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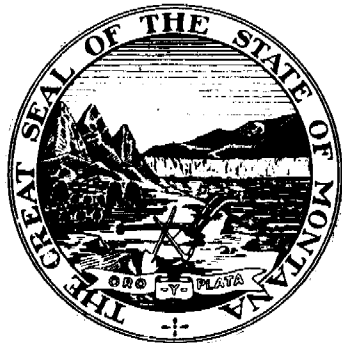
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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 4.3.602,) AMENDMENT
4.3.603, and 4.3.604 relating)
to the Rural Assistance Loan)
Program to assist substandard) NO PUBLIC HEARING CONTEMPLATED
income.

TO: All Interested Persons

1. On September 26, 1998, the Montana Department of Agriculture proposes to amend ARM 4.3.602, 4.3.603 and 4.3.604, relating to the Rural Assistance Loan Program to assist substandard income.

2. The rules as proposed to be amended provide as follows (new material is underlined; material to be deleted is interlined):

4.3.602 QUALIFICATIONS (1) Application must be made to the Montana Department of Agriculture. All application documents must be completed and presented to the department before the department loan committee will consider the request. Examples of required documents are financial statements, credit references and loan applications.

(2) Each applicant must be unable to obtain the needed funds from a private lender or other sources at reasonable rates or terms. Evidence shall consist of a statement, signed by a private lender, that financing was unavailable.

(3) Applicant(s) shall be at least 18 years of age.

(4) An applicant's net worth including that of spouse and minor children cannot exceed ~~\$50,000~~ \$100,000 at the time of application as determined using standard accounting procedures. The total value of an applicant's assets including those of spouse and minor children cannot exceed ~~\$150,000~~ \$250,000 including all real and personal property.

(a) Contingent assets or liabilities shall be included in the determination of net worth and total assets. Contingent assets or liabilities are those for which contracts or agreements have been or are in the process of being entered into but for which the asset or liability will be recognized in the future.

(5) Applicant(s) must demonstrate access to assets necessary to carry out the proposed agricultural enterprise.

(6) Applicant(s) must demonstrate the experience, knowledge and ability necessary to conduct the proposed agricultural enterprise.

(7) Applicant(s) must demonstrate repayment capacity using proceeds from the agricultural enterprise or other acceptable income.

(8) A two-member local committee must be established by the applicant to review the loan request. The committee shall be composed of an officer from a bank in the borrower's home community or bank where the borrower normally conducts business, and an agricultural specialist. Examples of agricultural specialists are county extension agents, vocational agriculture education teachers, and ~~Farmers-Home Administration Farm Service Agency~~ district supervisors. This committee will review eligibility of applicant(s) and make recommendations concerning making and servicing the loan. A bank official will assist the borrower and department in closing approved loans.

(9) A nonrefundable application fee of \$35 will be required with all applications.

AUTH: 80-2-106, MCA

IMP: 80-2-103, MCA

4.3.603 CLOSING REQUIREMENTS (1) ~~Unless a specific exception is granted by the department, a~~ joint bank account with ~~the borrower and~~ the department ~~shall~~ may be established at the time the loan funds are disbursed and the loan funds and the applicant's cash investment there deposited. A member of the local loan committee or other representative of the Montana Department of Agriculture may be designated to countersign checks drawn on this account by the borrower.

(2) The department may require insurance coverage on all mortgaged or otherwise secured property.

(3) The department may, if it deems necessary, require an appraisal from a qualified appraiser on property to be financed or used to secure a loan or to determine the value of the applicant's assets.

(4) The department may loan up to 80 percent of the value of secured property. The department may require collateral in addition to property being financed with loan funds. All collateral required by the department will be listed on the security agreement and the financing statement or mortgage.

(5) The department shall require a first mortgage position on any land being mortgaged.

(6) The applicant(s) shall provide title insurance in the name of the department for any land to be purchased with loan funds.

(7) The borrower(s) and guarantor(s) shall sign all necessary documents as required by the department and all documents requiring filing shall be properly filed by the department.

(8) The department may require the borrower to register a brand with the Montana Department of Livestock for the purpose of recording a lien on the brand and may require secured livestock to be branded.

(9) The borrower shall pay fees required to file, continue, or release financing statements, mortgages, and brand liens.

(10) A representative of the Montana Department of

Agriculture may at a reasonable time visit personally with applicant(s) for the purpose of inspecting facilities, machinery, collateral, assets, etc. and otherwise investigating the applicant's qualifications and abilities to conduct the proposed agricultural enterprise.

(11) The borrower shall allow members of the local loan committee and the department to inspect collateral or loan-related records upon request at any reasonable time during the repayment period.

(12) The borrower shall care for collateral and conduct agricultural operations in accordance with good and recognized agricultural practices.

AUTH: 80-2-106

IMP: 80-2-103, MCA

4.3.604 LIMITATIONS (1) Loan amounts shall not exceed ~~\$25,000~~ \$35,000 for any one individual or \$70,000 per household.

(2) Loans may be refinanced up to the maximum of ~~\$25,000~~ \$35,000.

(3) Interest rates for loans shall be established yearly on July 1 by the director of the Montana Department of Agriculture. Loans will bear simple interest charged yearly on the unpaid balance. The interest rate on established loans may be reviewed and adjusted to correspond with the established rate at 3-year intervals.

(4) Loan funds shall be used for purposes approved by the department and applicant(s) shall provide the amount necessary for a down payment as required by the department and use that amount for only the approved purposes.

(5) Loans may be authorized to finance the following types of property or activities:

(a) Property and equipment suitable for use in agriculture or agri business. Examples are livestock used for breeding purposes, farm machinery, and trucks-;

(b) Agricultural improvements suitable for farming which are located on agricultural land. Examples are confinement systems for livestock or poultry, barns and other buildings, grain storage facilities, and irrigation systems-;

(c) Annual operating expenses involved in farming activities-;

(d) Agricultural land-; and

(e) Other expenditures for agricultural equipment, property, facilities, or expenses as approved by the department.

(6) Loans shall not be eligible for financing personal residences, nonfarm vehicles, family-living expenses or other property used for household purposes.

(7) The repayment period shall be determined by the department prior to closing and shall not exceed the following schedules:

(a) Loans for agricultural property or equipment shall not exceed 7 years-;

(b) Loans for agricultural improvements or agricultural land shall not exceed 10 years; and

(c) Loans for operating expenses will be paid within 1 year unless first-year operating costs are included in a loan for agricultural property, equipment, improvements, or land in which case the amount for operating expense can be amortized over the repayment period.

(8) No more than one-half of rural development assets available for loans yearly shall be used for lending under this program.

AUTH: 80-2-106, MCA

IMP: 80-2-103, MCA

REASON: The proposed changes are necessary to put as many Ag Finance Funds to use in assisting Montana Ag producers as possible. In order to expand the opportunity for Montana borrowers to access these funds, we will need to increase the maximum amount of a Rural Assistance loan from \$25,000 to \$35,000 for any one individual or \$70,000 per household, increase the maximum net worth allowed from \$50,000 to \$100,000, increase the total asset value from \$150,000 to \$250,000, and allow the loans to be used for agri businesses. The loan program is designed for applicants that are at least eighteen years old and the loan committee feels the supervised checking account is not needed for all borrowers.

3. Interested persons may submit their data, views, or arguments concerning this proposed amendment to Lee Boyer, Bureau Chief, Department of Agriculture, Agricultural Development Division, PO Box 200201, Helena, MT 59620-0201, Phone (406)444-2402, FAX (406)444-5409, or E-Mail: AGR@MT.GOV, no later than September 24, 1998.

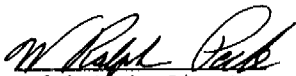
4. If a party who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Lee Boyer, Bureau Chief, Department of Agriculture, Agricultural Development Division, PO Box 200201, Helena, MT 59620-0201, Phone (406)444-2402, FAX (406)444-5409, or E-Mail: AGR@MT.GOV no later than September 24, 1998.

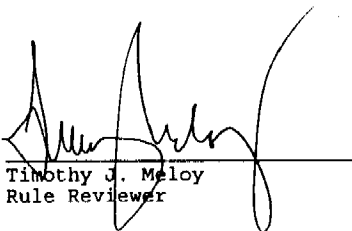
5. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from 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 approximately 2,400 based on approximately 24,000 agriculture producers. However, it is virtually impossible to know how many will become loan applicants at some future date.

6. As required by HB 389, 1997 Montana legislative session, this notice advises that the department maintains an interested person list for purposes of providing notice on rule making matters. Any person wishing to be on that list must provide to the department, in writing, their name, mailing address and a brief description of the subject matter in which they are interested.

DEPARTMENT OF AGRICULTURE


Ralph Peck, Director


Timothy J. Meloy
Rule Reviewer

Certified to the Secretary of State on August 17, 1998.

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

In the matter of the)
amendment of rules) NOTICE OF PUBLIC HEARING ON
6.6.3101, 6.6.3103 through) PROPOSED AMENDMENT,
6.6.3109, 6.6.3112 through) TRANSFER AND AMENDMENT
6.6.3115, transfer and) AND ADOPTION OF RULES
amendment of rules)
6.6.5601 through 6.6.5604)
and adoption of new rules)
I through IV pertaining)
to long-term care.)

TO: ALL INTERESTED PERSONS

1. On October 6, 1998, at 1:30 p.m., a public hearing will be held in room 413 of the State Capitol, at Helena, Montana, to consider the proposed amendment, transfer and amendment and adoption of rules 6.6.3101, 6.6.3103 through 6.6.3109, 6.6.3112 through 6.6.3115, 6.6.5601 through 6.6.5604 and adoption of new rules I through IV pertaining to long-term care.

2. The proposed amendments provide as follows (new text is underlined; text to be deleted is interlined):

6.6.3101 PURPOSE AND SCOPE (1) will remain the same.

(2) Except as otherwise specifically provided, these rules apply to all long-term care insurance policies or ~~group~~ certificates delivered or issued for delivery in this state on or after January 1, 1991, by ~~insurers~~ issuers; fraternal benefit societies; nonprofit health, hospital, and medical service corporations; prepaid health plans; health maintenance organizations, and all similar organizations.

(3) will remain the same.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3103 POLICY DEFINITIONS (1) No long-term care insurance policy or ~~group~~ certificate delivered or issued for delivery in Montana shall use the terms set forth below, unless the terms are defined in the policy or ~~group~~ certificate and the definitions satisfy the following requirements:

(2) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(2) remains the same but is renumbered (3).

(4) "Adult day care" means a program for six or more individuals, of social and health-related services provided

during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(5) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(6) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(7) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(8) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(9) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.

(10) "Hands-on assistance" means physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

(3) through (6) remain the same but are renumbered (11) through (14).

(15) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(7) remains the same but is renumbered (16).

(17) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(18) "Transferring" means moving into or out of a bed, chair or wheelchair.

(8) remains the same but is renumbered (19).

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3104 POLICY PRACTICES AND PROVISIONS (1) The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy or ~~group~~ certificate without further explanatory language in accordance with the disclosure requirements of ARM 6.6.3105.

(2) No such policy or certificate issued to an individual shall contain renewal provisions less favorable to the insured than "guaranteed renewable." The commissioner of insurance may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the commissioner of insurance, to best protect the interests of the insureds, if the ~~insurer~~ issuer demonstrates:

(a) that renewal will jeopardize the ~~insurer's~~ issuer's solvency; or

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

(e) the ~~insurer~~ issuer has made repeated and good faith attempts to stabilize loss experience of the policies, including the timely filing for rate adjustments.

(3) The term "guaranteed renewable" means the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the ~~insurer~~ issuer has no unilateral right to make any change in any provision of the policy, certificate, or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the ~~insurer~~ issuer on a class basis.

(4) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the ~~insurer~~ issuer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(5) No policy or ~~group~~ certificate may be delivered or issued for delivery in this state as long-term care insurance if such policy or ~~group~~ certificate limits or excludes coverage by type of illness, treatment, medical condition or accident, except it may include exclusions or limits for:

(5) (a) through (5) (h) will remain the same.

(6) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy or certificate.

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

(b) For the purposes of this section rule, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy or certificate would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy or certificate in its entirety or with respect to an insured class, and who has been continuously insured under the group policy or certificate and any group policy or certificate which it replaced, for at least three months immediately prior to termination, shall be entitled to the issuance of a converted policy or certificate by the ~~insurer~~ issuer under whose group policy or certificate the individual is covered, without evidence of insurability.

(c) will remain the same.

(d) Written application for the converted policy or certificate shall be made and the first premium due, if any, shall be paid as directed by the ~~insurer~~ issuer not later than thirty-one days after termination of coverage under the group policy or certificate. The converted policy or certificate

shall be issued effective on the day following the termination of coverage under the group policy or certificate, and shall be renewable annually.

(e) Unless the group policy or certificate from which conversion is made replaced previous group coverage, the premium for the converted policy or certificate shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which the conversion is made. Where the group policy or certificate from which conversion is made replaced previous group coverage, the premium for the converted policy or certificate shall be calculated on the basis of the insured's age at inception of coverage under the group policy or certificate replaced.

(f) Continuation of coverage or issuance of a converted policy or certificate shall be mandatory except where:

(7) (f) (i) through (7) (f) (ii) (B) will remain the same.

(g) Notwithstanding any other provision of this section rule a converted policy or certificate issued to an individual who at the time of conversion is covered by another long-term care insurance policy or certificate which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy or certificate, would result in payment of more than one hundred percent of incurred expenses. Such provision shall only be included in the converted policy or certificate if the converted policy or certificate also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) The converted policy or certificate may provide that the benefits payable under the converted policy or certificate, together with the benefits payable under the group policy or certificate from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy or certificate remained in force and effect.

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

(8) If a group long-term care policy or certificate is replaced by another group long-term care policy or certificate issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy or certificate:

(a) Shall not result in an exclusion for preexisting conditions that would have been covered under the group policy or certificate being replaced; and

(b) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(9) In the case of a group defined in 33-22-1107(5)(a), MCA, any requirement that a signature of an insured be obtained by an agent or issuer shall be deemed satisfied if:

(a) The consent is obtained by telephonic or electronic enrollment by the group policyholder or issuer. A verification of enrollment information shall be provided to the enrollee.

(b) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(c) The telephonic or electronic enrollment providing necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and "privileged information," as defined by 33-19-104(22), MCA, is maintained.

(d) The issuer shall make available, upon request of the commissioner, records that will demonstrate the issuer's ability to confirm enrollment and coverage amounts.

(10) For a policy or certificate that has been in force for less than six months an issuer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance of coverage.

(a) For a policy or certificate that has been in force for at least six months but less than two years an issuer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

(b) After a policy or certificate has been in force for two years it is not contestable upon the grounds of misrepresentation alone; such policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(c) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this rule, "field issued" means a policy or certificate issued by a producer or a third-party administrator pursuant to the underwriting authority granted to the producer or third-party administrator by an issuer.

(d) If an issuer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the issuer in the event that the policy or certificate is rescinded.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3105 REQUIRED DISCLOSURE PROVISIONS (1) Individual long-term care insurance policies and certificates shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy or certificate, and shall clearly state the duration, where limited, of renewability and the duration of the term of

coverage for which the policy or certificate is issued and for which it may be renewed. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(2) Except for riders or endorsements by which the ~~insurer~~ issuer effectuates a request made in writing by the insured under an individual long-term care insurance policy or certificate, all riders or endorsements added to an individual long-term care insurance policy or certificate after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy or certificate shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, certificate, rider or endorsement.

(3) A long-term care insurance policy or certificate which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of such terms in the policy or certificate and an explanation of such terms in its accompanying outline of coverage.

(4) and (5) will remain the same.

(6) With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

(7) Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this rule. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3106 PROHIBITION AGAINST POST-CLAIMS UNDERWRITING

(1) will remain the same.

(2) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed. If the medications listed in such application were known by the ~~insurer~~ issuer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Except for policies or certificates which are guaranteed issue, the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy or certificate.

(4) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy or certificate. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

(5) Prior to issuance of a long-term care policy or certificate to an applicant age eighty or older, the ~~insurer~~ issuer shall obtain one of the following:

(5) (a) through (6) will remain the same.

(7) Every ~~insurer~~ issuer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the commissioner of insurance in the format prescribed by the National Association of Insurance Commissioners in Appendix A.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3107 MINIMUM STANDARDS FOR HOME HEALTH CARE BENEFITS IN LONG-TERM CARE INSURANCE POLICIES (1) and (a) will remain the same.

(b) by requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a

home, ~~or~~ community or institutional setting before home health care services are covered;

(c) will remain the same.

(d) by requiring that a nurse or therapist provide services covered by the policy or certificate that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

~~(e)-(g)~~ by requiring that the insured or claimant have an acute condition before home health care services are covered; and

(f) will remain the same but is renumbered (h).

(i) by excluding coverage for adult day care services.

(2) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

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

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3108 REQUIREMENT TO OFFER INFLATION PROTECTION

(1) No ~~insurer~~ issuer may offer a long-term insurance policy or certificate unless the ~~insurer~~ issuer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy or certificate that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonable anticipated increases in the costs of long-term care services covered by the policy or certificate. ~~Insurers~~ Issuers must offer to each policyholder, at the time of purchase, the option to purchase a policy or certificate with an inflation protection feature no less favorable than one of the following:

(a) increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5%;

(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined, ~~or~~ The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that

benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy or certificate is issued to a group, the required offer in ~~subsection~~ (1) above shall be made to the group policyholder; except, if the policy or certificate is issued to a group defined in 33-22-1107~~(3)~~(5)(d), MCA, other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

(3) The offer in ~~subsection~~ (1) above shall not be required of +

~~(a) life insurance policies or riders containing accelerated long-term care benefits, nor~~

~~(b) expense incurred long term care insurance policies.~~

(4) ~~insurers~~ issuers shall include the following information in or with the outline of coverage:

(a) a graphic comparison of the benefit levels of a policy or certificate that increases benefits over the policy period with a policy or certificate that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty-year period; and

(b) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the ~~insurer~~ issuer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages seventy-five and eighty-five for benefit increases.

(c) An ~~insurer~~ issuer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(5) Inflation protection benefit increases under a policy or certificate which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy or certificate.

(6) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the issuer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7) Inflation protection as provided in (1)(a) of this section shall be included in a long-term care insurance policy or certificate unless an issuer obtains a rejection of inflation protection signed by the policyholder as required in this section.

