and safety can be maintained with, and no reasonable alternative exists to, the use of deck carpeting.

Dawn Slavin
Rule Reviewer

Debra K. Kline
Director, Public Health and
Human Services

Certified to the Secretary of State March 10, 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 December 31, 1996. This table includes those rules adopted during the period January 1, 1997 through March 31, 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 December 31, 1996, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 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. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of
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ADMINISTRATION, Department of, Title 2

- 2.4.136 State Accounting - Reimbursement for Receiptable
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- 4.5.102 and other rules - Projects, Procedures and Updates -
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6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 2349, 2843

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(Board of Alternative Health Care)

8.4.301 and other rules - Fees - Renewal - Unprofessional Conduct - Licensing of Out-of-State Applicants - Certification for Speciality Practice of Naturopathic Physician Continuing Education - Direct Entry Midwife Apprenticeship Requirements, p. 2230, 2576

(Board of Architects)

8.6.405 and other rules - Practice of Architecture, p. 2060, 2476, 3210

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8.10.403 and other rules - Barbers, Barber Shops and Barber Schools, p. 1432, 3114

(Board of Chiropractors)

8.12.601 and other rules - Chiropractors, p. 974, 2844, 3212

(Board of Dentistry)

8.16.402 and other rules - Dentists - Dental Hygienists - Denturists - Practice of Dentistry and Denturistry, p. 2478, 3118

(State Electrical Board)