The rejection shall be considered a part of the application and shall state:

(a) I have received the outline of the coverage and the graphs that compare the benefits and premiums of this policy or certificate with and without inflation protection. Specifically, I have reviewed Plans _____ and I reject inflation protection.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3109 REQUIREMENTS FOR REPLACEMENT APPLICATION FORMS AND REPLACEMENT COVERAGE (1) ~~Individual and direct response solicited long term care insurance - a~~ Application forms shall include ~~a question the following questions~~ designed to elicit information as to whether, ~~as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether the proposed insurance policy a long-term care policy or certificate~~ is intended to replace any other accident and sickness or long-term care insurance policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, ~~except where the coverage is sold without a producer, containing such a question the following questions~~ shall be used.

(a) Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

(b) Did you have another long-term care insurance policy or certificate in force during the last twelve months?

(i) If so, with which company?

(ii) If that policy or certificate lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

(2) Producers shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold that are still in force.

(b) List policies sold in the past five years that are no longer in force.

~~(2)(3)~~ Upon determining that a sale will involve replacement, an ~~insurer issuer~~, other than an ~~insurer issuer~~ using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy or certificate, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of ~~such the~~ notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the ~~insurer issuer~~. The required notice shall be provided in the following manner:

**NOTICE TO APPLICANT REGARDING REPLACEMENT
OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE
INSURANCE**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate

existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides ~~thirty~~ ~~(30)~~ days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY PRODUCER (OR OTHER REPRESENTATIVE): (Use additional sheets, as necessary.) I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. will remain the same.
2. If you are replacing existing long-term care insurance coverage. You you may wish to secure the advice of your present insurer issuer or its agent producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of Producer or Other Representative)

[Typed Name and Address of Producer]

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)

~~(3)~~(4) ~~Insurers~~ Issuers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy or certificate. The required notice shall be provided in the following manner:

**NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy or certificate delivered herewith issued by [company name] Insurance Company. Your new policy or certificate provides ~~thirty~~ (30) days within which you may decide, without cost, whether you desire to keep the policy or certificate. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy or certificate.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy or certificate only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy or certificate. This could result in denial or delay in payment of benefits under the new policy or certificate, whereas a similar claim might have been payable under your present policy or certificate.
2. If you are replacing existing long-term care insurance coverage. ~~You~~ you may wish to secure the advice of your present ~~insurer~~ issuer or its producer regarding the proposed replacement of your present policy or certificate. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy or certificate and replace it with new coverage, read the copy of the application attached to your new policy or certificate and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within ~~thirty~~ (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

(5) Where replacement is intended, the replacing issuer shall notify, in writing, the existing issuer of the proposed replacement. The existing policy or certificate shall be identified by the issuer, name of the insured and policy number or address including zip code. Notice shall be made within five working days from the date the application is received by the issuer or the date the policy or certificate is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care shall comply with this rule if the policy or certificate being replaced is a long-term care insurance policy. If the policy or certificate being replaced is a life insurance policy, the issuer shall comply with the replacement requirements of ARM 6.6.301 through 6.6.310. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy or certificate, the replacing issuer shall comply with both the long-term care and the life insurance replacement requirements.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3112 LOSS RATIO (1) through (m) will remain the same.

(2) Section (1) shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy or certificate that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy or certificate complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy or certificate;

(b) The portion of the policy or certificate that provides life insurance benefits meets the nonforfeiture requirements of 33-20-201, et seq., MCA;

(c) The policy or certificate meets the disclosure requirements of 33-20-127 and 33-20-128, MCA;

(d) Any policy illustration that meets the applicable requirements of the NAIC Life Insurance Illustrations Model Regulation; and

(e) An actuarial memorandum is filed with and reviewed by the insurance department of the state auditor's office that includes:

(i) A description of the basis on which the long-term care rates were determined;

(ii) A description of the basis for the reserves;

(iii) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) A description and a table of each actuarial assumption used. For expenses, an issuer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) The estimated average annual premium per policy or certificate and the average issue age;

(vii) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy or certificate, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy or certificate, both for active lives and those in long-term care claim status.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3113 FILING REQUIREMENT (1) Prior to an insurer issuer or similar organization offering group long-term care insurance to a resident of Montana pursuant to 33-22-1120, MCA, ~~the issuer~~ shall file with the commissioner of insurance evidence that the group policy or certificate thereunder has been for approved approval by ~~a~~ this state, having statutory or regulatory long term care insurance requirements substantially similar to those adopted in this state.

(2) The policy or certificate and all related forms must prominently display the specific kind and type(s) of long-term care benefits insured.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3114 STANDARD FORMAT OUTLINE OF COVERAGE (1) This rule implements, interprets and makes specific the provisions of 33-22-1111, MCA, in prescribing a standard format and the content of an outline of coverage.

~~(1)~~(2) The outline of coverage shall be a free-standing document, using no smaller than ~~ten~~ twelve point type.

(2) through (4) will remain the same but are renumbered (3) through (5).

(5)(6) Format for outline of coverage:

[COMPANY NAME]

[ADDRESS-CITY & STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]
[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy or certificate. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. Will remain the same.
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy or certificate contains governing contractual provisions. This means that the policy or certificate or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!
3. will remain the same.
 - (a) [Provide a brief description of the right to return-"free look" provision of the policy or certificate.]
 - (b) [Include a statement that the policy or certificate either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include description of them.]
4. through (b) will remain the same.
5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or

medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy or certificate provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY/CERTIFICATE.

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

(c) [Non-institutional benefits, by skill level.]

~~Any benefit screens must be explained in this section.~~

~~If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long term care, then these qualifying criteria or screens must be explained.]~~

(d) Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

Any additional benefit triggers must also be explained.

If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

7. through (d) will remain the same.

(e) Limitations.]

THIS POLICY/CERTIFICATE MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

8. through (e) will remain the same.

9. will remain the same.

~~(a) Describe [For long-term care health insurance policies or certificates, describe one of the following policy renewability provisions:]~~

(i) Policies and certificates that are guaranteed renewable shall contain the following statement:]
RENEWABILITY: THIS POLICY [CERTIFICATE] IS

GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy [certificate], to continue this policy [certificate] as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy [certificate] on its own, except that, in the future, it may increase the premium you pay.

(ii) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELABLE. This means that you have the right, subject to the terms of your policy or certificate, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy or certificate contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(9) (b) through (9) (d) will remain the same.

10. ALZHEIMER'S DISEASE, IRREVERSIBLE DEMENTIA, AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy or certificate provides coverage for insureds clinically diagnosed to having Alzheimer's disease, irreversible dementia, or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

11. will remain the same.

[(a) State the total annual premium for the policy or certificate;

(b) will remain the same.

12. will remain the same.

(a) QUALIFIED LONG-TERM CARE INSURANCE. Indicate whether or not the policy or certificate is a qualified long-term care insurance contract.

(a) and (b) will remain the same but are renumbered (b) and (c).

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.3115 REQUIREMENT TO DELIVER SHOPPER'S GUIDE

(1) will remain the same.

(a) In the case of producer solicitations, ~~an agent~~ a producer must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) and (2) will remain the same.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

3. Subchapter 56 is proposed to be transferred to subchapter 31. The proposed amendments provide as follows:

6.6.5601 STANDARDS FOR MARKETING (1) Every ~~insurer~~ issuer, ~~health care service plan~~ health service corporation, ~~health maintenance organization~~ or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its ~~agents~~ producers or other producers will be fair and accurate;

(b) will remain the same.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy or certificate the following:

"Notice to buyer: This policy or certificate may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

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

(f) ~~If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall. The issuer must at solicitation, provide written notice to the prospective policyholder and certificate holder that such a senior insurance counseling program is available and the name, address and telephone number of the program; and~~

(g) For long-term care health insurance policies and certificates, use the terms "noncancelable" or "level premium" only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the ~~insurer~~ issuer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(2) will remain the same.

(a) Twisting or knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or ~~insurers~~ issuers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or certificate or to take out a policy of insurance or certificate with another ~~insurer~~ issuer;

(b) will remain the same.

(c) Cold lead advertising such as making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance ~~agent~~ producer or insurance company.

(3)(a) will remain the same.

(b) The ~~insurer~~ issuer shall file with the insurance department the following material:

(3)(b)(i) through (3)(c)(i) will remain the same.

(ii) a brief description of the process under which such policies and the ~~insurer~~ issuer issuing such policies were selected.

(d) If the association and the ~~insurer~~ issuer have interlocking directorates or trustee arrangements, the association shall disclose such fact to its members.

(e) The board of directors of associations endorsing long-term care insurance policies or certificates shall review and approve such insurance policies as well as the compensation arrangements made with the ~~insurer~~ issuer.

(f) will remain the same.

(i) at the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the ~~insurer~~ issuer to conduct an examination of the policies, including its benefits, features, and rates and update such examination thereafter in the event of material change;

(ii) actively monitor the marketing efforts of the ~~insurer~~ issuer and its ~~agents~~ producers; and

(iii) will remain the same.

(g) No group long-term care insurance policy or certificate may be issued to an association unless the ~~insurer~~ issuer files with the state insurance department the information required in this ~~subsection~~ rule.

(h) the ~~insurer~~ issuer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the ~~insurer~~ issuer certifies annually that the association has complied with the requirements set forth in this ~~subsection~~ rule.

(i) will remain the same.

AUTH: Sec. 33-1-313 and 33-22-1121, MCA
IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.5602 APPROPRIATE SALE CRITERIA (1) Every ~~insurer~~ issuer, ~~health care service plan~~ health service corporation, ~~health maintenance organization~~ or other entity marketing long-term care insurance (the "issuer") shall:

(a) will remain the same.

(b) Train its ~~agents~~ producers in the use of its appropriate sale criteria standards; and

(c) through (2)(a)(iii) will remain the same.

(b) The issuer, and where ~~an agent~~ a producer is involved, the ~~agent producer~~ shall make reasonable efforts to obtain the information set out in (2)(a) above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in ~~Form A Appendix B~~, in not less than 12 point type. The issuer may request the applicant to provide additional information to comply with its appropriate sale criteria standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

(c) will remain the same.

(d) The sale or dissemination outside the company or agency by the issuer or ~~agent producer~~ of information obtained through the personal worksheet in ~~Form A Appendix B~~ is prohibited.

(3) will remain the same.

(4) ~~Agents Producers~~ shall use the appropriate sale criteria standards developed by the issuer in marketing long-term care insurance.

(5) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in ~~Form B Appendix C~~, in not less than 12 point type.

(6) If the issuer determines that the applicant does not meet its financial appropriate sale criteria standards, or if the applicant has declined to provide the information, the issuer ~~may reject the application. In the alternative, the issuer~~ shall send the applicant a letter similar to ~~Form G Appendix D~~. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(7) The issuer shall report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the appropriate sale criteria standards, and the number of those who chose to confirm after receiving a ~~an~~ appropriate sale criteria letter.

(8) This rule shall not apply to life insurance policies or certificates that accelerate benefits for long-term care.

AUTH: Sec. 33-1-313 and 33-22-1121, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

6.6.5603 NONFORFEITURE BENEFIT REQUIREMENT

(1) will remain the same.

(2) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of 33-22-1116, MCA:

(a) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in (5); and

(b) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

(3) If the offer of the long-term care insurance policy or certificate that includes nonforfeiture benefits is

rejected, the issuer shall provide the contingent benefit upon lapse described in this rule.

(4) After rejection of the offer of the long-term care insurance policy or certificate, for individual and group policies without nonforfeiture benefits issued after [the effective date of this rule], the issuer shall provide a contingent benefit upon lapse.

(a) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(b) The contingent benefit upon lapse shall be triggered every time an issuer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty days prior to the due date of the premium reflecting the rate increase.

Triggers for Contingent Benefit Upon Lapse

<u>Issue Age</u>	<u>Substantial Percent Over Initial Premium</u>
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%

<u>80</u>	<u>20%</u>
<u>81</u>	<u>19%</u>
<u>82</u>	<u>18%</u>
<u>83</u>	<u>17%</u>
<u>84</u>	<u>16%</u>
<u>85</u>	<u>15%</u>
<u>86</u>	<u>14%</u>
<u>87</u>	<u>13%</u>
<u>88</u>	<u>12%</u>
<u>89</u>	<u>11%</u>
<u>90 and over</u>	<u>10%</u>

(c) On or before the effective date of a substantial premium increase as defined in (4)(b), the issuer shall:

(i) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of (5). This option may be elected at any time during the 120-day period referenced in (4)(b); and

(iii) Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in (4)(b) shall be deemed to be the election of the offer to convert in (ii) above.

(5) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this rule:

(1)(a) will remain the same but is renumbered (5)(a).

(b) For purposes of this rule, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in ~~(4)~~(5)(c).

(c) The standard nonforfeiture credit will be equal to one hundred percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The ~~insurer issuer~~ issuer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of ~~(4)~~(5)(b).

(d) ~~No policy or certificate shall begin a~~ The nonforfeiture benefit and the contingent benefit upon lapse shall begin not later than the end of the third year following the policy or certificate issue date except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

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

(2) through (4) will remain the same, but are renumbered (6) through (8).

(a) Except as provided in ~~(4)~~(8)(b), the provisions of this rule apply to any long-term care policy or certificate issued in this state on or after [the effective date of this amended regulation rule]; and

(b) For certificates issued on or after [the effective date of this rule], under a group long-term care insurance policy or certificate as defined in 33-22-1107, MCA, which policy or certificate was in force at the time this rule became effective, the provisions of this rule shall not apply.

~~(5)~~(9) Premiums charged for a policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements of ARM 6.6.3112 treating the policy or certificate as a whole.

~~(10)~~ The purchase of additional coverage shall not be considered a premium rate increase.

~~(a)~~ For purposes of the calculation required under this section, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

~~(b)~~ A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under this section, the initial annual premium shall be based on the reduced benefits.

~~(11)~~ To determine whether contingent nonforfeiture upon lapse provisions are triggered under (4)(b), a replacing issuer that purchased or otherwise assumed a block or blocks of long-term care insurance policies or certificates from another issuer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy or certificate was first purchased from the original issuer.

~~(6)~~(12) This rule does not apply to life insurance policies, certificates or riders containing accelerated long-term care benefits.

AUTH: Sec. 33-1-313 and 33-22-1121, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

~~6.6.5604~~ ADOPTION OF FORMS (1) will remain the same.

- ~~(a)~~ Appendix A Rescission Reporting Form
- ~~(a)~~(b) Form A Appendix B Long-Term Care Insurance Personal Worksheet
- ~~(b)~~(c) Form B Appendix C Things You Should Know Before You Buy Long-Term Care Insurance
- ~~(a)~~(d) Form C Appendix D Long-Term Care Insurance Appropriate Sale Criteria Letter

AUTH: Sec. 33-1-313 and 33-22-1121, MCA

IMP: Sec. 33-22-1101 through 33-22-1121, MCA

4. The new rules proposed for adoption provide as follows:

RULE 1 UNINTENTIONAL LAPSE (1) Each issuer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(a) No individual long-term care policy or certificate shall be issued until the issuer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy or certificate for nonpayment of premium. I understand that notice will not be given until thirty days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice." The issuer shall notify the insured of the right to change this written designation, no less often than once every two years.

(b) When the policyholder or certificateholder pays the premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in (1)(a) need not be met until sixty days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(c) No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the issuer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to (1)(a) at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until thirty days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) In addition to the requirement in (1), a long-term care insurance policy or certificate shall include a provision

that provides for reinstatement of coverage, in the event of lapse if the issuer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy or certificate expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

AUTH: Sec. 33-1-313 and 33-22-1121, MCA
IMP: Sec. 33-22-1113, MCA

RULE II REPORTING REQUIREMENTS (1) Every issuer shall maintain records for each producer of that producer's amount of replacement sales as a percentage of the producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the producer as a percentage of the producer's total annual sales.

(2) Every issuer shall report annually by June 30 the 10% of its producers with the greatest percentages of lapses and replacements as measured by (1) above.

(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely producer activities regarding the sale of long-term care insurance.

(4) Every issuer shall report annually by June 30 the number of lapsed policies as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the end of the preceding calendar year.

(5) Every issuer shall report annually by June 30 the number of replacement policies sold as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the preceding calendar year.

(6) For purposes of this rule, "policy" shall mean only long-term care insurance and "report" means on a statewide basis.

AUTH: Sec. 33-1-313 and 33-22-1121, MCA
IMP: Sec. 33-22-1113, MCA

RULE III LICENSING (1) No producer is authorized to market, sell, solicit or otherwise contact a person for the purpose of marketing long-term care insurance unless the producer has demonstrated his or her knowledge of long-term care insurance and the appropriateness of such insurance by passing a test required by this state and maintaining appropriate licenses.

AUTH: Sec. 33-1-313 and 33-22-1121, MCA

IMP: Sec. 33-17-201, MCA

RULE IV FILING REQUIREMENTS FOR ADVERTISING (1) Every issuer, health service corporation or health maintenance organization or other entity providing long-term care insurance or benefits in Montana shall provide a copy of any long-term care insurance advertisement intended for use in this state whether through written, radio or television medium to the commissioner of insurance for review or approval by the commissioner. In addition, all advertisements shall be retained by the issuer, health service corporation, health maintenance organization or other entity for at least three years from the date the advertisement was first used.

(2) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

(3) All advertising and marketing materials must prominently display the specific kind and type(s) of long-term care benefits insured.

AUTH: Sec. 33-1-3113 and 33-22-1121, MCA

IMP: Sec. 33-22-1103, MCA

5. Following are Appendices A through D.

APPENDIX A

**RESCISSION REPORTING FORM FOR
LONG-TERM CARE POLICIES
FOR THE STATE OF _____
FOR THE REPORTING YEAR 19[]**

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission: _____

Signature

Name and Title (please type)

APPENDIX B

**Long-Term Care Insurance
Personal Worksheet**

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must ask you to fill out this worksheet to help you and the company decide if you should buy this policy.

Premium

The premium for the coverage you are considering will [\$_____ per month, or \$_____ per year,] [a one-time single premium of \$_____.]

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums in the future.] The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The last rate increase for this policy in this state was in [year], when premiums went up by an average of _____%]. [The company has not raised its rates for this policy.]

Drafting Note: The issuer shall use the bracketed sentence or sentences applicable to the product offered. If a company includes a statement regarding not having raised rates, it must disclose the company's rate increases under prior policies providing essentially similar coverage. The issuer may include rate information for up to two policy forms if the issuer has not changed rates on either policy form or for prior policies providing essentially similar coverage.

Have you considered whether you could afford to keep this policy if the premiums were raised, for example, by 20%?

Drafting Note: The issuer shall use the bracketed sentence unless the policy is fully paid up or is a noncancellable policy.

How will you pay each year's premiums?

From my Income From my Savings/Investments My Family will pay

Income

What is your annual income? (check one)

Under \$10,000 \$[10,000-20,000] \$[20,000-30,000]
 \$[30,000-50,000] Over \$50,000

Drafting Note: The issuer may choose the numbers to put in the brackets to fit its suitability standards.

How do you expect your income to change over the next 10 years? (check one)

No change Increase Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Turn the Page

Savings and Investments

Not counting your home, about how much are all of your assets worth (your savings and investments)?

(check one)

- Under \$20,000 \$20,000-\$30,000 \$30,000-\$50,000
- Over \$50,000

How do you expect your assets to change over the next 10 years? (check one)

- Stay about the same Increase Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

<input type="checkbox"/> The answers to the questions above describe my financial situation.	<input type="checkbox"/> I choose not to complete this information.
--	---

Signed: _____ (Applicant) _____ (Date)

I explained to the applicant the importance of completing this information.

Signed: _____ (Agent) _____ (Date)

Agent's Printed Name: _____]

[**Note:** In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Signed: _____ (Applicant) _____ (Date)

Drafting Note: Choose the appropriate sentences depending on whether this is a direct mail or agent sale.

The company may contact you to verify your answers.

Drafting Note: When the Long-Term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the page may be removed.

Appendix C

Things You Should Know Before You Buy Long-Term Care Insurance

- Long-Term Care Insurance**
- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
 - [You should **not** buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

Drafting Note: For single premium policies, delete this bullet; for noncancelable policies, delete the second sentence only.

- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.
- Medicare**
- Medicare does **not** pay for most long-term care.
- Medicaid**
- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should **not** buy this policy if you are now eligible for Medicaid.
 - Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.
 - When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.
 - Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

- Shopper's Guide** • Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.
- Counseling** • Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

Appendix D

Long-Term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

Drafting Note: Choose the paragraph that applies.

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

- Yes**, [although my worksheet indicates that long-term care insurance may not be a suitable purchase.] I wish to purchase this coverage. Please resume review of my application.

Drafting Note: Delete the phrase in brackets if the applicant did not answer the questions about income.

- No**, I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE

DATE

6. REASON: In 1996 Congress passed Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA). The Act contained requirements for health insurance carriers and group health plans regarding health insurance accessibility and portability. The act allowed states to choose whether to implement the requirements for insurers and health plans and enforce the requirements through state insurance departments, or to allow the federal government to enforce the act directly. Montana elected to adopt most of the provisions of HIPAA and to enforce the provisions through the Insurance Commissioner's office. Montana's version of HIPAA was Senate bill 378, enacted into law in 1997.

These proposed amendments and new rules implement HIPAA requirements for Long-Term Care Insurance by amending existing sections of current rules and creating new rules in compliance with HIPAA.

Further, the proposed Long-Term Care Insurance amendments and new rules follow an industry-wide intent to mirror the Long-Term Care Insurance Model Regulation as promulgated by NAIC. These proposed changes conform with the current NAIC Model Regulation.

In addition to the rule changes described above, this notice includes a number of housekeeping amendments which involve corrections and style changes.

The principal reasons for the proposed amendments follow.

6.6.3101 makes minor language changes to ensure the rules are consistent with both the Montana Code Annotated and current industry standards.

6.6.3103 adds certain long-term care definitions to conform with both current statutes and industry standards.

6.6.3104 makes minor language changes to conform with MCA and industry standards. New (8) clarifies issuer procedures for discontinuance and replacement of long-term care insurance. New (9) clarifies the use of electronic enrollment for group policies or certificates. New (10) details parameters of incontestability periods.

6.6.3105 makes language changes to conform with MCA and industry standards. New (6) broadens the disclosure requirements for life insurance policies that provide accelerated benefits for long-term care. New (7) expands the disclosure requirements pertaining to eligibility for payment of benefits.

6.6.3106 makes language changes to conform with MCA and industry standards and corrects the reference to a renamed appendix in the long-term care section of the rules.

6.6.3107 further restricts benefit limitations and exclusions allowable on long-term care insurance policies or certificates that provide benefits for home health care services. New (2) provides the minimum policy coverage to be provided for total home health or community care.

6.6.3108 makes minor language changes and provides minimum limits on annual benefit increases under required inflation protection. New (5) provides for continuing inflation protection without regard to insured's age, claim

status or history or length of time insured. New (6) requires conspicuous disclosure of anticipated premium changes, if any, under inflation protection. New (7) outlines the required wording necessary in an insured's rejection of inflation protection.

6.6.3109 changes the catchphrase for further clarity and amends language throughout for consistency with MCA and industry standards. Language amended in (1) to specify the exact application questions for issuers to use in eliciting information regarding replacement coverage. New (2) requires producers to list any additional health insurance policies previously sold to the applicant. Renumbered (3) to account for new (2) and made minor language changes. Inserted language in notices to applicant regarding replacement for both direct response solicitation and other than direct response. The inserted language clearly advises the insured to review any new coverage carefully, comparing it with any current insurance, before deciding to replace any long-term care coverage. New (5) requires the replacing issuer give written notice to the existing issuer of the proposed replacement. New (6) outlines the compliance requirements for replacement of life insurance policies that accelerate benefits for long-term care.

6.6.3112 illustrates the provisions under which life insurance policies that accelerate benefits for long-term care are considered to provide reasonable benefits in relation to premiums paid.

6.6.3113 clarifies the requirement of issuers to file policies and certificates with the commissioner of insurance, and receive the commissioner's approval, prior to offering coverage to Montana residents. New (2) inserts the requirement that the specific kind and type(s) of long-term care benefits insured be prominently displayed on the policy, certificate and all related forms.

6.6.3114 prescribes the standard format and content of the outlines of long-term care coverage, as prescribed in section 33-22-1111, MCA. New language inserted under "Benefits Provided by this Policy" adds activities of daily living and cognitive impairment as triggers for eligibility for payment of benefits. New language under "Terms Under Which the Policy (or Certificate) May be Continued in Force or Discontinued" requires clear explanation of "guaranteed renewable" and/or "noncancellable" on the outline of coverage. New language under "Additional Features" requires clear indication if the policy or certificate is a qualified long-term care insurance contract, for tax purposes, under section 7702B of the Internal Revenue Code, 26 U.S.C. 7702B.

6.6.3115 makes one minor language change.

6.6.5601 updates language throughout to maintain consistency with MCA and to provide clearer explanations.

6.6.5602 updates language and renumbers/renames certain forms in appendices to follow NAIC form designation. In (6), removed option for issuer to reject applications for not meeting issuer's financial appropriate sale criteria standards

or when the applicant declines to provide such information. In these instances, the issuer will send the applicant a form entitled, "Long-Term Care Insurance Suitability Letter".

6.6.5603 amends and updates language throughout the rule, for clarity and consistency with MCA. New (2) expands required guidelines for an issuer to follow when offering nonforfeiture benefits pursuant to provisions of 33-22-1116, MCA. New (3) mandates the issuer to provide a contingent benefit upon lapse once the offer of long-term care insurance with nonforfeiture benefits is rejected. New (4) describes how the contingent benefit upon lapse is triggered and includes a chart showing issue age and the corresponding substantial percent over initial premium. New (10) explains the changes in premium resulting from adding and/or reducing coverage on policies with nonforfeiture benefits or contingent benefit upon lapse. New (11) explains how a replacing issuer, after acquiring a block of long-term care policies or certificates, determines whether contingent nonforfeiture upon lapse provisions are triggered.

6.6.5604 adopts one new form (Appendix A: "Rescission Reporting Form") and renames/renumbers previously adopted forms to coincide with NAIC's form designation.

The principal reasons for the proposed new rules follow.

Rule I has been added to comply with standards as required under the consumer protection provisions of the Health Insurance Portability and Accountability Act (HIPPA). This rule describes the provisions issuers shall follow in order to provide long-term care insureds with substantial protection against unintentional lapse of their long-term care insurance policy or certificate.

Rule II requires the issuer to maintain records of all producers' lapsed and replaced long-term care policies, both as percentages of the producer's total sales and total number of policies in force. The reporting replacement and lapse rates do not alone constitute any insurance law violation or imply any wrongdoing. The reporting is required in order to review more closely producer activities regarding the sale of long-term care insurance. The language is largely drawn from the current NAIC Long-Term Care Insurance Model Regulation.

Rule III is added to further protect the consumer by requiring all long-term care producers to pass a test showing adequate knowledge of long-term care insurance. This rule also requires long-term care insurance producers to maintain appropriate state licenses when marketing, selling or soliciting long-term care insurance in this state. The language is largely drawn from the current NAIC Long-Term Care Insurance Model Regulation.

Rule IV has been added to comply with the requirements of issuers of long-term care insurance under the Health Insurance Portability and Accountability Act (HIPPA). This rule requires copies of all long-term care insurance advertisements intended for use in Montana be submitted to the commissioner of insurance for review or approval and kept on file for three (3) years from the date the advertisement was first used. The

language is largely drawn from the current NAIC Long-Term Care Insurance Model Regulation.

7. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Peter Funk, State Auditor's Office, 126 North Sanders, Mitchell Building, Room 270, Helena, Montana 59620, and must be received no later than October 16, 1998.

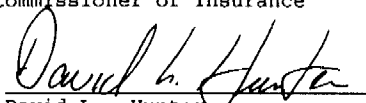
8. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the office no later than 5:00 p.m., September 28, 1998, to advise us as to the nature of the accommodation needed. Please contact Darla Sautter at 126 North Sanders, Mitchell Building, Room 270, Helena, Montana 59620, telephone (406) 444-2726; Montana Relay 1-800-332-6148; TDD (406) 444-3246; facsimile (406) 444-3497. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Darla Sautter.

9. Peter Funk has been designated to preside over and conduct the hearing.

10. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59624, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By:


David L. Hunter
Deputy State Auditor

By:


Russell B. Hill
Rules Reviewer

Certified to the Secretary of State August 17, 1998.

BEFORE THE BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to experience requirements,) 8.50.428 EXPERIENCE REQUIRE-
fees and private investigator) MENTS, 8.50.437 FEE SCHEDULE
trainee) AND 8.50.438 PROBATIONARY
) PRIVATE INVESTIGATORS

TO: All Interested Persons:

1. On September 16, 1998, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.50.428 EXPERIENCE REQUIREMENTS (1) through (2) will remain the same.

(3) One and one-half years experience as a licensed insurance ~~adjuster~~ investigator may be counted towards the three-year experience requirements as a private investigator."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-303, MCA

REASON: During its regular rule review, the Board realized that the language of the rule was not precise in the type of experience required for licensure. The term "adjuster," as commonly understood, involves no aspect of investigation and, therefore, is not appropriate experience leading to licensure as a private investigator. The correct designation is "insurance investigator" as an individual employed as such typically engages in activities similar to those of a private investigator and, on that basis, is suitable experience for licensure.

"8.50.437 FEE SCHEDULE

(1) License application fees	
(a) Contract security company	\$75 100
(b) Proprietary security organization	75 100
(c) Private investigator	75 100
(d) Qualifying agents and resident managers	75 100
(e) Security alarm installer	75 100
(f) Probationary license <u>Private investigator trainee</u>	75 100
(2) Employee registration application fees	
(a) Contract security employee	15 25

(b) Proprietary security employee	15	25
(c) Security Alarm installer employee	15	25
(3) Licensee and employee renewals		
(a) Licensee renewals	30	50
One-half price on fee for renewals only for each additional license for dual or multiple licenses		
(b) Contract security employee	10	25
(c) Proprietary security employee	10	25
(d) Security Alarm installer employee	10	25
(e) Late renewal		50
(4) Miscellaneous fees License exam fee		20
(a) (5) Re-exams	15	20
(b) Late renewals	25	
(6) Process server/levying officer exam		20
(7) Miscellaneous fees		
(c) (a) Branch office application	10	20
(b) Firearm instructor application		25
(d) (c) Duplicate licenses	5	10
(e) and (f) will remain the same, but will be renumbered		
(d) and (e).		
(5) Exam fee	15	
(6) (f) Temporary practice permit	10	25
(7) Process server examination	15	
(8) will remain the same."		

Auth: Sec. 37-1-134, 37-60-202, MCA; IMP, Sec. 25-1-1104, 37-1-134, 37-60-304, 37-60-312, MCA

REASON: As a regular agenda item, the board reviews its operating budget to determine whether current expenditures are in keeping with revenue derived by license fees. At its last meeting, the board administrator projected a budget shortfall if fees were not raised. Based upon the requirement that fees be commensurate with costs, 37-1-134, MCA, the Board proposes the above fee increases.

"8.50.438 PROBATIONARY PRIVATE INVESTIGATOR PRIVATE INVESTIGATOR TRAINEE (1) On a form provided by the board, a person who is at least 19 years of age, but does not meet the requirements of 37-60-303(1) and (3), MCA, may apply for a probationary trainee license as a private investigator. The application shall be accompanied by a statement from a licensed private investigator who will employ and provide direct supervision of the probationary trainee license holder, setting forth the scope of the probationary trainee license holder's duties and training.

(2) Direct supervision for the purposes of (1) means daily contact while the probationary trainee licensee is engaged in an investigation including one face-to-face meeting on a weekly basis. A probationary trainee license holder may not conduct an independent business or act as an independent contractor.

(3) The employment and training of the probationary trainee license holder may not commence until the board has

approved the application and the applicant has received the probationary trainee license and identification card. The probationary trainee license expires annually and may be renewed three times."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-202, MCA

REASON: The Board proposes this amendment to remove the word probationary from the rule. "Probationary" is commonly understood to mean a license under some form of discipline. The proper wording for the activity contemplated is training which the amendment incorporates into the rule.


3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., September 6, 1998, to advise us of the nature of the accommodation that you need. Please contact Sandra Blanton-Donahue, Board of Private Security Patrol Officers and Investigators, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3728; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Sandra Blanton-Donahue.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Private Security Patrol Officers and Investigators, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., September 26, 1998.

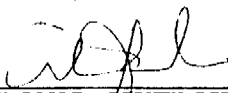
5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Private Security Patrol Officers and Investigators administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3728.

BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
GARY GRAY, CHAIRMAN


R. PERRY ESKRIDGE
Rule Reviewer

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 17, 1998.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of proposed)
repeal, amendment, and) NOTICE OF PUBLIC
adoption of rules relating) HEARING
to procedures for evaluation)
and determination of)
eligibility for special)
education and related)
services)

TO: All interested persons.

1. On September 30, 1998, at 9:00 a.m., in the Stillwater Room, Holiday Inn Billings Plaza, 5500 Midland Road, Billings, Montana, a public hearing will be held to consider the proposed repeal, amendment and adoption of rules pertaining to procedures for evaluation and determination of eligibility for special education and related services.

2. The Office of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this document. If you need accommodation, please contact Pat Reichert, (406) 444-4402, to advise the Office of Public Instruction of the nature of the accommodation you need.

3. Statement of Reasonable Necessity. The Office of Public Instruction (OPI) is proposing to repeal, amend and adopt administrative rules concerning the process school districts use to evaluate whether a student is eligible for special education and related services. These rule changes are necessary for the following reasons:

A. In 1997 Congress enacted Public Law 105-117 revising the Individuals with Disabilities Education Act (IDEA). In order to continue receiving federal education aid under IDEA, Montana must make changes in its administrative rules to comply with the requirements of IDEA.

B. OPI is reviewing all of its administrative rules related to special education to repeal any rules that are repetitive of controlling Federal statute or rule. Congress's revisions to IDEA changed the statutory requirements for re-evaluation of students previously identified as IDEA eligible. School districts are now required to review existing evaluation data and determine what, if any, additional data is needed. Input from the student's parent is used to determine the extent of additional information needed in re-evaluation. The Montana administrative rules on evaluation and re-evaluation are being changed to comply with the federal changes by distinguishing

between initial evaluation and re-evaluation and clarifying that the initial evaluation is a comprehensive evaluation by a defined child study team.

C. Section 20-7-401(4), MCA, lists the categories of disability that qualify a student for special education and related services. Existing rules establish criteria for identification of a student for some, but not all of the categories listed in statute. The new rules complete the list from statute by establishing the criteria for identification of a student as having emotional disturbance, autism, traumatic brain injury, or other health impairments.

4. The rules proposed for repeal follow. Full text of the rules are found at pages 10-223, 10-225, 10-227 and 10-235, ARM.

10.16.1101 PROTECTION IN EVALUATION PROCEDURES
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1103 REVIEW/REEVALUATION
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1106 PROTECTION FROM USE OF DIAGNOSTIC CATEGORY FOR PLACEMENT PURPOSES
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1121 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING MULTIPLE DISABILITIES
(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

5. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows.

10.16.1113 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS

~~(1) Before any action is taken with respect to the initial placement of a student with disabilities in a special education program initial provision of special education and related services, a full comprehensive and individual individualized evaluation of the student's educational needs must shall be conducted in accordance with the requirements of ARM 10.16.1101 20 U.S.C. Sec. 1414, and its implementing regulations.~~

~~(2) An evaluation based on procedures required in subsection (1) of this rule shall be conducted at least every three years or more frequently if conditions warrant or if the student's parent or teacher requests an evaluation. The child study team shall determine whether the evaluation is adequate and whether the student has a disability which adversely affects the student's performance in the general curriculum and because of that disability needs special education.~~

(3) ~~Before conducting an initial comprehensive educational evaluation, the local educational agency shall obtain written parental consent according to ARM 10.16.2700. The child study team shall prepare a written report of the results of the evaluation. The report shall include the results of assessments and shall include statements of implications for educational planning in terms understandable to all team members.~~

(4) ~~In interpreting evaluation data and in making program decisions, the child study team shall: For initial evaluations, the child study team report shall address:~~

(a) ~~Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; The results of assessments in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and~~

(b) ~~Ensure that information obtained from all of these sources is documented on the child study team report and carefully considered; The data necessary to address criteria established in ARM 10.16.1115 through 10.16.1124 and Rules I through IV.~~

(c) ~~Ensure that decisions made by the child study team include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and~~

(d) ~~Ensure that program decisions are made in conformity with the least restrictive environment requirements.~~

(5) ~~The child study team shall determine whether the evaluation is adequate and whether the student has a disability which adversely affects the student's educational performance and because of that disability needs special education. For all initial evaluations and re-evaluations, the child study team report shall address a review of existing evaluation data on the student, including:~~

(a) ~~Evaluations and information provided by the parents of the student;~~

(b) ~~Current classroom-based assessments and observations;~~

(c) ~~Observations by teachers and related services providers.~~

(6) ~~The child study team shall prepare a written report of the results of the evaluation. The report shall include a summary statement of the basis for making the determination that the student has a disability and needs special education and related services. Each local educational agency team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusions. All child study team reports shall include a summary statement of the basis for making the determination whether the student has a disability and needs special education and related services.~~

(7) All child study team reports will identify a disability category or categories for each student with a disability consistent with 20-7-401, MCA. This identification of a disability category is for the purposes of data reports required by the office of public instruction.