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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 February 1997, appear. Vacancies scheduled to appear from April 1, 1997, through June 30, 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 March 5, 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 FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|--|-----------------|-----------------------------|
| Agriculture Development Council (Agriculture) | | | |
| Mr. Peter Blouke | Governor | Noel | 2/14/1997 |
| Helena | | | 7/1/1998 |
| Qualifications (if required): | director of the Department of Commerce | | |
| Appellate Defender Commission (Administration) | | | |
| Judge Dorothy B. McCarter | Governor | reappointed | 2/11/1997 |
| Helena | | | 1/1/2000 |
| Qualifications (if required): | district judge | | |
| Mr. Mark Parker | Governor | reappointed | 2/11/1997 |
| Billings | | | 1/1/2000 |
| Qualifications (if required): | attorney | | |
| Board of Chiropractors (Commerce) | | | |
| Dr. Karlene Berish | Governor | reappointed | 2/28/1997 |
| Billings | | | 1/1/2000 |
| Qualifications (if required): | licensed chiropractor | | |
| Ms. Patti Mitchell | Governor | Remick | 2/28/1997 |
| Dillon | | | 1/1/2000 |
| Qualifications (if required): | public member | | |
| Board of Directors of the State Compensation Insurance Fund (Administration) | | | |
| Ms. Laurie Shadoan | Governor | not listed | 2/5/1997 |
| Bozeman | | | 4/28/1999 |
| Qualifications (if required): | representative of private enterprise | | |
| Board of Investments (Commerce) | | | |
| Mr. Dick Anderson | Governor | Walker | 2/14/1997 |
| Helena | | | 1/1/2001 |
| Qualifications (if required): | public member | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---|------------------|-----------------------------|
| Board of Investments (Commerce) Cont. | | | |
| Mr. James E. Cowan | Governor | reappointed | 2/14/1997 |
| Seeley Lake | | | 1/1/2001 |
| Qualifications (if required): | representative of the Teachers' | Retirement Board | |
| Mr. Troy W. McGee, Sr. | Governor | reappointed | 2/14/1997 |
| Helena | | | 1/1/2001 |
| Qualifications (if required): | representative of the Public Employees' | Retirement Board | |
| Mr. Bill Price | Governor | reappointed | 2/14/1997 |
| Lewistown | | | 1/1/2001 |
| Qualifications (if required): | public member | | |
| Mr. Warren Vaughn | Governor | reappointed | 2/14/1997 |
| Billings | | | 1/1/2001 |
| Qualifications (if required): | representative of agriculture | | |
| Board of Labor Appeals (Labor and Industry) | | | |
| Mr. Joseph E. Thares | Governor | reappointed | 2/7/1997 |
| Helena | | | 1/1/2001 |
| Qualifications (if required): | public member | | |
| Ms. Carol Vega | Governor | Johns | 2/7/1997 |
| Butte | | | 1/1/2001 |
| Qualifications (if required): | public member | | |
| Board of Passenger Tramway Safety (Commerce) | | | |
| Mr. John Kattell | Governor | Erickson | 2/5/1997 |
| Missoula | | | 2/1/1999 |
| Qualifications (if required): | representing the United States Forest Service | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|----------------------------|-------------|----------------------|
| Board of Physical Therapy Examiners (Commerce) | | | |
| Dr. B. John Heetderks, M.D. | Governor | Weinert | 2/19/1997 |
| Belgrade | | | 7/1/2000 |
| Qualifications (if required): | physician | | |
| Ms. Christine Jensen | Governor | reappointed | 2/19/1997 |
| Clinton | | | 7/1/2000 |
| Qualifications (if required): | public member | | |
| Board of Public Assistance (Public Health and Human Services) | | | |
| Mr. Dick Heineman | Governor | reappointed | 2/5/1997 |
| Wibaux | | | 1/1/2001 |
| Qualifications (if required): | attorney | | |
| Ms. Gloria Paladichuk | Governor | reappointed | 2/5/1997 |
| Sidney | | | 1/1/2001 |
| Qualifications (if required): | public member | | |
| Board of Public Education (Education) | | | |
| Sen. Bob Brown | Governor | Ferneus | 2/1/1997 |
| Whitefish | | | 2/1/2004 |
| Qualifications (if required): | republican from District 1 | | |
| Board of Regents of Higher Education (Education) | | | |
| Mr. Richard A. Crofts | Governor | Baker | 2/25/1997 |
| Helena | | | 0/0/0 |
| Qualifications (if required): | ex-officio member | | |
| Mr. Edwin H. Jasmin | Governor | Schwanke | 2/24/1997 |
| Bigfork | | | 2/1/2004 |
| Qualifications (if required): | republican from District 1 | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---|-----------------|-----------------------------|
| Board of Respiratory Care Practitioners (Commerce) | | | |
| Mr. Paul A. Bergman | Governor | reappointed | 2/14/1997 |
| Miles City | | | 1/1/2001 |
| Qualifications (if required): | public member | | |
| Ms. Iris L. Bungay | Governor | reappointed | 2/14/1997 |
| Cut Bank | | | 1/1/2001 |