(8) Each participant of the child study team shall be provided an opportunity to submit a separate statement of conclusions if the report does not reflect the conclusions of the participant.

(9) A copy of the report shall be provided to the parent.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

10.16.1114 COMPOSITION OF A CHILD STUDY TEAM (1) The initial evaluation for determining eligibility for special education and related services is made by the multidisciplinary child study team including that includes the following members:

(a) A local educational agency principal or administrative designee who has authority to provide or supervise the provision of special education services; The parents of the student;

(i) if the local educational agency does not employ a principal, the county school superintendent or special education cooperative director.

(b) The student's regular education teacher; At least one regular education teacher of the student if the student is participating in the regular education environment;

(i) if the student has more than one regular education teacher, one of the regular education teachers or a school counselor may represent the teachers;

(ii) if the student is not enrolled in public school, a regular education teacher who teaches grades or subjects appropriate for the student's age; and

(iii) if the student is age 5 and not enrolled in public school, the regular education teacher shall be a teacher with elementary education endorsement. If the student is age 3 or 4, a regular education teacher is not required to participate.

(c) The student's special education teacher when the student is already receiving special education; At least one special education teacher or related services provider;

(i) if the student is not receiving special education, the special education teacher who will be most likely to serve the student in the event that the student needs special education services shall be appointed; and

(ii) if the student is suspected of having a speech/language impairment, the special education teacher may be the speech/language pathologist.

(d) one or both of the student's parents; An administrative representative or designee of the local educational agency who:

(i) is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general curriculum; and

(iii) is knowledgeable about the availability of resources;

(e) ~~the student, where appropriate. At least one teacher or other specialist with knowledge in the area of suspected disability who can interpret the instructional implications of evaluation results. This individual may be a member of the team described in (1)(a) through (f). For specific disabilities, the following specialists or teachers are required:~~

~~(i) emotional disturbance, traumatic brain injury, specific learning disability or cognitive delay - a school psychologist;~~

~~(ii) speech-language impairment, deaf/blindness, traumatic brain injury - a speech-language pathologist;~~

~~(iii) autism - a school psychologist and speech-language pathologist; and~~

~~(iv) deafness or hearing impairment - a speech-language pathologist or audiologist;~~

~~(f) when the student is enrolled in a private school, a representative from the private school; and At the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise regarding the student; and~~

~~(g) at least one teacher or other specialist with knowledge in the area of suspected disability. For specific disabilities, the following specialists or teachers are required: The student, when appropriate.~~

~~(i) serious emotional disturbance or specific learning disability or cognitive delay; a school psychologist;~~

~~(ii) speech/language impairment, deaf/blindness, traumatic brain injury; a speech/language pathologist;~~

~~(iii) autism; a school psychologist and speech/language pathologist; and~~

~~(iv) deafness or hearing impairment; a speech/language pathologist or audiologist;~~

~~(2) remains the same.~~

~~(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)~~

10.16.1117 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAF-BLINDNESS (1) ~~The student has both deafness or hearing impairment and vision impairment and severe communication problems that severely restricts the student's ability to communicate and participate in education programs solely for students with deafness or blindness. Written documentation shall include description of may be identified as having deaf-blindness if documentation supports that the student:~~

~~(a) existence of a hearing impairment, deafness and vision impairment as defined in ARM 10.16.1118, 10.16.1119, and Meets the criteria in ARM 10.16.1124 for visual impairment;~~

~~(b) significant deficits in speech/language performance as defined in ARM 10.16.1119; and Meets the criteria in ARM 10.16.1123 for speech-language impairment;~~

~~(c) the impact of impairments on other developmental and educational problems is so severe that multiple disabilities special education and related services are required. Meets the criteria in ARM 10.16.1119 for hearing impairment or in ARM 10.16.1118 for deafness; and~~

(d) Is experiencing severe delays in communication and other developmental and educational skills such that services designed solely for students with deafness or for students with blindness would not meet the student's educational needs.
(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

10.16.1118 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAFNESS (1) ~~The student has a hearing impairment may be identified as having deafness if an audiological report documents that hearing loss is so severe that the student is~~ impaired in processing linguistic information, with or without amplification, to the extent that prevents the auditory channel from being the primary mode of learning speech and language.

(2) remains the same.
(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

10.16.1119 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING A HEARING IMPAIRMENT (1) ~~The student may be identified as having a hearing impairment if an audiological report documents that the student has an organic hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided, or has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to adversely affect educational performance.~~ "Adversely affect the student's educational performance" means that the student's ability to learn in the regular education setting remains severely affected even when classroom interventions are applied or accommodations provided, to the degree that the student needs special education and related services.

(2) remains the same.
(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

10.16.1120 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT (1) ~~The student has an~~ may be identified as having orthopedic impairment ~~as if the student is diagnosed or confirmed by a qualified medical practitioner which that the impairment~~ substantially limits normal function of muscles and joints due to congenital anomaly, disease or permanent injury and adversely affects the student's ability to learn or participate in the general education programs curriculum. "Substantially limits" requires specific examples of the adverse impact of the orthopedic impairment on the student's educational performance and written documentation of:

- (a) remains the same.
- (b) the effect of medications, treatments or other medical interventions on the student's educational performance; and
- (c) the results of a physical therapy and/or occupational therapy evaluation which describes the need for therapy as related to educational performance; and
- ~~(d) accommodations or interventions tried in regular education including, if appropriate, modifications to program requirements, schedules or facilities.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

10.16.1122 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age and ability levels:

(a) ~~t~~The student's rate of achievement relative to the student's age and ability levels remains below expectations and the student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (1)(b);

(b) ~~t~~The student has a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning, phonological awareness skills; and

(c) ~~t~~The severe discrepancy between ability and achievement is not correctable without special education and related services.

(i) ~~For initial identification, a~~ A severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in subsection (1)(b) when adjusted for regression to the mean. Error in test measurement requires clinical judgment for students who score near two standard deviations below the population mean.

(ii) ~~The child study team may determine that, based on a phonological awareness assessment which indicates that the student's scores fall two or more standard deviations below the norm, the student's knowledge of sounds, how they blend together to form words, phrases and sentences severely limits the student's ability to perform basic reading skills at a level appropriate to the student's ability.~~

(iii) When standardized test instruments do not provide valid assessment results for determining the two standard deviation discrepancy, any alternative assessment procedure utilized shall determine that a discrepancy between ability and achievement exists at a level of severity similar to a two standard deviation discrepancy. In making this judgment, the child study team shall document the basis for concluding that standardized test instruments when applied to this student are not valid and verify with specific examples that the student's ability to learn in the regular education setting in one or more of the areas listed in subsection (1)(b) remains severely affected even when classroom interventions are applied.

(2) ~~The student may be identified as having a specific learning disability only when written documentation supports that:~~

~~(a) The student has had opportunities to learn commensurate with the student's age and abilities;~~

~~(b) At least two intervention techniques have been tried in the regular classroom and the student's ability remains severely affected; and~~

(c) Educationally relevant medical findings, if any, have been considered.

(3) The student may not be identified as having a specific learning disability if the severe discrepancy between ability and achievement is primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay or emotional disturbance; or environmental, cultural or economic factors.

~~(3) The student may be identified as having a specific learning disability only when written documentation supports that:~~

~~(a) the student has had opportunities to learn commensurate with the student's age and abilities;~~

~~(b) at least two intervention techniques have been tried in the regular classroom and that the student's ability remains severely affected; and~~

~~(c) educationally relevant medical findings, if any, have been considered:~~

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

10.16.1123 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPEECH-LANGUAGE IMPAIRMENT

(1) The student may be identified as having a speech-language impairment if the student has a significant deviation in speech such as fluency, articulation or voice, or in the ability to decode or encode oral language which involves phonology, morphology, semantics or pragmatics or a combination thereof.

(a) and (b) remain the same.

(c) If norm referenced procedures are not used, alternative assessment procedures must shall substantiate a significant deviation from the norm.

(2) The student may be identified as having a speech-language impairment only when written documentation of the student's interpersonal communication effectiveness in a variety of educational settings by the teacher, and parent, and speech-language pathologist, and others as appropriate supports the adverse educational affect effect of the speech-language impairment or oral communication in a classroom or school setting.

(3) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

6. The rules, as proposed to be adopted, provide as follows:

RULE 1 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING

AUTISM (1) The student may be identified as having autism if documentation supports the existence of a developmental disability that was generally evident before the student was three years of age and if the student has a communication disability in verbal or nonverbal communication and social interaction.

(2) Assessments shall document the presence of at least six items from (a), (b) and (c), to include one from (a)(ii) and one from (a)(iii):

(a) Qualitative impairment in social interaction, as manifested by at least two of the following:

(i) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze facial expression, body postures and gestures to regulate social interaction;

(ii) failure to develop peer relationships appropriate to developmental level;

(iii) a lack of spontaneous seeking to share enjoyment, interests or achievements with other people (e.g., a lack of showing, bringing or pointing out objects of interest);

(iv) lack of social or emotional reciprocity;

(b) Qualitative impairments in communication as manifested by at least one of the following:

(i) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime);

(ii) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;

(iii) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level;

(c) Restricted, repetitive and stereotyped patterns of behavior, interests and activities, as manifested by at least one of the following:

(i) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;

(ii) apparently inflexible adherence to specific nonfunctional routines or rituals;

(iii) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);

(iv) persistent preoccupation with parts of objects;

(d) Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years:

(i) social interaction;

(ii) language as used in social communication;

(iii) symbolic or imaginative play.

(3) The student may not be identified as having autism if the student has a hearing impairment, serious emotional disturbance or global cognitive defects in which the student exhibits "autistic-like" behavior, such as Rett's disorder, Asperger's disorder, or childhood disintegrative disorder.
(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

RULE II CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE (1) The student may be identified as having emotional disturbance if a condition which includes one or more of the following characteristics is present:

(a) An inability to build or maintain satisfactory relationships with peers and teachers;

(b) Inappropriate types of behavior or feelings under normal circumstances including behaviors which are psychotic or bizarre in nature or behaviors which are atypical and for which no observable reason exists;

(c) A general, pervasive mood of unhappiness or depression including major depression and dysthymia but excluding normal grief reactions;

(d) A tendency to develop physical symptoms or fears associated with personal or school problems including separation anxiety, avoidant disorder and overanxious disorder;

(e) Schizophrenia.

(2) For each of the conditions in (1), the condition shall meet the criteria of having been present to a marked degree, over a long period of time and adversely affecting the student's educational performance.

(3) The student may be identified as having emotional disturbance when:

(a) The student has been observed by two or more persons at separate times and places, each of which cite and corroborate specific behaviors which, in the aggregate, provide foundation for probable concern for emotional disturbance; and

(b) The local educational agency has attempted at least two different behavioral intervention techniques which may include, but are not limited to, changes in the student's regular class schedule, curriculum, and/or teacher, school counseling or use of community resources.

(c) Documentation of the observations and interventions shall include:

(i) descriptions of procedures, durations of each, and results accruing to each;

(ii) dated and signed documented anecdotal records of behavioral observations made in multiple settings (i.e., in addition to the classroom setting, consider playground, cafeteria, school bus, hallway, etc.) and showing that the student's disability is evident in other than the school classroom environment; and

(iii) a social or developmental history compiled directly from the student's parents, or from records when the parents are not available.

(4) The student may not be identified as having emotional disturbance if:

(a) Delays in educational performance are primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay, cultural factors or limited educational opportunity; or

(b) Common disciplinary problem behaviors (e.g., truancy, smoking, breaking school conduct rules) are the sole criteria for determining existence of emotional disturbance. Common disciplinary problem behaviors may exist in conjunction with emotional disturbance, but cannot be used as the sole criteria for recommending special education and related services.

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

RULE III CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT (1) The student may be identified as having other health impairment if the student has limited strength, vitality or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes that adversely affects the student's educational performance.

(2) The child study team shall determine whether the disability adversely affects the student's educational performance in the regular curriculum, with or without accommodations or modifications, and because of that disability needs special education.

(3) A medical diagnosis of a chronic or acute health problem is required.

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

RULE IV CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING TRAUMATIC BRAIN INJURY (1) The student may be identified as having traumatic brain injury if the student has an acquired injury to the brain caused by external physical force which substantially limits the student's functional or psychosocial ability or both and the student's ability to learn or participate in the general education curriculum.

(2) "Substantially limits" means that the student's ability to learn and participate in the general education setting remains severely affected even when classroom interventions are applied or accommodations provided. Documentation shall include specific examples of the severe effect of the injury on the student's educational performance, including school attendance, loss or retention of previously acquired skills and knowledge, and student's social/interpersonal skills.

(3) The student may not be identified as having a traumatic brain injury if the disability is primarily due to visual or hearing impairment, cognitive delay, emotional disturbance, or if the injury to the brain is congenital, degenerative, or caused by birth trauma.

(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

RULE V CRITERIA FOR CONTINUED ELIGIBILITY (1) For purposes of determining continued eligibility, criteria for disability determination is met if assessment data support the on-going need for special education and related services.


(AUTH: 20-7-402, MCA; IMP: 20-7-401, 20-7-403, 20-7-414, MCA)

7. Any person/party may be placed on OPI's list of interested persons/parties for rulemaking by contacting Pat Reichert, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, telephone number (406) 444-4402.

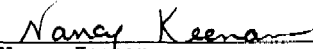
8. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, no later than 5:00 p.m. on October 7, 1998.

9. Janice Frankino Doggett of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

10. The notice requirements of 2-4-302, MCA, have been satisfied.



Geralyn Driscoll
Rule Reviewer
Office of Public Instruction



Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State August 17, 1998.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM) AMENDMENT
17.58.331 pertaining to)
assent to audit requirements) NO PUBLIC HEARING
) CONTEMPLATED
)
) (PETROLEUM TANK RELEASE
) COMPENSATION BOARD)

TO: All Interested Persons

1. On October 19, 1998, the board proposes to amend Rule 17.58.331.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.58.331 ASSENT TO AUDIT (1) Except as provided in (3), each ~~Each~~ contractor, ~~or~~ subcontractor, ~~or~~ vendor employed to carry out a corrective action plan in whole or in part shall assent to an audit by the board of the documentation supporting their invoices when billable labor is charged.

(2) The responsible party shall obtain the assent on an "Assent to Audit Form". The form may be executed by the contractor, consultant, ~~or~~ subcontractor, ~~or~~ vendor before or after the work is completed.

(3) ~~Vendors performing delivery services at the site that do not provide services away from the release site~~ are not required to submit to an audit.

AUTH: Sec. 75-11-318, MCA; IMP: Sec. 75-11-309, MCA

3. The term "vendor" is defined in ARM 17.58.311(20) as "a person who provides materials necessary for corrective action at the release site or services away from the release site." The board is proposing to amend 17.58.331 to expressly require vendors who provide services away from the release site to assent to be audited when they bill for labor. This is implied in the rule currently, and the Board has been auditing these vendors. However, the rule does not expressly authorize these

audits.

It is necessary for the Board to be able to audit vendors when they charge for labor because an audit of records is the only means available to insure that applications for reimbursement are actual, necessary, and reasonable. It is not necessary to audit vendors when they provide only materials because material costs can be verified using information from other vendors.

4. Interested persons may submit their data, views, or arguments either orally or in writing, to the Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, MT 59620-0902, to the attention of Jean Riley, Executive Director, no later than September 25, 1998.

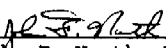
5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, MT 59620-0902 to the attention of Jean Riley, Executive Director. A written request for a hearing must be received no later than September 25, 1998.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25 persons, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 600 persons based on approximately 6,000 tank owners in Montana.

PETROLEUM TANK RELEASE COMPENSATION BOARD

By  _____
Jean Riley, Executive Director

Reviewed by:



John F. North, Rule Reviewer

Certified to the Secretary of State August 17, 1998.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PROPOSED
of new Rule I, providing for	)	ADOPTION AND AMENDMENT
approved providers of)	
training for water treatment)	
system operators; amendment)	
of 17.40.201 adding a	)	NO PUBLIC HEARING
definition; amendment of	)	CONTEMPLATED
17.40.202 updating)	
classification of water and)	
wastewater treatment systems;	)	(Water Treatment System
and amendment of 17.40.213	)	Operators)
concerning continuing)	
education requirements for)	
operators.)	

TO: All Interested Persons

1. On October 13, 1998, the department proposes to adopt new Rule I, concerning approved training providers for water treatment system operators; amend 17.40.201 adding a definition; amend 17.40.202 updating classification of water treatment systems and wastewater treatment systems; and amend 17.40.213 concerning continuing education requirements for operators.

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

RULE I APPROVED TRAINING PROVIDERS (1) To be approved as a training provider, the provider must first apply to the department for approval and demonstrate in writing, using the department's form, that:

(a) training is one of the provider's principal programs;
(b) the provider offers training appropriate for water and wastewater treatment operators; and

(c) that the provider does not have a vested interest in selling or marketing any product or service related to water or wastewater treatment other than training.

(2) Based on the written submittal, the department may, in writing, approve the provider for educational offerings under this rule for up to 2 years. The department may revoke its approval of the training provider, in writing, for good cause, after notice and an opportunity for an informal conference with the department.

(3) An approved training provider shall provide the following documentation, maintain the following records and make such information available to the department upon request:

(a) Attendance registration forms must be maintained. The provider shall keep registration forms on file for at least 2 years. The registration forms must state:

- (i) the provider's name;
- (ii) the title of the course;
- (iii) the date and location of the course;
- (iv) the name of the person monitoring attendance at each course;
- (v) each attendee's name and operator number;
- (vi) the water or wastewater treatment system where each attendee is employed;
- (vii) the number of continuing education credits (credits) earned by each attendee; and
- (viii) whether the course is facility-based training.

(b) A notice of a course sponsored by an approved training provider must be sent to the department 2 weeks before the course begins, along with the training announcement required under (3)(c) of this rule. The provider shall keep a copy of this notice on file for at least 2 years. The notice must be on the department's form or an equivalent form requiring the same information. The notice must include:

- (i) the name of the training provider;
- (ii) the title of the course;
- (iii) the number of contact hours;
- (iv) the class(es) of certificate(s) for which the course is approved;
- (v) any prerequisites;
- (vi) the name(s) of the instructor(s) and their qualifications for teaching the course as provided in (4) of this rule;
- (vii) location and date of the course;
- (viii) fee or membership required; and
- (ix) the provider's contact person for the course.

(c) The provider shall prepare a training announcement for each course announcing the availability of the course. The provider shall send a copy of the training announcement to the department along with the notice required in (3)(b) of this rule and shall keep the training announcement on file for at least 2 years. The training announcement must state:

- (i) the classes of certification for which the course is approved;
 - (ii) the number of credits available;
 - (iii) a specific agenda;
 - (iv) identity and qualifications of the instructor(s);
- and
- (v) date(s), location(s), and fee.

(vi) In addition, the training announcement must clearly inform attendees that they will receive credit only if the attendee holds the class of certificate for which the course is approved.

(d) The training provider shall provide each attendee with a form on which attendees can evaluate the course. The course evaluation form must, at a minimum, provide attendees with the opportunity to state how the course might be improved, whether the course imparts knowledge that is useful to attendees and

attendee's evaluation of instructor(s). The training provider shall keep course evaluations on file for at least 2 years.

(e) The training provider shall distribute to each attendee a continuing education credit report form provided by the department to be filled out by the attendee.

(i) Attendees shall fill out the form by providing:

- (A) their name;
- (B) certification class and type;
- (C) system operated;
- (D) address; and
- (E) instructions for applying credits earned.

(ii) Attendees shall return the credit report form to the training provider. The provider shall complete the form adding information concerning:

- (A) course title, location and date;
- (B) subject of training including whether credits are available for more than one class of certificate;
- (C) number of credits earned by each attendee; and
- (D) whether the course is facility-based training.

(iii) The provider shall verify the information by signing the form and shall send the completed and signed form to the department within 2 weeks after the end of the course.

(iv) The department shall keep the credit report forms on file for at least 2 years.

(f) The provider shall keep copies on file of any written instructional materials or exams used in the course for at least 2 years.

(4) In order for a course to qualify for credits, all instructors must:

(a) have at least 4 years' practical experience in the subject matter to be presented;

(b) have experience as a professional trainer in the subject matter to be presented;

(c) be selected or recommended as an instructor by a nationally known water or wastewater organization;

(d) be professional or technical staff of the department or another Montana state or federal agency with expertise in the subject matter to be presented; or

(e) be approved by the department based on instructor's education and experience in the subject matter to be presented.

(5) The training provider shall determine, subject to department approval, the number of credits available and to what class(es) of certificate(s) credits apply in accordance with ARM 17.40.213. The provider shall include this information in the training announcement as required in (3)(c) of this rule.

AUTH: Sec. 37-42-202, MCA; IMP: Sec. 37-42-202, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.40.201 DEFINITIONS In addition to the terms defined

in 37-42-102, MCA:

(1) "Facility-based training" means training provided by the owner of a water treatment system, water distribution system or wastewater treatment system for its employees and either held at that treatment facility or taught, in whole or in part, by other employees of that facility.

(1) through (10) remain the same in text, but are renumbered (2) through (11).

AUTH: Sec. 37-42-202, MCA; IMP: 37-42-101 through 322, MCA.

17.40.202 CLASSIFICATION OF SYSTEMS (1) All water systems and wastewater systems are classified according to source of water, population served and type of treatment as shown below:

(1) (a) through (c) (i) Remains the same.

(1) (c) (ii) class 2--treatment such as extended aeration, oxidation ditches, trickling filters, package plants, bio-discs or tertiary treatment systems discharging to ~~surface~~ state waters;

(1) (c) through (2) Remains the same.

AUTH: Sec. 37-42-202, MCA; IMP: 37-42-104, 37-42-304, 37-42-306, MCA.

17.40.213 CONTINUING EDUCATION REQUIREMENTS (1) All fully certified operators must earn a one or more continuing education credits ~~or~~ (credits), as specified in this rule, during each 2-year period commencing on July 1 of each even-numbered year.

~~(a) Two continuing education credits per water distribution and/or water system certificate and 2 continuing education credits per wastewater certificate must be earned by a class 1 certified operator during each 2 year period. A class 1 certified operator must earn 2 credits for each certificate held by the operator for water treatment, or water distribution, or both, and must earn 2 credits for each wastewater certificate held by the operator.~~

~~(b) One continuing education credit per water distribution and/or water system certificate and 1 continuing education credit per wastewater certificate must be earned by a class 2, 3, and 4 certified operator. Class 2, 3 and 4 certified operators must earn 1 credit for each certificate held by the operator for water treatment, or water distribution, or both, and must earn 1 credit for each wastewater certificate held by the operator.~~

(1) (c) through (2) (a) Remains the same.

(2) (b) To determine the number of credits to be awarded to a certified operator for teaching a classroom program, 0.1 credit per actual hour of classroom instruction shall be awarded in addition to the credits earned for attending that course.

(2) (c) Remains the same.

(3) (a) Newly certified operators (previously uncertified) who are certified from January 1 of an odd-numbered year to June 30 of the following even-numbered year are not required to earn

the credit applicable to each classification certificate until the next 2-year period.

(3) (b) through (5) Remain the same.

(5) (a) A safety course qualifies for full credits if it is specific to water or wastewater system operation; other safety courses that contain topics that are generally applicable to water or wastewater treatment system qualify for half credit.

(b) The department shall maintain a list of topics that, although not specific to water or wastewater treatment system operation, are generally applicable and are approved for half credit.

(6) (a) through (a) (ii) Remain the same.

(6) (a) (iii) ~~training courses or conferences offered by department approved training organizations providers approved by the department pursuant to Rule I. The organization must first apply to the department for approval and demonstrate, in writing, that training is one of its principal programs. Based on the submittal, the department may, in writing, approve the organization for education offerings under this subsection for up to a 2 year period. The department may also revoke the approval at any time, citing the reasons for its revocation.~~

(6) (b) In addition to the requirements in (5) of this rule, the activities must be related to the subject matter of the educational offering must be relevant to the particular class(es) of certificates to which the credit is being applied. An operator may receive credit only for courses approved for the type of certificate(s) held by that operator.

(6) (c) Remains the same.

(d) Fully certified operators holding both water and wastewater certificates may earn credits toward the continuing education requirements of both certificates (i.e. dual credits) by attending a course which has been approved for both classes of certificates.

(7) Facility-based training is eligible for credits only if the training meets all other requirements of this sub-chapter for continuing education credits.

(7) through (10) Remain the same in text, but are renumbered (8) through (11).

AUTH: 37-42-202, MCA; IMP, 37-42-304 through 37-42-308, MCA

4. The Department proposes to adopt Rule I in order to set out requirements for those persons or organizations who are approved by the Department to provide continuing education to certified operators of water treatment plants, water distribution systems and wastewater treatment plants without such training providers being required to obtain the Department's approval for each course offering.

Sections (1) and (2) of Rule I set out requirements for obtaining department approval as a training provider and for revocation of such approval. Section (3) sets out documentation and record keeping requirements for approved training providers and the Department. The proposed scheme of documentation is

intended to enable the department to inform operators of course offerings, to maintain records of continuing education credits earned by operators holding various classes of certificates, and to monitor the quality of instruction provided. Section (4) sets out requirements for qualifications of instructors. Section (5) requires the approved training provider to assist the Department by determining, subject to the Department's approval, the number of credits available and the class of certificate to which the credits apply.

The Department is proposing Rule I to provide an administrative mechanism that is more efficient than its existing system for ensuring that continuing education courses meet quality and quantity standards. Currently the Department reviews the curriculum and faculty for every course. Rule I would allow approved training organizations to offer courses without requiring indepth Department review of each course.

Rule 17.40.201 would be amended to add a definition of "facility-based training", a term used in a new provision of ARM 17.40.213 as that rule would be amended.

Rule 17.40.202 would be amended in (1) to provide that the Department is to consider the source of water in classifying water treatment systems under 37-42-104, MCA. The Department is proposing this amendment to comply with Environmental Protection Agency guidance issued under the Safe Drinking Water Act (42 U.S.C. 300 et. seq.) and because the source of water is relevant to this determination. These systems are classified in accordance with the type of water that they treat.

Rule 17.40.202 would also be amended in (1)(c)(ii) to provide that class 2 wastewater treatment systems discharge to any state water rather than to surface water only. Some wastewater treatment systems discharge to ground water but not to surface water. Currently these systems are not required to have operators that meet class 2 standards. Because ground water often serves as a drinking water source and sometimes flows into surface water, operators of these plants should be required to meet class 2 standards.

Rule 17.40.213 would be amended to generally update, clarify, and improve the readability of the rule concerning continuing education requirements for operators of water and wastewater treatment systems.

Subsection (5)(a) would be added to 17.40.213 to provide that safety courses qualify for full credit only if they are specifically applicable to water or wastewater treatment facilities. Subsection (5)(b) would be added to require the Department to maintain a list of topics of general application that qualify for half credit. These amendments are proposed to maintain the quality and relevance of continuing education courses.

A portion of 17.40.213(6)(a)(iii) concerning approval of training providers by the Department would be deleted because that subject would be covered in new Rule I. Subsection (6)(d) would be added to clarify that an operator holding both water

and wastewater certificates may earn dual credits (credits under both certificates) for attending a course approved for both classes of certificates. Nearly all states allow this. The Department is proposing it because the current rule in effect increases, without justification, the education for persons who hold dual licenses.

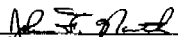
A new subsection (7) would be added to provide that, in order to receive full credit, facility-based training (training held at a treatment facility for its staff or taught by facility staff) must meet other requirements for continuing education courses under these rules. The remaining proposed amendments to Rule 17.40.213 are intended to clarify and to improve grammar and readability.

5. Interested persons may submit their data, views, or arguments in writing to Debbie G. Allen, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. Any comments must be received no later than September 24, 1998.

6. If a person who is directly affected by the proposed rule adoption and amendment as described above wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Debbie G. Allen, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than September 24, 1998.

7. If the agency receives requests for a public hearing on the proposed rule adoption and amendment from either 10 percent or 25 persons, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 267 persons based on the fact that there are in Montana about 1500 certified operators, 1153 water or wastewater treatment systems and about 20 training providers.

Reviewed by:



John F. North
Rule Reviewer



Mark A. Simonich, Director

Certified to the Secretary of State August 17, 1998.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PROPOSED
amendment of rule 32.24.301) AMENDMENTS
as it pertains to the butter)
component used in the) NO PUBLIC HEARING
pricing structure of milk to) CONTEMPLATED
establish the class I, II and)
III producer prices.) DOCKET #1-98

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT
(SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED
PERSONS:

1. On September 30, 1998, the board of milk control proposes to amend rule 32.24.301 which will reflect the changes brought about by the discontinuance of the grade A butter commodity that the Chicago Mercantile Exchange (CME) supplied for the pricing structure of Montana producer milk for class I, II and III.

2. The rule as proposed to be amended provides as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

32.24.301 PRICING RULES

(1)-(3)(a) Remain the same.

(b) The class I butterfat differential will be calculated by multiplying the most recent Chicago area grade AA butterfat price (grade A 92 score) as reported by the United States department of agriculture, less an adjustment factor of \$.0895, by a factor of .118 and the resulting answer from this calculation shall be rounded to nearest half cent. When milk does not test 3.5 percent butterfat, the price per CWT will be adjusted for each .1 percent the butterfat test moves up or down. The derivation of the adjustment factor shall be an average of the difference between the Chicago area grade AA and grade A butter prices over a two year period ending April 30, 1998.

(4) Formula for fixing the class II price to be paid to producers.

(a) Prices paid producers for class II milk will be the last spray process nonfat dry milk solids price per pound quote for the month, Central States area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area grade AA butter price quote for the month (grade A, 92 score), as most recently reported by the United States department of agriculture, less an adjustment factor of

\$.0895, as calculated in (3)(b), multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from 100 pounds of 3.5% milk), less a make allowance of 8.5%. In the case of milk containing more or less than 3.5% butterfat, the differential to be employed in computing prices will be determined by multiplying the above-mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to nearest half cent (\$.005).

(4)(b) Remains the same.

(5) Formula for fixing the class III price to be paid to producers.

(a) Prices paid to producers for class III milk will be the last Chicago area grade AA butter price quote for the month (~~grade A, 92 score~~) as most recently reported by the United States department of agriculture, less an adjustment factor of \$.0895, as calculated in (3)(b), less 10% and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote for the month, the Central States area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2, less 17%.

(5)(b)-(8) Remain the same.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

3. Rule 32.24.301 is being amended for the following reasons:

a) That as of July 1, 1998, the Chicago Mercantile Exchange (CME) no longer trades in grade A butter. The board of milk control utilizes the price of this commodity in the producer pricing structure in class I, II and III milk in Montana.

b) Changing the derivation of the butterfat component used in the producer pricing of class I, II and III milk, allows the Montana consumer the right to an adequate supply of wholesome class I milk. This change also will save disruption and injury to the milk industry in Montana.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Milk Control Bureau, 301 N. Roberts St. - Room 236, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than September 25, 1998.

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

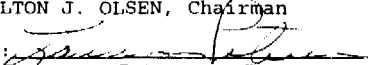
request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau, 301 N. Roberts St. - Room 236, PO Box 202001, Helena, MT 59620-2001. A written request must be received no later than September 25, 1998.

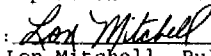
6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 15 persons based on 145 licensed milk producers and 3 licensed in-state distributors.

7. The two-bill sponsor notice requirements of section 2-4-302, MCA, do not apply.

8. The board of milk control maintains a list of interested persons who wish to receive notices of rule making actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices. Such written request may be mailed or delivered to the Milk Control Bureau, 301 N. Roberts St. - Room 236, PO Box 202001, Helena, MT 59620-2001, or faxed to the office at (406)444-1423.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: 
Laurence Petersen, Exec.
Officer, Board of Livestock
Department of Livestock

By: 
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State August 17, 1998.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of ARM	)	ARM 2.21.6401, 2.21.6403
2.21.6401, 2.21.6403 and	)	AND 2.21.6422 AND THE
2.21.6422 and the repeal	)	REPEAL OF ARM 2.21.6402,
of ARM 2.21.6402,	)	2.21.6411, AND 2.21.6413
2.21.6411, and 2.21.6413	)	THROUGH 2.21.6415 RELATED
through 2.21.6415 related	)	TO PERFORMANCE APPRAISAL
to performance appraisal)	

TO: All Interested Persons.

1. On June 11, 1998, the Department of Administration published notice of the proposed amendment of ARM 2.21.6401, 2.21.6403 and 2.21.6422 and the repeal of ARM 2.21.6402, 2.21.6411, and 2.21.6413 through 2.21.6415 related to performance appraisal at page 1452 of the 1998 Montana Administrative Register, issue number 11.

2. The department has repealed the rules as proposed. The department has amended ARM 2.21.6401 and 2.21.6422 as proposed. The department has amended ARM 2.21.6403 with the following changes:

2.21.6403 POLICY AND OBJECTIVES (1) through (1) (c) Same as proposed.

(d) an employee shall have the right to submit a written response to an evaluation which shall be retained with the evaluation in the employee's personnel record. The response shall be submitted to the employee's supervisor or another person designated in an agency policy within 10 working days of the evaluation or in a time period established in an agency's policy of not less than 10 working days;

(e) through (h) Same as proposed.

(2) It is the objective of this policy pursuant to 2-18-102, MCA, to delegate to each agency the authority to select a method of performance management and evaluation which incorporates and implements the requirements of this policy and which may be adapted to the mission and needs of the agency.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. One written comment was received covering two areas.

COMMENT: In ARM 2.21.6403, add a definition of competence in (1)(b) and add the phrase "shall be submitted to the supervisor" in (1)(d).


RESPONSE: The department does not believe it is appropriate at this time to adopt a definition of competence in this subchapter. The department has undertaken development of an alternative classification and pay system which evaluates skills

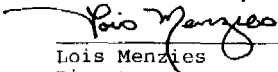
and competencies as directed by House Bill 13 of the 1997 Legislature. A number of pilot projects in state agencies are underway to test and evaluate various aspects of this system. A working definition of competency has been developed and published and is in use in the pilot projects. The department prefers to propose enactment of a statutory definition which will cover all aspects of personnel management affected by competency-based systems and recommends use of the working definition at this time.

The department agrees with the comment on (1)(d). The rule will require an employee's response to be given to the supervisor or another person designated in the agency's policy.

As additional clarification in (2) of this rule, language is added concerning an agency obligation to incorporate the requirements of this policy into an internal policy which meets individual needs.

BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State August 17, 1998.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 4.5.302, 4.5.307,)
4.5.308, 4.5.309, and 4.5.316)
relating to certification of)
Noxious Weed Seed Free Forage)

TO: All Interested Persons

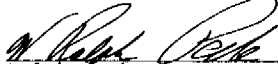
1. On June 25, 1998, the Department of Agriculture published a notice of proposed amendment of rules 4.5.302, 4.5.307, 4.5.308, 4.5.309, and 4.5.316 pertaining to certification of Noxious Weed Seed Free Forage, at page 1546 of the 1998 Montana Administrative Register, Issue No. 12.

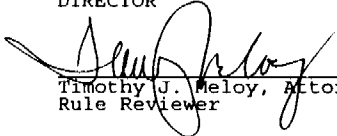
On July 16, 1998, the Department published an amended notice of proposed amendment for the same rules at page 1827 of the 1998 Montana Administrative Register, Issue No. 13.

2. The department has amended the rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE


Ralph Peck
DIRECTOR


Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State August 17, 1998.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
of rules pertaining to applica-) REPEAL OF RULES PERTAINING
tions for examination -) TO THE PRACTICE OF COSME-
temporary permits, application) TOLOGY, MANICURING,
of out-of-state cosmetologists,) ELECTROLOGY AND ESTHETICS
manicurists, estheticians,)
transfer students, continuing)
education, salons, and booth)
rental licenses and the repeal)
of a rule pertaining to)
restrictions of temporary)
permits)

TO: All Interested Persons:

1. On June 11, 1998, the Board of Cosmetologists published a notice of public hearing on the proposed amendment and repeal of rules pertaining to the practice of cosmetology, manicuring, electrology and esthetics at page 1456, 1998 Montana Administrative Register, issue number 11.

2. The Board did not adopt the proposed amendments to ARM 8.14.803 and the rule will remain the same as currently published in the Administrative Rules of Montana. The Board has amended ARM 8.14.805, 8.14.807, 8.14.816, 8.14.817 and 8.14.818 and has repealed ARM 8.14.819 exactly as proposed, and has amended ARM 8.14.815 as proposed, but with the following changes:

8.14.815 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) will remain the same.

(2) Continuing education courses must meet the following requirements to be considered for approval by the board:

- (a) be available to all licensed instructors;
- (b) provide proof of advertising or notice to licensees at least 30 days prior to the course start date;
- (c) be germane to the practice of cosmetology, manicuring, or esthetics or instructing.

(2) through (7) will remain the same."

Auth: Sec. 37-1-131, 37-1-306, 37-1-319, 37-31-203, MCA; IMR, Sec. 37-1-306, 37-31-322, MCA

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

ARM 8.14.803 APPLICATIONS FOR EXAMINATION-TEMPORARY PERMITS

COMMENT NO. 1: Three commentors made a general comment that by removing the availability of temporary permits, the board would make it very difficult for students to obtain a

running start at a career. They encouraged the Board to keep the rule.