| Qualifications (if required): | certified respiratory therapist technician | | |
| Ms. Jennifer Graupmann | Governor | Gildersleeve | 2/14/1997 |
| Great Falls | | | 1/1/2001 |
| Qualifications (if required): | registered respiratory therapist | | |
| Child Care Advisory Council (Public Health and Human Services) | | | |
| Ms. Shyla Barnosky | Governor | Briese | 2/5/1997 |
| Miles City | | | 6/30/1999 |
| Qualifications (if required): | represents Department of Public Health and Human Services | | |
| Ms. Nancy Bond | Governor | Bush | 2/5/1997 |
| Kalispell | | | 6/30/1999 |
| Qualifications (if required): | interested in child care | | |
| Ms. Patty Butler | Governor | Laplant | 2/5/1997 |
| Lewistown | | | 6/30/1999 |
| Qualifications (if required): | child care provider | | |
| Mr. Kevin Chamberlain | Governor | Tibbets | 2/5/1997 |
| Superior | | | 6/30/1999 |
| Qualifications (if required): | interested in child care | | |
| Ms. Deborah Graham | Governor | Gibson | 2/5/1997 |
| Bozeman | | | 6/30/1999 |
| Qualifications (if required): | parent representative | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|--------------------------|-----------------|-----------------------------|
| Child Care Advisory Council (Public Health and Human Services) | Governor | reappointed | Cont. |
| Ms. Kathleen Miller Green | | | 2/5/1997 |
| Missoula | | | 6/30/1999 |
| Qualifications (if required): | interested in child care | | |
| Children's Trust Fund Board (Public Health and Human Services) | Governor | Flack | 2/27/1997 |
| Ms. Donna Ahneman | | | 1/1/2000 |
| Wolf Point | | | |
| Qualifications (if required): | public member | | |
| Ms. Ann (Punky) Bullis | Governor | Ortman | 2/27/1997 |
| Crow Agency | | | 1/1/2000 |
| Qualifications (if required): | public member | | |
| Committee for the Humanities (Governor) | Governor | reappointed | 2/8/1997 |
| Dr. William Bevis | | | 1/2/2001 |
| Missoula | | | |
| Qualifications (if required): | public member | | |
| Ms. Jamie Doggett | Governor | reappointed | 2/8/1997 |
| White Sulphur Springs | | | 1/2/2001 |
| Qualifications (if required): | public member | | |
| Ms. Arla Jean Murray | Governor | Stewart | 2/8/1997 |
| Miles City | | | 1/2/2001 |
| Qualifications (if required): | public member | | |
| Mr. Robert Poore | Governor | Rostad | 2/8/1997 |
| Butte | | | 1/2/2001 |
| Qualifications (if required): | public member | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---------------------|-----------------|-----------------------------|
| Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) | | | |
| Mr. Tom Green | Governor | Curtis | 2/27/1997 |
| Harlem | | | 1/1/2003 |
| Qualifications (if required): representative of Region II | | | |
| Ms. Paula Holdeman | Governor | Terry | 2/27/1997 |
| Plentywood | | | 1/1/2003 |
| Qualifications (if required): representative of Region I | | | |
| Mr. Kenneth Kaline | Governor | reappointed | 2/27/1997 |
| Ashland | | | 1/1/2003 |
| Qualifications (if required): family member with a disability and a Native American | | | |
| Rep. Bob Lawson | Governor | not listed | 2/27/1997 |
| Whitefish | | | 1/1/1998 |
| Qualifications (if required): member of the House of Representatives | | | |
| Mr. Cary Lund | Governor | reappointed | 2/27/1997 |
| Helena | | | 1/1/2003 |
| Qualifications (if required): representative of the Department of Public Health and Human Services | | | |
| Ms. Florence Massey | Governor | reappointed | 2/27/1997 |
| Billings | | | 1/1/2003 |
| Qualifications (if required): representative of Region III | | | |
| Mr. Thomas Price | Governor | reappointed | 2/27/1997 |
| Eureka | | | 1/1/2003 |
| Qualifications (if required): representative of Region V | | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Cont. | | | |
| Mr. Robert Runkel | Governor | reappointed | 2/27/1997 |
| Helena | | | 1/1/2003 |
| Qualifications (if required): representative of the Office of Public Instruction | | | |
| Mrs. Othelia Schulz | Governor | reappointed | 2/27/1997 |
| Butte | | | 1/1/2003 |
| Qualifications (if required): representative of Region IV | | | |
| Mr. Peyton Terry | Governor | Kronebusch | 2/27/1997 |
| Glasgow | | | 1/1/2003 |
| Qualifications (if required): representative of consumers | | | |
| Independent Living Council (Public Health and Human Services) | | | |
| Ms. Kris Kleinschmidt | Director | Whistling Elk | 2/1/1997 |
| Great Falls | | | 2/1/1999 |
| Qualifications (if required): none specified | | | |
| Missouri River Basin Advisory Council (Natural Resources and Conservation) | | | |
| Ms. Diane Brandt | Governor | not listed | 2/25/1997 |
| Glasgow | | | 2/25/1999 |
| Qualifications (if required): public member | | | |
| Mr. Chuck Carlson | Governor | not listed | 2/25/1997 |
| Fort Peck | | | 2/25/1999 |
| Qualifications (if required): public member | | | |
| Mr. Bud Clinch | Governor | not listed | 2/25/1997 |
| Helena | | | 2/25/1999 |
| Qualifications (if required): Director of the Department of Natural Resources and Conservation | | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| Missouri River Basin Advisory Council (Natural Resources and Conservation) Cont. | | | |
| Mr. Tom Huntley | Governor | not listed | 2/25/1997 |
| Sidney | | | 2/25/1999 |
| Qualifications (if required): | public member | | |
| Mr. Ron Miller | Governor | not listed | 2/25/1997 |
| Glasgow | | | 2/25/1999 |
| Qualifications (if required): | public member | | |
| Mr. Steve Page | Governor | not listed | 2/25/1997 |
| Glasgow | | | 2/25/1999 |
| Qualifications (if required): | public member | | |
| Mr. Jim Rector | Governor | not listed | 2/25/1997 |
| Glasgow | | | 2/25/1999 |
| Qualifications (if required): | public member | | |
| Mr. Scott Ross | Governor | not listed | 2/25/1997 |
| Glasgow | | | 2/25/1999 |
| Qualifications (if required): | public member | | |
| Montana Higher Education Student Assistance Corporation (Education) | | | |
| Ms. Shirley Warehime | Governor | Perrin | 2/24/1997 |
| Helena | | | 1/1/2000. |
| Qualifications (if required): | public member | | |
| Montana State Lottery Commission (Commerce) | | | |
| Ms. Carol Thomas | Governor | Kasten | 2/26/1997 |
| Great Falls | | | 1/1/1998 |
| Qualifications (if required): | public member | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|--|-------------|----------------------|
| Small Business Compliance Assistance Advisory Council (Environmental Quality) | | | |
| Ms. Sandy Newton | Governor | reappointed | 2/5/1997 |
| Jefferson City | | | 10/1/1999 |
| Qualifications (if required): | public member | | |
| Ms. Karen Williams | Governor | Stovall | 2/5/1997 |
| Helena | | | 10/1/1999 |
| Qualifications (if required): | public member | | |
| State Compensation Insurance Fund (Administration) | | | |
| Mr. Herbert Leuprecht | Governor | Hill | 2/5/1997 |
| Butte | | | 4/28/1997 |
| Qualifications (if required): | policy holder | | |
| Trauma Care Committee (Public Health and Human Services) | | | |
| Ms. Cindy Peterson | Governor | O'Leary | 2/27/1997 |
| Great Falls | | | 11/2/2000 |
| Qualifications (if required): | representative of the Central Regional Trauma Advisory Council | | |
| Whirling Disease Task Force (Fish, Wildlife and Parks) | | | |
| Mr. Jim Ahrens | Governor | not listed | 2/7/1997 |
| Helena | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Mr. John Bailey | Governor | not listed | 2/7/1997 |
| Livingston | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Dr. Marshall Bloom | Governor | not listed | 2/7/1997 |
| Hamilton | | | 2/7/1999 |
| Qualifications (if required): | public member | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| Whirling Disease Task Force (Fish, Wildlife and Parks) Cont. | | | |
| Mr. Frank Cooper | Governor | not listed | 2/7/1997 |
| Helena | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Mr. Robin Cunningham | Governor | not listed | 2/7/1997 |
| Gallatin Gateway | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Dr. John Duffield, Ph.D. | Governor | not listed | 2/7/1997 |
| Missoula | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Mr. John Etgen | Governor | not listed | 2/7/1997 |
| Belgrade | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Mr. Pat Graham | Governor | not listed | 2/7/1997 |
| Helena | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Dr. Willard O. Granath, Jr. | Governor | not listed | 2/7/1997 |
| Missoula | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Sen. Mike Halligan | Governor | not listed | 2/7/1997 |
| Missoula | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Mr. Bud Lilly | Governor | not listed | 2/7/1997 |
| Bozeman | | | 2/7/1999 |
| Qualifications (if required): | public member | | |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---------------------|-----------------|-----------------------------|
| Whirling Disease Task Force (Fish, Wildlife and Parks) Cont. Mr. Dud Lutton Helena Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |
| Mr. Art Neill Butte Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |
| Mr. Roger Nelson Livingston Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |
| Rep. Karl Ohs Harrison Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |
| Ms. Chris Somers Butte Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |
| Mr. Frederick "Rick" Stowell Missoula Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |
| Dr. William Tietz, Ph.D. Bozeman Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |
| Ms. Marsha "Josh" Turner Helena Qualifications (if required): public member | Governor | not listed | 2/7/1997 2/7/1999 |