RESPONSE: The Board has accepted the comments and did not adopt the proposed amendments.

COMMENT NO. 2: The Board received twenty-six comments stating that the temporary permits should be allowed to remain based on the "apprenticeship" aspect the permit offers. One comment consisted of a letter signed by thirty-four licensees. The commentators stated that maintaining the dexterity skills obtained in school, and which are so important for passing the examination, is difficult enough without having to wait three months to take the examination. Additionally, commentators supported the additional training received by the permit holder's supervisor during the permit period.

RESPONSE: The Board accepted the comments and did not adopt the proposed amendments.

COMMENT NO. 3: The Board received thirty-eight comments, including a comment signed by thirty-four licensees, stating that without the possibility of obtaining a temporary permit, the additional period between graduation and licensure during which they are unable to work as cosmetologists places a financial burden on the applicant which is unreasonable.

RESPONSE: The Board has accepted the comments and did not adopt the proposed amendments.

COMMENT NO. 4: Several commentators stated that by removing the temporary permit, the Board will, in essence, encourage individuals to work out of their homes while waiting to receive their license so that the applicants may earn a living. This will only add to the unlicensed practice problems already encountered by the Board.

RESPONSE: The Board has accepted the comments and did not adopt the proposed amendments.

COMMENT NO. 5: In addition to the comment regarding financial hardship, three commentators stated that the continuity between graduation and work was important for maintaining clientele. Without the possibility of going to work immediately following graduation, the students/applicants will find it difficult to keep the clients obtained through the school informed as to the student's new place of employment.

RESPONSE: The Board has accepted the comments and did not adopt the proposed amendments.

COMMENT NO. 6: Twenty-three commentators, including one comment signed by thirty-four individuals, suggested that the Board vigorously pursue disciplinary action against salons who permit temporary permittees to engage in unprofessional conduct. Several of the commentators also suggested that the Board, prior to taking disciplinary action, contact the schools via letter and inform salon owners of the duties and responsibilities of both salon owners supervising temporary

permit holders as well as the duties and responsibilities of temporary permit holders.

RESPONSE: The Board has accepted the comments and did not adopt the proposed amendments.

COMMENT NO. 7: Three commentors stated that the Board should send a large print, bright colored form letter to applicants explaining the proper use of a temporary permit. The explanation should set forth the permissible types of employment, the length of time in which the permit is effective, expiration events, and consequences of working on an expired permit. The same letter should be sent to the salon owner who will provide supervision.

RESPONSE: The Board acknowledged the comments and did not adopt the proposed amendments.

COMMENT NO. 8: Eleven commentors suggested that the Board hold the examination more often as an accommodation to removal of the temporary permits.

RESPONSE: The Board acknowledged the comments. The Board did not adopt the proposed amendment to ARM 8.14.803 so the comments are redundant.

COMMENT NO. 9: One commentor suggested that by removing the requirement that the Board review the hours for each student, the Board could then focus on disciplinary actions against salons which are engaging in unprofessional conduct relative to use of temporary permits.

RESPONSE: The Board acknowledged the comment and did not adopt the proposed amendments.

COMMENT NO. 10: The Board received numerous comments stating that it was unfair to punish the honest permittees simply as a result of the bad actions of a few permittees.

RESPONSE: The Board acknowledged the comments and did not adopt the proposed amendments.

ARM 8.14.815 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS

COMMENT NO. 11: Three commentors suggested that subsection (2) (a) and (b) not be adopted. Commentors stated that licensees should not have to advertise 30 days in advance to everyone because it places too high a burden on the education provider.

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

COMMENT NO. 12: Four commentors stated that it was one of the benefits of belonging to a professional organization and receiving the benefit of the additional educational offerings. Many of the organizations have experience requirements to belong and limit education to members. By requiring the

education to be open to all licensees, the Board has essentially removed the primary benefit of professional associations. Therefore, the rule should not be adopted.

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

COMMENT NO. 13: Several comments suggested adding licensed instructors to subsection (2)(c).

RESPONSE: The Board accepted the comment and amended the rule as shown above.

ARM 8.14.817 BOOTH RENTAL LICENSES

COMMENT NO. 1: Three commentors stated that the requirement of adding another sign designating an area as a booth rental was redundant to the posting of the booth rental license.

RESPONSE: The Board rejected the comment based on the fact that the sign is not redundant, but necessary, to ensure the public is made aware that the cosmetologist is an independent contractor and not the owner or employee of the salon.

COMMENT NO. 2: Three commentors stated that it is too much to require names on every piece of equipment as well as the individual dispensary areas for which a booth renter is responsible. If a cart is in front of a booth, it must belong to the renter and should be inspected as such.

RESPONSE: The Board rejected the comment. The Board is not requiring that names appear on every piece of equipment. The booth renter must place his/her name on their station, roll-about cart, any cabinets or retail areas. The reason for this identification is to help identify the areas leased by the booth renter for the annual inspection and the public.


COMMENT NO. 3: Three commentors opposed the general practice of inspecting booth rental areas without the benefit of having the renter present.

RESPONSE: The Board rejected this comment because the Board has a statutory requirement to inspect all salons and booths. There are instances when an inspector arrives to inspect the salon and booths for the annual inspection, and booth renters are not present. The inspector cannot identify the booth renter's equipment or station without such identification. There are 2400 salons and booths to be inspected annually. If the inspectors are required to wait until the booth renters are present, the Board would not meet the statutory requirement of annual inspection. Costs would


be extensive. The Board must be able to inspect salons and booth rentals during business hours of the salon.

BOARD OF COSMETOLOGISTS
VERNA DUPUIS, CHAIRMAN

BY:



ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE



R. PERRY ESKRIDGE, RULE REVIEWER

Certified to the Secretary of State, August 17, 1998.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to unpro-) 8.35.408 UNPROFESSIONAL
fessional conduct and continuing) CONDUCT AND 8.35.417
education) CONTINUING EDUCATION

TO: All Interested Persons:

1. On June 25, 1998, the Board of Occupational Therapists published a notice of proposed amendment of the above-stated rules at page 1551, 1998 Montana Administrative Register, issue number 12.

2. The Board has amended the rules exactly as proposed.

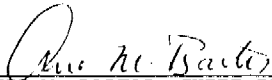
3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

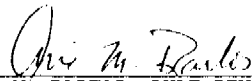
COMMENT NO. 1: The Board received one comment from staff of the Administrative Code Committee stating staff felt that the statement of reasonable necessity was not sufficient.

RESPONSE: The Board feels the statement provides adequate notice to the public of the Board's rationale for adopting such rule. The Board feels that it is clear that if a rule requires submittal of documents as an integral part of the license renewal process, failure to do so will be grounds for disciplinary action. ARM 8.35.417 requires licensees to provide documentation of continuing education. ARM 8.35.408 was amended to reflect that failure to provide such documentation would be unprofessional conduct. Section 37-1-316(18), MCA, allows boards to make unprofessional conduct, "conduct which does not meet the generally accepted standards of practice." The second sentence of the reason provides notice to licensees that the board may take action against a licensee for not submitting continuing education documentation required by ARM 8.35.417.

BOARD OF OCCUPATIONAL THERAPISTS
LYNN BENSON, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 17, 1998.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to net) 8.39.804 REVIEW OF OPERATIONS
client hunting use) PLAN AND PROPOSED EXPANSION
) OF NET CLIENT HUNTING USE
) UNDER AN EXISTING OPERATIONS
) PLAN

TO: All Interested Persons:

1. On June 11, 1998, the Board of Outfitters published a notice of public hearings on the proposed amendment of the above-stated rule at page 1463, 1998 Montana Administrative Register, issue number 11. The hearings were held in Helena and Billings, Montana on July 7, 1998.

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

"8.39.804 REVIEW OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER AN EXISTING OPERATIONS PLAN (1) through (7)(g) will remain the same as proposed.

(8) The board shall review the proposal and any comments received before the expiration of the deadline for receipt of such comments. The board shall utilize comments received, in conjunction with criteria specified below, to decide whether to approve the proposal. The board shall not approve a new operations plan or the proposed expansion of net client hunting use under the existing operations plan if it finds that the proposal will cause an undue conflict with existing hunting uses of the area, constituting a threat to the public health, safety, or welfare. The criteria the board ~~may~~ shall consider when identifying undue conflict include, but are not limited to:

(a) ~~sufficiency of land for personal safety of the hunters and adequate sufficient wildlife for a quality hunt to support the proposed net client hunting use;~~

(b) ~~restriction of public access points to private or public lands utilized for public hunting use;~~

(c) through (10) will remain the same as proposed."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

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

COMMENT NO. 1: Three commentators suggested that (8) be amended to remove the word "may" and replace with the word "shall" so that it was clear that the Board was required to consider all criteria in evaluating a net client hunting use expansion application.

RESPONSE: The Board accepted the comment and the rule was amended as shown above.

COMMENT NO. 2: Two commentors suggested that the Board add criteria considering the sufficiency of land for the personal safety of hunters and to ensure a quality hunt for clients.

RESPONSE: With respect to the sufficiency of land to ensure the personal safety, the Board has accepted the comment and has amended the rule as shown above. The Board recognized, on its review of the comments, that there may have been some confusion regarding whose safety was at issue and wishes to clarify that it is the client and the general hunting public that is its primary concern. With regard to the sufficiency of land for a quality hunt, the criterion is adequately addressed in (8) (a) of the rule.

COMMENT NO. 3: Four commentors suggested the addition of criteria regarding applications that may have significant impact on wildlife or wildlife habitat.

RESPONSE: The rule has been amended to include notification to the Montana Department of Fish, Wildlife and Parks of all expansion applications received by the Board. The function of the Montana Department of Fish, Wildlife and Parks is the management of game and game habitats within the state and, accordingly, the Board will rely upon the Department to provide relevant comments regarding the impact that an application may have. The Board will then review those comments and determine whether or not the application should be granted. For clarification purposes the Montana Department of Fish, Wildlife and Parks has always been on the Board's mailing list regarding past expansion requests, but was not previously identified in the rule.

COMMENT NO. 4: Several commentors suggested the addition of criteria evaluating the impact on public hunting opportunities on lands adjacent to the lands included within the expansion application.

RESPONSE: The Board believes that (8) (a) adequately addresses commentors' concerns and the Board intends that the subsection include such considerations.

COMMENT NO. 5: Several commentors suggested the addition of criteria evaluating restrictions on public access to public or private lands utilized for public hunting.

RESPONSE: The Board recognizes from the comments received, that there may be some confusion regarding the Board's intent with regard to the criterion listed in (8) (b). Therefore, the Board has amended that subsection as shown above.

COMMENT NO. 6: Several commentors suggested that outfitters be required to post signage at access points to lands utilized by the outfitter as a part of the outfitter's operations plan.

RESPONSE: The Board accepts the comment and will discuss the merits of the comment as a possible amendment to the rule during its September 3, 1998, meeting.

COMMENT NO. 7: Several commentors suggested the addition of a criterion evaluating expansions onto block management areas or that will impact the hunting opportunities on block management land.

RESPONSE: The management of block management lands rests with the Montana Department of Fish, Wildlife and Parks. The Board has amended the rule to ensure that Department of Fish, Wildlife and Parks is provided ample opportunity to review expansion applications for conflicts with block management areas and to make appropriate comments to the Board for the Board's evaluation. Additionally, the Board recognizes that it is within Department of Fish, Wildlife and Parks's authority to authorize outfitters to operate on block management lands and therefore, the Board is without jurisdiction to dictate the terms of a block management contract.

COMMENT NO. 8: Several commentors suggested the addition of a criterion evaluating excessive use above the normal or existing hunting use of the area by private, public or commercial hunters.

RESPONSE: The Board rejects the comment as the Board believes this consideration is adequately addressed in (8) (a) and (b).

COMMENT NO. 9: One commentor suggested the addition of criteria evaluating proposed expansion in terms of public controversy generated as a result of the application evidenced by public comment.

RESPONSE: The Board rejects the comment as it is clear in the statutory authority that applications are to be rejected for conflict with existing hunting use and not solely on the basis of controversy. The Board does not believe that it is appropriate to deny an application simply because several people disagree with the expansion as proposed.

COMMENT NO. 10: Several commentors suggested the addition of criteria evaluating expansion applications based upon the cumulative impact upon wildlife populations and public hunting opportunities.

RESPONSE: See response to Comment No. 3 above.

COMMENT NO. 11: Several commentors suggested the addition of criteria evaluating expansion applications that would require denial of an application if the expansion request is

too large, as measured in an increase in acreage and/or the number of clients, and its effect on hunters' safety and quality of hunt.

RESPONSE: The Board rejects the comments as the Board's authority is to license outfitters based upon the outfitter's ability to adequately serve a client and do so in a safe manner. The Board does not believe that simply because an outfitter chooses to expand his operation, that it results in a per se conflict with existing hunting uses. Therefore, the addition of a criterion which essentially requires denial based simply upon size is inappropriate.

COMMENT NO. 12: Several commentors suggested the addition of criteria evaluating expansion applications based upon future plans for special public permit hunts.

RESPONSE: The Board rejects the comments as it is impossible to know when a special permit hunt is going to occur in a specified area. Moreover, the criterion would not be effective as licenses and permits are regulated by the Department of Fish, Wildlife and Parks and the Board is not permitted to condition a current application upon the speculation that a separate agency may or may not choose to provide permitted hunts at some time in the future.

COMMENT NO. 13: Several commentors suggested the addition of criteria evaluating expansion applications on the basis of impacts on equality of pre-existing public hunting opportunities.

RESPONSE: The Board believes that the suggested criteria is adequately addressed in (8) (a) and (b) of the rule.

COMMENT NO. 14: Several commentors suggested the addition of criteria evaluating expansion applications on the basis of infringement of public hunting opportunities.

RESPONSE: See response to Comment No. 13.

COMMENT NO. 15: Several commentors suggested that the Board consider whether an outfitter has pending disciplinary action, current license restrictions, game law violations, investigations for multiple outfitted client complaints, or history of hunter harassment complaints by non-outfitted clients.

RESPONSE: The Board believes that this criterion is adequately addressed under (8) (c) of the rule as proposed.

COMMENT NO. 16: Several commentors suggested that outfitters must be required to reside within the same Department of Fish, Wildlife and Parks region as the proposed expansion is located.

RESPONSE: The Board has serious concerns about the possibility of such a requirement as applied to rights guaranteed to citizens of the state under the Montana Constitution. To the extent that the comments were directed toward the issue of supervision of guides and clients by an

outfitter located in a distant region, the Board accepts those comments and will address the issue at its September 3, 1998 meeting with a view to amending the unprofessional conduct rule to address commentators' concerns.

COMMENT NO. 17: One commentator suggested that the Board require outfitters pursuing active status and proposing to use leased or owned property also included within an operations plan for an existing outfitter to reapply for additional net client hunting use numbers.

RESPONSE: The Board accepts the comment and will address the issue at its September 3, 1998 meeting as a possible amendment to the rule.

COMMENT NO. 18: One commentator suggested that the Board insert language specifying that the rules are applied to determine whether the application should be denied and insertion of language defining the phrase "undue conflict."

RESPONSE: The Board accepts the comment and will address the issue at its September 3, 1998 meeting as a possible amendment to the rule.

COMMENT NO. 19: Several commentators believe that (8)(c) and (d) are merely bookkeeping matters for the Board and do not go to the issue of undue conflict.

RESPONSE: The Board rejected the comment, however, realizes that the two subsections may seem out of place. The Board believes that (8)(c) and (d) are the most pointed considerations for protection of public health, safety and welfare and that evidence of disciplinary actions or the truthfulness of statements made in an expansion application demonstrate the outfitter's ability to further expand an operation in a responsible manner.

COMMENT NO. 20: One commentator suggested that the Board establish an acreage amount as well as an acre/client ratio which will provide a quality hunt but also be fair to Montana sportsmen.

RESPONSE: The Board rejected the comment as it is impossible to define within any particularity a set acreage amount or ratio that would be applicable to all possible operations plan scenarios and capable of being applied to all applicants in a consistent manner.

COMMENT NO. 21: One commentator suggested that the Board of Outfitters be removed from the Department of Commerce and placed within the Montana Department of Fish, Wildlife and Parks.

RESPONSE: The Board rejected the comment as it is outside the Board's purview of authority.

COMMENT NO. 22: One commentor suggested that the Board reconvene its ad hoc committee to discuss the outcome of the public meetings.

RESPONSE: The Board rejects the comment as the ad hoc committee was established to develop the criteria set forth in the proposed amendments of the rule. The members of the committee are welcome to attend a future Board meeting to discuss the committee's efforts and the amendments which resulted.

The Board would take this opportunity to once again thank the members of the committee for the time spent in developing the criteria and recognize them for their extraordinary efforts.

COMMENT NO. 23: One commentor suggested that the Board develop a map outlining all outfitters' operations plans and the lands they have acquired to eliminate the public's wasted time in seeking out lands already controlled by outfitters.

RESPONSE: The Board recognizes the concern within the comment and will discuss this as a corollary to the requirement that outfitters place signs at access points to lands utilized by the outfitter within the outfitter's operations plan.

COMMENT NO. 24: One commentor suggested implementing a guide-to-client ratio of one guide to two to three clients.

RESPONSE: The Board will address this matter in its discussion regarding the supervision of clients and guides by outfitters located in a distant region.

COMMENT NO. 25: Several commentors requested the Board not approve any requests for new client hunting use on public land or on private land without first eliminating a corresponding amount of net client hunting use within that region as defined by the Department of Fish, Wildlife and Parks.

RESPONSE: The Board recognizes the intent of the comments, however, such requests are not within the Board's jurisdiction. With regard to private lands and the desire of a landowner to allow an outfitter to serve a specified number of clients on the landowner's land, the Board believes that such a decision rests solely with the landowner and will not interfere with the private landowner's right to dictate the activities undertaken on the land.

COMMENT NO. 26: One commentor urged the Board to take no further action on expansion of outfitter licenses or net client hunting use until the legislature re-examines House Bills 195 and 196 at sunset.

RESPONSE: The Board understands commentor's suggestion, however, it is without legal authority to delay any action on a properly presented application for expansion based on statutes and rules in effect at the time the application is presented.

COMMENT NO. 27: One commentor suggested that increases in net client hunting use days must be site specific.

RESPONSE: The Board believes that commentor did not understand the concept of net client hunting use and erroneously associated such use with the client day use utilized by the Forest Service. Accordingly, the Board rejects the comment as net client hunting use relates to the number of clients which an outfitter may potentially serve as an integral part of the outfitter's operations plan.

COMMENT NO. 28: One commentor suggested that the Board refrain from any action to adopt these rules until receipt of the Attorney General's opinion regarding net client hunting use.