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1997

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| Whirling Disease Task Force (Fish, Wildlife and Parks) Cont. | | | |
| Mr. Richard J. Wesnick | Governor | not listed | 2/7/1997 |
| Billings | | | 2/7/1999 |
| Qualifications (if required): | public member | | |
| Mr. Bob Wiltshire | Governor | not listed | 2/7/1997 |
| Livingston | | | 2/7/1999 |
| Qualifications (if required): | public member | | |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Board of Athletics (Commerce) Dr. Andrew Vandolah, Conrad Qualifications (if required): public member | Governor | 4/25/1997 |
| Board of Clinical Laboratory Science Practitioners (Commerce) Dr. J. David Walker, Kalispell Qualifications (if required): physician qualified to direct high complexity laboratory | Governor | 4/16/1997 |
| Ms. Loraine Kay Crull, Missoula Qualifications (if required): clinical laboratory science practitioner | Governor | 4/16/1997 |
| Ms. Sonja Bennett, Billings Qualifications (if required): clinical laboratory science practitioner | Governor | 4/16/1997 |
| Board of County Printing (Commerce) Mr. Roy Aafedt, Great Falls Qualifications (if required): county commissioner | Governor | 4/1/1997 |
| Ms. Nancy Clark, Ryegate Qualifications (if required): public member | Governor | 4/1/1997 |
| Mr. Curtis Starr, Malta Qualifications (if required): representing the printing industry | Governor | 4/1/1997 |
| Ms. Fern Hart, Missoula Qualifications (if required): county commissioner | Governor | 4/1/1997 |
| Mr. Verle Rademacher, White Sulphur Springs Qualifications (if required): representing the printing industry | Governor | 4/1/1997 |
| Board of Hail Insurance (Agriculture) Mr. Vince Schmoedel, Malta Qualifications (if required): public member | Governor | 4/18/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Board of Nursing Home Administrators (Commerce) Ms. Leona Petro, Bigfork Qualifications (if required): professional concerned with care for chronically ill and aged patients | Governor | 5/28/1997 |
| Board of Optometry (Commerce) Dr. Cynthia Kinna Johnson, Wolf Point Qualifications (if required): optometrist | Governor | 4/3/1997 |
| Board of Plumbers (Commerce) Mr. Vernon E. (Gene) Mahn, Lincoln Qualifications (if required): public member | Governor | 5/4/1997 |
| Board of Professional Engineers and Land Surveyors (Commerce) Mr. Dennis F. Carver, Kalispell Qualifications (if required): professional engineer | Governor | 4/23/1997 |
| Mr. David M. Hummel, Jr., Billings Qualifications (if required): civil engineer | Governor | 4/23/1997 |
| Board of Real Estate Appraisers (Commerce) Mr. A. Farrell Rose, Helena Qualifications (if required): licensed appraiser | Governor | 5/1/1997 |
| Ms. Jeannie Flechsenhar, Cascade Qualifications (if required): public member | Governor | 5/1/1997 |
| Board of Realty Regulation (Commerce) Mr. Bruno Friia, Missoula Qualifications (if required): licensed real estate broker or salesman | Governor | 5/9/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Board of Regents of Higher Education (Education) Mr. Michael Green, Malta Qualifications (if required): student representative | Governor | 6/1/1997 |
| Board of Veterans' Affairs (Military Affairs) Mr. George G. Hageman, Jordan Qualifications (if required): honorably discharged from military services | Governor | 5/18/1997 |
| Capitol Restoration Commission (Administration) Mr. Bob Marks, Clancy Qualifications (if required): public member | Governor | 6/10/1997 |
| Executive Board of Montana College of Mineral Science and Technology (Education) Ms. Catherine Williams, Butte Qualifications (if required): public member | Governor | 4/15/1997 |
| Executive Board of Eastern Montana College (Education) Ms. Kelly Holmes, Bozeman Qualifications (if required): public member | Governor | 4/15/1997 |
| Executive Board of Montana State University (Education) Mrs. Virginia Martin, Bozeman Qualifications (if required): public member | Governor | 4/15/1997 |