RESPONSE: See Response to Comment No. 26.

COMMENT NO. 29: One commentor suggested the Board obtain empirical data via written surveys of hunters or review of game quotas.

RESPONSE: The Board has amended (7) to include notification of expansion applications to the Department of Fish, Wildlife and Parks so that the Department may incorporate such information into their comments submitted to the Board.

COMMENT NO. 30: One commentor suggested that (8) (b) be amended to state, "Outfitter use of any public or private land currently being utilized for public hunting is prohibited."

RESPONSE: From the comment, the Board recognizes that (8) (b) may be confusing the Board's intent. The intent of (8) (b) was to clearly state that access to lands was to be the consideration and not the ability of the public to utilize lands. Specifically, the Board intends to review applications for conflicts regarding access points (e.g. roads) and not access in the global understanding of the ability to hunt on a given parcel of land. Accordingly, (8) (b) has been amended as shown above.

COMMENT NO. 31: One commentor proposed the Board deny applications that will result in an increased percentage of hunter harvest, particularly trophy animals.

RESPONSE: The Board recognizes the comment, however, such action is within the purview of the Department of Fish, Wildlife and Parks.

COMMENT NO. 32: One commentor suggested that expansion applications granted prior to the adoption of this rule be reviewed for compliance under the new standards.

RESPONSE: The Board rejects the comment as the rule simply incorporates the criteria utilized by the Board in reviewing expansion applications since the inception of House Bills 195 and 196. Moreover, the Board is awaiting an Attorney General's Opinion which will clarify the nature of the Board's action with regard to the review of the prior applications.

COMMENT NO. 33: One commentor suggested that any request that is large enough to be unreasonable be denied.

RESPONSE: The Board rejects the comment simply because an applicant requests a large number of clients, such a request does not necessarily result in the demonstration of undue conflict with existing hunting use.

COMMENT NO. 34: One commentor suggested that guides proceed through the same testing procedure as outfitters.

RESPONSE: The Board recognizes the comment, however, it is beyond the scope of this particular rulemaking proceeding.

COMMENT NO. 35: One commentor recommended that outfitters be zoned to two or more miles beyond road areas.

RESPONSE: The Board rejected this comment because it is beyond the purview of this rulemaking proceeding.

COMMENT NO. 36: One commentor suggested that the number of outfitters and guides be capped.

RESPONSE: This issue is adequately addressed in House Bill 195 from the 1995 Legislative session.

COMMENT NO. 37: One commentor suggested that outfitters know their boundaries and exactly where they are in regard to private and public land boundaries.

RESPONSE: This issue is adequately addressed in the Board's unprofessional conduct rules.

COMMENT NO. 38: One commentor suggested that (7)(g) be deleted because commentor has direct personal knowledge that the Department of Fish, Wildlife and Parks ignores information provided to it by the Board of Outfitters.

RESPONSE: The Board rejects the comment as the Board believes it is important that the Department of Fish, Wildlife and Parks be made aware of pending expansion applications. However, the Board is without authority to require the Department of Fish, Wildlife and Parks to take action regarding the applications received.

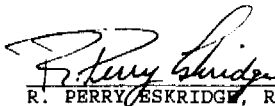
COMMENT NO. 39: One commentor suggested that the rule be amended to provide that no more than one net client hunting use expansion application be submitted within a twelve-month period.

RESPONSE: The Board rejects the comment simply because the Board does not have authority to limit the number of applications an outfitter may feel is necessary.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE



R. PERRY ESKRIDGE, RULE REVIEWER

Certified to the Secretary of State, August 17, 1998.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to fees,) 8.59.506 FEES, 8.59.601
continuing education and unpro-) CONTINUING EDUCATION
fessional conduct) REQUIREMENTS AND 8.59.702
) UNPROFESSIONAL CONDUCT

TO: All Interested Persons:

1. On June 25, 1998, the Board of Respiratory Care Practitioners published a notice of proposed amendment of the above-stated rules at page 1553, 1998 Montana Administrative Register, issue number 12.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICH LUNDY, 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, August 17, 1998.

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

In the matter of the adoption) NOTICE OF ADOPTION
of Rule I (12.3.126), Rule II) OF RULES
(12.3.127), and Rule III)
(12.3.128) concerning angler)
education events.)

TO: All Interested Persons.

1. On March 12, 1998, The Montana Department of Fish, Wildlife and Parks (department) published notice of the proposed adoption of the above-captioned rules at page 626, 1998 Montana Administrative Register, issue number 5.

2. No comments were received regarding the adoption of these rules. However, the department is making certain changes to the proposed rules to comport with its experience to date in handling angler education events.

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

RULE I (ARM 12.3.126) CRITERIA AND PROCEDURE FOR APPROVAL OF ANGLER EDUCATION EVENTS AND ACTIVITIES (1) A participant in an angler educational event or activity that is approved by the department in accordance with this rule may fish without the otherwise required fishing license while participating in the event on the specified body of water.

(2) To be approved by the department as an angler education event or activity for which fishing licenses are not required, the event or activity must meet the following criteria:

(a) through (c) remain as proposed.

(d) the event must not be a part of a profit-making event or activity, except that a service organization or other non-profit entity may conduct an event as a part of a fund raising activity;

(e) through (f) remain as proposed.

AUTH: 87-2-808, MCA IMP: 87-2-808, MCA

RULE II (ARM 12.3.127) PROCEDURE FOR ANGLER APPLICATIONS AND EVENTS (1) The department will review an application for an angler education event or activity as follows:

(a) an application for approval of an angler education event must be submitted to the department's state angler education coordinator in Helena at least 30 days sufficiently prior to the date of the event to allow the department time to review the application. The application must be in writing, and must include the date, time, and location of the proposed event and must demonstrate that the event meets the criteria of ARM 12.3.126;

(b) through (d) remain as proposed.

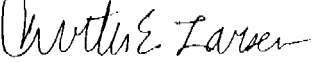
(2) A person conducting an approved angler education event must have the written approval of the department available at the location of the event. The applicant must keep a written record of attendees and participation in the event and submit a copy of the record to the department's angler education coordinator within 15 days of the conclusion of the event. A person who fails to provide the report will not be approved for another angler education event until the report is filed.

AUTH: 87-2-808, MCA IMP: 87-2-808, MCA

RULE III (ARM 12.6.128) TRAINING AND CERTIFICATION OF VOLUNTEERS (1) through(2)(c) remain as proposed.

AUTH: 87-2-808, MCA IMP: 87-2-808, MCA

RULE REVIEWER


Curtis E. Larsen

DEPARTMENT OF FISH, WILDLIFE
AND PARKS


Patrick J. Graham, Director

Certified to the Secretary of State on August 17, 1998.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.4.101, 11.4.102,)
11.5.105 through 11.5.108,)
11.4.111, 11.4.112, 11.4.115,)
11.4.116, 11.4.119, 11.4.120,)
11.4.121, 11.4.123, 11.4.125,)
11.4.127, 11.4.128, 11.4.301)
through 11.2.306 pertaining to)
aging services)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, aging services is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 11.4.101, 11.4.102, 11.5.105 through 11.5.108, 11.4.111, 11.4.112, 11.4.115, 11.4.116, 11.4.119, 11.4.120, 11.4.121, 11.4.123, 11.4.125, 11.4.127, 11.4.128, 11.4.301 through 11.2.306, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 41.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

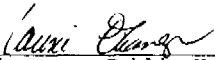
<u>OLD</u>	<u>NEW</u>	
11.4.101	37.41.101	Purpose
11.4.102	37.41.102	Definitions
11.4.105	37.41.107	Designation of Planning and Service Areas
11.4.106	37.41.108	Designation of Area Agencies
11.4.107	37.41.109	Division Hearing Procedures
11.4.108	37.41.110	Functions of Area Agency
11.4.111	37.41.116	Area Agency Advisory Council
11.4.112	37.41.117	Area Plan Content
11.4.115	37.41.118	Area Plan Review
11.4.116	37.41.119	Area Plan, Approval/Disapproval
11.4.119	37.41.120	Area Plan, Amendment/Development
11.4.120	37.41.121	Direct Provision of Services by an Area Agency
11.4.121	37.41.122	Area Agency, Funds Termination
11.4.123	37.41.130	Service Continuation by Division
11.4.125	37.41.131	Contributions for Services
11.4.127	37.41.132	Provision of Congregate Nutrition Services
11.4.128	37.41.133	Food Distribution Ratios
11.4.301	37.41.301	Nutrition Services, Eligibility
11.4.302	37.41.302	Nutrition Services, Definitions
11.4.303	37.41.306	Nutrition Services, Food Requirements
11.4.304	37.41.307	Nutrition Services, General Provider

11.4.305	37.41.308	Requirements Congregate Nutrition Services, Provider Requirements
11.4.306	37.41.315	Home Delivered Nutrition Services, Provider Requirements

3. The transfer of rules is necessary because this program was transferred from the Department of Family Services to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State August 17, 1998.

VOLUME NO. 47

OPINION NO. 16

CITIES AND TOWNS - Appointment of nonelective officers;
OFFICES - Vacancies in office;
OFFICES - Holding over in office;
MONTANA CODE ANNOTATED - Sections 7-4-4102(4)(a), -4103(4)(c),
-4111, -4303(1), (2), -4602(1).

- HELD: 1. A vacancy in the office of town attorney is not created when the attorney holds over following expiration of the term of office.
2. A qualified town attorney lawfully holding over in the office continues to hold the office until the mayor nominates a successor and the council approves the appointment.

August 12, 1998

Mr. Jack H. Morris
Whitehall Town Attorney
P.O. Box 488
Whitehall, MT 59759-0488

Dear Mr. Morris:

You have requested my opinion on the following question:

May the acting town attorney, whose two-year term of office has expired, continue to discharge the duties of the office when the mayor has appointed a new town attorney but the town council has not approved the appointment?

Your letter informs me that you have served as the acting town attorney for the Town of Whitehall pursuant to a two-year term which expired August 24, 1997. Prior to February 9, 1998, no successor had been appointed and you continued to serve in that capacity. On that date, the newly-elected mayor submitted the appointment of a successor to the council, which rejected the appointment. A dispute has now arisen as to whether you or the mayor's appointee is entitled to serve in the office in an acting capacity pending appointment and qualification of a successor.

Powers of the Mayor and Council

In a town with general powers, governmental responsibilities are divided between the mayor, whose powers are executive, and the town council, the legislative body. The mayor may nominate or appoint all nonelective officers but he may do so only "with the consent of the council." Mont. Code Ann. § 7-4-4303(1). The mayor may also suspend or remove nonelective officers but,

again, only with the consent of the council. Mont. Code Ann. § 7-4-4303(2).

Montana law specifically provides that the city attorney may be appointed by the mayor "with the advice and consent of the council." Mont. Code Ann. § 7-4-4102(4)(a). Similarly, the mayor of a town may appoint, with the "advice and consent of the council," other officers necessary to carry out the law. § 7-4-4103(4)(c). The phrase "other officers" obviously would include a town's attorney.

Because the statutes do not distinguish between the office of city attorney and the office of town attorney, there is no separate provision for the term of office of a town attorney. In the matter which gave rise to your opinion request, all parties have assumed that the term of office of the acting town attorney was two years, and that the term has expired. For purposes of this opinion and in order to answer your question, I will assume, without resolving the issue, that the office of "town" attorney is for a term of two years.

Vacancies in Office

Your question requires me to determine whether the office of town attorney is vacant following expiration of the term of that office. By statute, a city or town office is deemed vacant (prior to expiration of the term of office) in the event of death, mental illness, resignation, removal from office, and for similar enumerated reasons. Mont. Code Ann. § 7-4-4111. This statute does not provide that an office becomes vacant upon expiration of the incumbent's term of office.

In State ex rel. Nagle v. Stafford, 97 Mont. 275, 34 P.2d 372 (1934), the Court examined similar provisions of the predecessor to Mont. Code Ann. § 7-4-4111. The Court held that the enumerated "events" which trigger a vacancy in an office are exclusive. Consequently, the office of one holding over pending appointment of a successor is not a vacant office. State ex rel. Nagle v. Stafford, 97 Mont. at 291, 34 P.2d at 379-80. Montana law distinguishes between "tenure" (which is the actual time in office) and "term" (which is a fixed or definite time period). State ex rel. Racicot v. District Court, 243 Mont. 379, 386, 794 P.2d 1180, 1184 (1990).

As discussed below, an incumbent officer is legally entitled to continue service or hold over until a qualified successor is appointed and approved as provided by law. State ex rel. Olsen v. Swanberg, 130 Mont. 202, 209-10, 299 P.2d 446, 450-52 (1956). Therefore, during the tenure of the officer who is holding over, the office is not vacant. State ex rel. Olsen v. Swanberg, 130 Mont. at 209-10, 299 P.2d at 450-51; State ex rel. Nagle v. Stafford, 97 Mont. at 291, 34 P.2d at 379-80; Chenoweth v. Acton, 31 Mont. 37, 41-42, 77 P. 299, 301 (1908).

Holding Over in Office

In State ex rel. Sandquist v. Rogers, 93 Mont. 355, 18 P.2d 617 (1933), the Court considered whether the city engineer was allowed to discharge his duties until a successor was appointed and qualified. In Rogers, the newly elected mayor twice attempted to nominate persons to assume the duties of city engineer. Both nominations were rejected by the city council. Rogers, the acting city engineer, was directed by the council to continue his duties but the mayor refused to sign warrants needed to pay Rogers' salary. The Court held that Rogers was allowed to hold his office until a successor was appointed and qualified. In reaching its holding, the Court followed the prevailing common law rule:

The general rule of law is that an officer shall hold over until his successor is appointed and qualified, unless by the language of the statute such holding over is expressly or by clear implication prohibited.

State ex rel. Sandquist v. Rogers, 93 Mont. at 362, 18 P.2d at 618. The rule followed in Rogers is still the prevailing rule which is followed in a large number of states. See 3 McQuillin, Municipal Corporations § 12.110, at 529-37 (3d ed. 1990).

In State ex rel. Olsen v. Swanberg, the Court addressed the governor's appointment of the chairperson of the Industrial Accident Board. The appointment required the approval of the Senate, but because the legislature was not in session when the appointment was made, the appointment was not approved by the Senate. The term of office of the acting chairperson, Swanberg, had expired. Nonetheless, the Court held that Swanberg (rather than the governor's appointee) was still the office holder. The Court stated:

It follows that Mr. Swanberg holds office as a member and chairman of the Industrial Accident Board for the specific term of four years and thereafter until his successor has been appointed and qualified.

State ex rel. Olsen v. Swanberg, 130 Mont. at 208, 299 P.2d at 450.

In Dewar v. City of Great Falls, 178 Mont. 21, 582 P.2d 1171 (1978), a police officer who was charged with theft challenged the jurisdiction of the police commission which suspended him. One of the issues on appeal was whether members of the commission had validly held over after expiration of their terms and before qualification and appointment of their successors. The Court, holding that the members of the commission had validly held over after expiration of their terms, relied upon

the Court's decision in State ex rel. Sandquist v. Rogers, 93 Mont. at 362, 18 P.2d at 617,

wherein it is plainly stated that every officer must continue to discharge the duties of his office although his term has expired, until his successor has qualified. This right is qualified only by express or clear implication of prohibition in the language of the statute.

Dewar v. City of Great Falls, 178 Mont. at 24, 582 P.2d at 1173 (citations omitted).

The policy underlying the common law rule is the strong public interest in continuing the work of important governmental offices when a qualified officer is holding over pending appointment and approval of a successor. Although the statutes are silent regarding the right of appointed officers to hold over, the present statutory scheme does not abrogate the common law rule or the policy underlying the rule. A prohibition against holding over is not clearly provided by statute and, in my opinion, a statutory prohibition against holding over cannot be implied.

Finally, a mayor's nominee to replace a holdover town attorney requires council approval. The mayor's appointment is ineffective unless and until the nominee is approved by the council. Mont. Code Ann. §§ 7-4-4103(4)(c), -4303(1), -4602(1). In State ex rel. Sandquist v. Rogers, 93 Mont. 355, 361, 18 P.2d 617, 618 (1933), the Court stated:

The nominees of a mayor who fail to be confirmed by a city council do not become effective as officers, and cannot assume that status until concurred in by a majority of the city or town council.

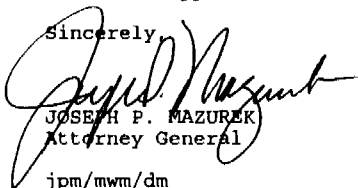
See also State ex rel. Olsen v. Swanberg, 130 Mont. at 206, 299 P.2d at 448-49.

THEREFORE, IT IS MY OPINION:

1. A vacancy in the office of town attorney is not created when the attorney holds over following expiration of the term of office.
2. A qualified town attorney lawfully holding over in the office continues to hold the office until the mayor

nominates a successor and the council approves the appointment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph P. Mazurek".

JOSEPH P. MAZUREK
Attorney General

jpm/mwm/dm

VOLUME NO. 47

OPINION NO. 17

COMMUNITY COLLEGES - Funding of community college teacher retirement;
COUNTY COMMISSIONERS - Funding of community college teacher retirement;
EDUCATION - Funding of community college teacher retirement;
RETIREMENT SYSTEMS - Funding of community college teacher retirement;
TEACHERS - Funding of community college teacher retirement;
MONTANA CODE ANNOTATED - Sections 19-20-602, -605, 20-9-142, -501, 20-15-106, -310, -311, -313.

HELD: The board of county commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property which is located in the county, but not in the community college district. Such a levy may only be imposed on property within the community college district.

August 18, 1998

Mr. Gerald J. Navratil
Dawson County Attorney
P.O. Box 1307
Glendive, MT 59330-1307

Dear Mr. Navratil:

You have asked my opinion on the following question:

May a county in which a community college is located issue a tax levy against property not located within the community college district to fund the local community college district's teachers' retirement obligation?

The process underlying the funding of education in general, community college districts in particular, as well as the teachers' retirement system, is determined by referencing many different sections of Mont. Code Ann. titles 19 and 20. Thus, the resolution of your question necessitates the analysis and interpretation of many and diverse statutes.

Each community college district is "a body corporate and a subdivision of the state of Montana" whose purpose is to provide community college instruction. Mont. Code Ann. § 20-15-101. Community college districts are under the supervision and coordination of the Montana Board of Regents, and are controlled by an elected board of trustees. Mont. Code Ann. §§ 20-15-103,

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-225. Community college districts may consist of several contiguous elementary school districts and may include more than one county. Mont. Code Ann. § 20-15-201.