| Executive Board of Northern Montana College (Education) Ms. Debbie Leeds, Havre Qualifications (if required): public member | Governor | 4/15/1997 |
| Executive Board of Western Montana College (Education) Mr. Joe Womack, Dillon Qualifications (if required): public member | Governor | 4/15/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Executive Board of the University of Montana (Education) Mr. Leonard Landa, Missoula Qualifications (if required): public member | Governor | 4/15/1997 |
| House Bill 195 Incentives Advisory Council (Fish, Wildlife and Parks) Sen. John Hertel, Moore Qualifications (if required): none specified | Director | 6/1/1997 |
| Mr. Alan Charles, Miles City Qualifications (if required): none specified | Director | 6/1/1997 |
| Licensing Advisory Council (Fish, Wildlife and Parks) Mr. Charles R. Decker, Libby Qualifications (if required): none specified | Director | 6/1/1997 |
| Mr. Jack Billingsley, Glasgow Qualifications (if required): none specified | Director | 6/1/1997 |
| Mr. Russ Smith, Philipsburg Qualifications (if required): none specified | Director | 6/1/1997 |
| Mr. Bob Jensen, Circle Qualifications (if required): none specified | Director | 6/1/1997 |
| Montana Library Services Advisory Council (State Library) Ms. Nora Verpoorten, Plains Qualifications (if required): none specified | Director | 6/1/1997 |
| Ms. Margaret Kernan, Helena Qualifications (if required): none specified | Director | 6/1/1997 |
| Ms. Carolyn Salansky, Dupuyer Qualifications (if required): none specified | Director | 6/1/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Montana Library Services Advisory Council (State Library) | Cont. | |
| Ms. Gloria Wahl, Lewistown Qualifications (if required): none specified | Director | 6/1/1997 |
| Ms. Mary Lou Hoppner, Westby Qualifications (if required): none specified | Director | 6/1/1997 |
| Ms. Mary Bushing, Bozeman Qualifications (if required): none specified | Director | 6/1/1997 |
| Rep. Ray Peck, Havre Qualifications (if required): none specified | Director | 6/1/1997 |
| Mr. Will Cowdrey, Missoula Qualifications (if required): none specified | Director | 6/6/1997 |
| Ms. Kathleen Bartlett, Clinton Qualifications (if required): none specified | Director | 6/1/1997 |
| Ms. Deborah Schlesinger, Helena Qualifications (if required): none specified | Director | 6/1/1997 |
| Ms. Susan Callaghan, Butte Qualifications (if required): none specified | Director | 6/1/1997 |
| Mr. Wesley S. Plann, Terry Qualifications (if required): none specified | Director | 6/1/1997 |
| Ms. Andrine Haas, Glendive Qualifications (if required): none specified | Director | 6/1/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|-------------------------------------|-----------------|
| Montana Sentencing Commission Mr. Mike Salvagni, Bozeman Qualifications (if required): county attorney | Governor | 5/31/1997 |
| Mr. Tony Harbaugh, Miles City Qualifications (if required): county sheriff | Governor | 5/31/1997 |
| Mr. John G. Thomas, Helena Qualifications (if required): member of Board of Pardons | Governor | 5/31/1997 |
| Mr. Frank DiFonzo, Sidney Qualifications (if required): chief of police | Governor | 5/31/1997 |
| Montana State Veterans Cemetery Advisory Council Mr. Jim Heffernan, Helena Qualifications (if required): none specified | Adjutant General (Military Affairs) | 5/1/1997 |
| Mr. Fred Olson, Fort Harrison Qualifications (if required): none specified | Adjutant General | 5/1/1997 |
| Ms. Irma Paul, Helena Qualifications (if required): none specified | Adjutant General | 5/1/1997 |
| Mr. Robert C. McKenna, Helena Qualifications (if required): none specified | Adjutant General | 5/1/1997 |
| Mr. James W. Duffy, Helena Qualifications (if required): none specified | Adjutant General | 5/1/1997 |
| Major Joel Cusker, Helena Qualifications (if required): none specified | Adjutant General | 5/1/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| Board/current position holder | Appointed by | Term end |
|--|--------------------------|----------|
| Montana State Veterans Cemetery Advisory Council | (Military Affairs) Cont. | |
| Mr. Ray Read, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Ms. Alma Dickey, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. Herb Ballou, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. Carl L. Nordberg, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. James F. Jacobsen, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. Ruddy Reilly, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Ms. Rose Marie Storey, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. Mickey Nelson, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. Lee Dickey, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. M. Herbert Goodwin, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |
| Mr. Dick Baumberger, Helena | Adjutant General | 5/1/1997 |
| Qualifications (if required): none specified | | |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Montana State Veterans Cemetery Advisory Council (Military Affairs) Cont. Mr. George Paul, Helena Qualifications (if required): none specified | Adjutant General | 5/1/1997 |
| Point of Sale Advisory Council (Fish, Wildlife and Parks) Mr. Bob LeFeve, Butte Qualifications (if required): none specified | Director | 5/22/1997 |
| Public Employees' Retirement Board (Administration) Ms. Carole Carey, Ekalaka Qualifications (if required): member of public employees' retirement system | Governor | 4/1/1997 |
| State Compensation Mutual Insurance Fund (State Compensation Insurance Fund) Mr. Herbert Leuprecht, Butte Qualifications (if required): policy holder | Governor | 4/28/1997 |
| Mr. James A. Brouelette, Stevensville Qualifications (if required): private for profit representative | Governor | 4/28/1997 |
| Ms. Sandra D. Reiter, Billings Qualifications (if required): private for profit representative | Governor | 4/28/1997 |
| State Library Commission (Education) Ms. Eleanor N. Gray, Miles City Qualifications (if required): public member | Governor | 5/22/1997 |
| Ms. Peggy Guthrie, Choteau Qualifications (if required): public member | Governor | 5/22/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Youth Justice Advisory Council (Justice) | | |
| Mr. Craig Anderson, Glendive Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Stephen Nelsen, Bozeman Qualifications (if required): public member | Governor | 6/16/1997 |
| Judge Diana Barz, Billings Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Rick Day, Helena Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Al Davis, Helena Qualifications (if required): public member | Governor | 6/16/1997 |
| Ms. Kate Mrgudic, Missoula Qualifications (if required): public member | Governor | 6/16/1997 |
| Judge Catherine Aragon, Harlem Qualifications (if required): public member | Governor | 6/16/1997 |
| Ms. Gail Gray, Helena Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Allen Horsfall, Hamilton Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Kim Olson, Bozeman Qualifications (if required): public member | Governor | 6/16/1997 |
| Rep. Royal C. Johnson, Billings Qualifications (if required): public member | Governor | 6/16/1997 |

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1997 through June 30, 1997

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Youth Justice Advisory Council Ms. Sally Stansberry, Missoula Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Hank Hudson, Helena Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Ted O. Lympus, Kalispell Qualifications (if required): public member | Governor | 6/16/1997 |
| Captain Kevin Clader, Missoula Qualifications (if required): public member | Governor | 6/16/1997 |
| Mr. Pat Lovett, Helena Qualifications (if required): public member | Governor | 6/16/1997 |
| Ms. Jani McCall, Billings Qualifications (if required): public member | Governor | 6/16/1997 |