General funding for community college districts comes from several sources, including student tuition and fees, the state general fund, and a combination of mandatory and optional mill levies on the community college district. Mont. Code Ann. §§ 20-15-310, -311. Once the trustees have established the mandatory and optional mill levies, the board of county commissioners of each county in the community college district must "fix and levy the community college district tax on all the real and personal property of the community college district situated in its county." Mont. Code Ann. § 20-15-313 (emphasis supplied).

Your question focuses on a specific funding question, the financing of teachers' retirement obligations by a community college district. Teachers employed by a community college district "are subject to and eligible for the benefits of the Montana teachers' retirement system." Mont. Code Ann. § 20-15-106. As such, they are "members" of the teachers' retirement system. Mont. Code Ann. § 19-20-101(9).

The Montana Teachers' Retirement System (hereinafter referred to as TRS) is funded by contributions from its members and the employers of its members. See Mont. Code Ann. §§ 19-20-601 to -621. Employers of TRS members are required to "pick up and pay the contributions that would be payable by the member." Those contributions are part of the members' earned compensation and must be paid out of the same source used to pay the members' compensation. Mont. Code Ann. § 19-20-602(1)(a), (c). Thus, the members' contributions are payable by the community college district from the funding sources listed in Mont. Code Ann. § 20-15-311. Those sources include mandatory and optional levies of taxes imposed solely on real and personal property located within the community college district. See Mont. Code Ann. § 20-15-313, discussed above.

Employers of TRS members are also responsible for making employer contributions to TRS's pension accumulation fund. Mont. Code Ann. § 19-20-605. The board of trustees of a community college district must budget and pay for its employer contributions pursuant to Mont. Code Ann. § 20-9-501. See Mont. Code Ann. § 19-20-605(2). This process leads to a mill levy separate and distinct from those contemplated in Mont. Code Ann. § 20-15-311.

[Montana Code Annotated § 20-9-501], however, does more than create a retirement fund and establish a reporting system. It directs the county superintendent to determine the "retirement fund levy requirement" necessary to meet the retirement fund

budget and then directs the county commissioners to "fix and set" the retirement fund levy in accordance with [Mont. Code Ann. § 20-9-142]. [Section 20-9-142] provides when the county commissioners shall levy on taxable property within the district.

We think this language is sufficient to authorize the county commissioners to levy a special tax to finance community college districts' teachers' retirement fund contributions.

Burlington Northern, Inc. v. Flathead County, 176 Mont. 9, 15, 575 P.2d 912, 915 (1978).

Section 20-9-501 discusses the financing of retirement funds by educational institutions in general. The first two subsections address, among other things, how trustees of school districts are to calculate the employer contribution due TRS. Subsection (3) provides the method to be used by the county superintendent of schools in establishing the retirement fund levy. Subsection (4) requires the county superintendent of schools to "total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county," and to report each of the levy requirements to the board of county commissioners. Mont. Code Ann. § 20-9-501(4) (a), (b).

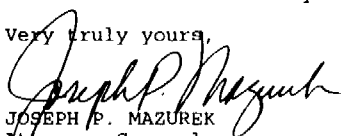
The board of county commissioners must then "fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget." Mont. Code Ann. § 20-9-142 (emphasis supplied). As used throughout title 20, the term "district" references elementary districts, high school districts, and, "whenever specified," community college districts.

Section 20-9-501's requirement that the county superintendent determine *each district's* net retirement fund separately, together with the language in Mont. Code Ann. § 20-9-142 requiring boards of county commissioners to fix and levy taxes on real and personal property located within a district, indicates the legislature's intent that levies designated for community college district retirement costs be limited to property located in the community college district, not county-wide. This interpretation is also consistent with dicta found in Burlington Northern, Inc. v. Flathead County, 176 Mont. at 15, 575 P.2d at 915, that "[Mont. Code Ann. § 20-9-142] provides when the county commissioners shall levy on taxable property within the district." (Emphasis supplied.) Thus, a board of county commissioners must limit the levying and taxing of retirement costs specific to a community college district to real and personal property located in that specific district.

THEREFORE, IT IS MY OPINION:

The board of county commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property which is located in the county, but outside of the community college district. Such a levy may only be imposed on property within the community college district.

Very truly yours,



JOSEPH P. MAZUREK
Attorney General

jpm/mas/dm

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for) NOTICE OF PETITION FOR
declaratory ruling on the) DECLARATORY RULING
management of continuous infusion)
of epidural catheters for analgesia)
in the obstetric setting.)

1. On November 5, 1998 at 8:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the management of continuous infusion of epidural catheters for analgesia in the obstetric setting. This petition was originally published at page 767, 1998 Montana Administrative Register, issue 6. Due to an error in drafting the initial Notice, several interested parties were not notified. Therefore, the board is beginning the process, again.

2. This petition is filed by Susan R. Hall, RN, BSN, Kathleen Harrington, RN, BSN, and Cathy Powell, RN, BSN (Petitioner), Staff RNs at Community Medical Center, 2827 Fort Missoula Rd., Missoula, MT 59804.

3. The board recognizes the following interested parties identified in the petition: Diane Hangas, Assistant Vice President for Patient Care Services; Shelly Peterson, Maternal Child Care Director; Gordon Gray, M.D., Chair, Anesthesia Department; Gary Harvey, M.D., Chair, OB-GYN Department; Linda Smith, Risk Management. These individual are employed or otherwise associated with Community Medical Center, 2827 Fort Missoula Road, Missoula, Montana 59804.

4. Petitioner relies extensively on a position statement prepared by the Association of Women's Health, Obstetric, and Neonatal Nurses (AWHONN). Accordingly, Petitioner alleges that the management of continuous infusion of epidural catheters for analgesia in the obstetric setting is not within the scope of practice for a licensed professional nurse unless qualified as a credentialed, licensed anesthesia care provider. Petitioner cites to section 37-8-102(5)(b), MCA.

Petitioner alleges that at this time, professional nurses at Community Medical Center are assigned approximately 9 cases involving management of continuous infusion epidural analgesia catheters in the obstetric setting each month. In discussions with the medical center's risk management division, Petitioner was advised to follow current procedure guidelines. Petitioner points out, however, that under the board's recent declaratory ruling that RNs may administer epidural analgesia, the board should have limited the practice to settings other than obstetrics.

5. The statute upon which Petitioner requests the declaratory ruling is section 37-8-102(5)(b), MCA, which provides:

"Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

- (i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;
- (ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

6. The Petitioner requests that the Board of Nursing declare that the management of continuous infusion of epidural catheters for analgesia in the obstetric setting is not within the scope of practice for a licensed professional nurse.


7. Interested persons may submit their data, view, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., October 9, 1998.

8. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you desire an accommodation, contact the Department no later than 5:00 p.m., November 2, 1998, to advise of the nature of the accommodation that you need. Please contact Dianne Wickham, RN, MN, Board Executive Director, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-2071; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-7759.

Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Dianne Wickham.

BOARD OF NURSING
KIM POWELL, RN, BSN, CEN

BY:



ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE



R. PERRY ESKRIDGE, RULE REVIEWER

Certified to the Secretary of State, August 17, 1998.

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 June 30, 1998. This table includes those rules adopted during the period July 1, 1998 through September 30, 1998 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 June 30, 1998, 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, 1997 and 1998 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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- 8.8.2802 and other rules - Definitions - Prohibitions - Physical Examinations - Physician Requirements - Elimination-type Events - Point System - Scoring - Promoter-Matchmaker - Medical Advisor, p. 1053

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- 8.12.601 and other rules - Applications - Examination Requirements - Temporary Permit - Renewals - Unprofessional Conduct - Endorsement, p. 49, 1494

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(Board of Cosmetologists)

- 8.14.803 and other rules - Applications for Examination - Temporary Permits - Application of Out-of-State Cosmetologists, Manicurists, Estheticians - Transfer Students - Continuing Education - Salons - Booth Rental Licenses - Restrictions of Temporary Permits, p. 1456

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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 July 1998, appear. Vacancies scheduled to appear from September 1, 1998, through November 30, 1998, 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 August 4, 1998.

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 JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Public Health and Human Services)			
Ms. Fern Prather	Governor	reappointed	7/23/1998
Big Timber			7/18/2001
Qualifications (if required):	public member		
Ms. Jeannette Stevenson	Governor	reappointed	7/23/1998
Hobson			7/18/2001
Qualifications (if required):	public member		
Mr. Irvin Hutchison	Governor	reappointed	7/23/1998
Chester			7/18/2001
Qualifications (if required):	public member		
Mr. Howard Hammer	Governor	Hultman	7/23/1998
Hamilton			7/18/2001
Qualifications (if required):	public member		
Agriculture Development Council (Agriculture)			
Mr. Larry Barber	Governor	Johnson	7/1/1998
Coffee Creek			7/1/2001
Qualifications (if required):	actively engaged in agriculture		
Mr. Peter Blouke	Governor	reappointed	7/1/1998
Helena			7/1/2001
Qualifications (if required):	director of the Department of Commerce		
Mr. P.L. "Joe" Boyd	Governor	reappointed	7/1/1998
Billings			7/1/2001
Qualifications (if required):	actively engaged in agriculture		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Agriculture Development Council (Agriculture) cont. Mr. W. Ralph Peck Helena Qualifications (if required): director of the Department of Agriculture	Governor	reappointed	7/1/1998 7/1/2001
Board of Funeral Service (Commerce) Mr. Douglas D. Lowry Big Timber Qualifications (if required): licensed mortician	Governor	not listed	7/1/1998 7/1/2003
Board of Hearing Aid Dispensers (Commerce) Mr. David King Billings Qualifications (if required): licensed hearing aid dispenser with national certification	Governor	Foss	7/7/1998 7/1/2001
Board of Landscape Architects (Commerce) Mr. Robert Broughton Hamilton Qualifications (if required): licensed landscape architect	Governor	reappointed	7/7/1998 7/1/2002
Mr. Lester Field Townsend Qualifications (if required): public member	Governor	reappointed	7/7/1998 7/1/2002
Board of Nursing (Commerce) Mr. Steve Rice Miles City Qualifications (if required): public member	Governor	Barkus	7/23/1998 7/1/2002

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Nursing (Commerce) cont. Ms. Rita Harding Billings	Governor	reappointed	7/23/1998 7/1/2002
Qualifications (if required): registered professional nurse			
Ms. Joan Miles Helena	Governor	Proul	7/23/1998 7/1/2002
Qualifications (if required): public member			
Ms. Jeanine Thomas Ronan	Governor	not listed	7/23/1998 7/1/2002
Qualifications (if required): licensed practical nurse			
Board of Pharmacy (Commerce) Ms. Sherry Lersbak Troy	Governor	Ori	7/13/1998 7/1/2002
Qualifications (if required): public member			
Ms. Colette Bernica Great Falls	Governor	Pasha	7/1/1998 7/1/2003
Qualifications (if required): public member			
Board of Physical Therapy Examiners (Commerce) Ms. Colleen Hatcher Miles City	Governor	not listed	7/1/1998 7/1/2001
Qualifications (if required): physical therapist			
Board of Professional Engineers and Land Surveyors (Commerce) Ms. Janet Markle Glasgow	Governor	Dana	7/1/1998 7/1/2002
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Professional Engineers and Land Surveyors (Commerce) cont.			
Mr. Richard Ainsworth	Governor	reappointed	7/1/1998
Missoula			7/1/2002
Qualifications (if required):	professional land surveyor		
Mr. Steve Wright	Governor	Prill	7/1/1998
Columbia Falls			7/1/2002
Qualifications (if required):	professional engineer		
Board of Public Accountants (Commerce)			
Ms. Beryl Argall Stover	Governor	Smrcka	7/9/1998
Missoula			7/1/2003
Qualifications (if required):	certified public accountant		
Board of Radiologic Technologists (Commerce)			
Dr. Daniel Alzheimer	Governor	reappointed	7/1/1998
Helena			7/1/2001
Qualifications (if required):	physician who employs a radiologic technologist		
Ms. Debbie Hepp	Governor	Winter	7/1/1998
Great Falls			7/1/2001
Qualifications (if required):	licensed radiologic technologists		
Board of Respiratory Care Practitioners (Commerce)			
Mr. Gregory Paulauskis	Governor	Graupmann	7/7/1998
Great Falls			7/1/2001
Qualifications (if required):	respiratory care practitioner		
Board of Sanitarians (Commerce)			
Ms. Janet Bauer	Governor	Tuemmler	7/1/1998
Great Falls			7/1/2001
Qualifications (if required):	registered sanitarian		

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterinary Medicine (Commerce) Dr. Jean Lindley Miles City Qualifications (if required): licensed veterinarian	Governor Myers		7/31/1998 7/31/2003
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Pat Byrne Great Falls Qualifications (if required): water well contractor	Governor reappointed		7/1/1998 7/1/2001
Capital Finance Advisory Council (Administration) Mr. Patrick P. Davison Billings Qualifications (if required): representative of the Board of Regents	Governor not listed		7/28/1998 2/25/2000
Commission for Human Rights (Labor and Industry) Mr. Jack Copps Seeley Lake Qualifications (if required): public member	Governor Svee		7/1/1998 1/1/1999
Community Services Advisory Council (Governor's Office) Mr. Bob Simoneau Helena Qualifications (if required): representative of the Department of Labor	Governor reappointed		7/13/1998 7/1/2001
Ms. Patricia J. Gunderson Belgrade Qualifications (if required): representative of labor unions	Governor reappointed		7/13/1998 7/1/2001

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community Services Advisory Council (Governor's Office) cont.			
Ms. Billie Krenzler	Governor	reappointed	7/13/1998
Billings			7/1/2001
Qualifications (if required):	representative of local government		
Mr. Bill Cain	Governor	reappointed	7/13/1998
Butte			7/1/2001
Qualifications (if required):	representative of business		
Family Education Savings Program Oversight Committee (Education)			
Mr. Patrick P. Davison	Governor	Kaze	7/28/1998
Billings			7/1/1999
Qualifications (if required):	presiding officer of the Board of Regents		
Mr. Gerry Meyer	Governor	not listed	7/1/1998
Great Falls			7/1/2002
Qualifications (if required):	public member		
Governor's Council on Organ Donor Awareness (Public Health and Human Services)			
Ms. Carole Erickson	Governor	not listed	7/29/1998
Missoula			2/12/2000
Qualifications (if required):	public member		
Independent Living Council (Public Health and Human Services)			
Mr. John Pipe	Director	Nitz	7/10/1998
Wolf Point			7/10/2000
Qualifications (if required):	none specified		
Mental Disabilities Board of Visitors (Commerce)			
Mr. Steve Cahill	Governor	Ellerd	7/8/1998
Ciancy			8/1/1999
Qualifications (if required):	representative of organization concerned with welfare of mentally ill		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Historical Society Board of Trustees (Historical Society)			
Dr. Thomas A. Poor	Governor	reappointed	7/1/1998
Missoula			7/1/2003
Qualifications (if required): archeologist			
Mr. William M. Hoit	Governor	reappointed	7/1/1998
Lolo			7/1/2003
Qualifications (if required): public member			
Ms. Vicki A. McCarthy	Governor	reappointed	7/1/1998
Billings			7/1/2003
Qualifications (if required): public member			
Montana Mint Committee (Agriculture)			
Mr. Darrel Sperry	Governor	reappointed	7/7/1998
Corvallis			7/1/2001
Qualifications (if required): mint grower			
Montana Research and Development Task Force (Commerce)			
Mr. Edwin H. Jasmin	Governor	not listed	7/20/1998
Bigfork			6/30/1999
Qualifications (if required): public member			
Mr. Ken Thuerbach	Governor	not listed	7/20/1998
Victor			6/30/1999
Qualifications (if required): public member			
Rep. Ernest Bergsagel	Governor	not listed	7/20/1998
Malta			6/30/1999
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeded</u>	<u>Appointment/End Date</u>
Montana Research and Development Task Force (Commerce) cont. Sen. Mignon Waterman Helena Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999
Dr. Richard Crofts Helena Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999
Mr. Ralph Hutcheson Bozeman Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999
Dr. Tom McCoy Bozeman Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999
Mr. Chuck Merja Sun River Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999
Dr. Lloyd Chestnut Missoula Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999
Mr. Rob Ryan Hamilton Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999
Mr. Chris Busch Ronan Qualifications (if required): public member	Governor	not listed	7/20/1998 6/30/1999

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Petroleum Tank Release Compensation Board (Environmental Quality)			
Mr. Gary Basso	Governor	reappointed	7/7/1998
Billings			6/30/2001
Qualifications (if required):	representative of the insurance industry		
Mr. Dallas Herron	Governor	reappointed	7/7/1998
Kalispell			6/30/2001
Qualifications (if required):	representative of the independent petroleum marketers		
Ms. Beth Dotson	Governor	Nordahl	7/7/1998
Billings			6/30/2001
Qualifications (if required):	representative of petroleum release remediation consultant industry		
State Electrical Board (Commerce)			
Mr. Todd Stoddard	Governor	not listed	7/1/1998
Dillon			7/1/2003
Qualifications (if required):	licensed electrician		
Teachers' Retirement Board (Administration)			
Ms. Emily Hall Bogut	Governor	Stuber	7/23/1998
Kalispell			7/1/2002
Qualifications (if required):	teacher and a member of the retirement system		
Telecommunications Access Services for Disabilities (Public Health and Human Services)			
Mr. Ben Havdahl	Governor	reappointed	7/1/1998
Helena			7/1/2001
Qualifications (if required):	hard of hearing		
Mr. Ron Bibler	Governor	reappointed	7/1/1998
Great Falls			7/1/2001
Qualifications (if required):	disabled		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Telecommunications Access Services for Disabilities (Public Health and Human Services)			
cont.			
Mr. Bradley Griffin	Governor	Delano	7/1/1998
Billings			7/1/2001
Qualifications (if required):	non-disabled businessman		
Mr. Jack Sterling	Governor	Mandeville	7/1/1998
Billings			7/1/1999
Qualifications (if required):	representative of independent local exchange companies		
Tourism Advisory Council (Commerce)			
Ms. Maureen Averill	Governor	reappointed	7/24/1998
Bigfork			7/1/2001
Qualifications (if required):	representing Glacier Country		
Ms. Lisa Perry	Governor	reappointed	7/24/1998
Shepherd			7/1/2001
Qualifications (if required):	representing Custer Country		
Ms. Betsy Baumgart	Governor	reappointed	7/24/1998
Helena			7/1/2001
Qualifications (if required):	representing Gold West Country		
Mr. Robert Dompier	Governor	reappointed	7/24/1998
Great Falls			7/1/2001
Qualifications (if required):	representing the Montana Innkeepers Association		
Ms. Debbie Donovan	Governor	Brandt	7/24/1998
Larslan			7/1/2001
Qualifications (if required):	representing Missouri River Country		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce) cont.			
Ms. Kathy Brown	Governor	McCleary	7/24/1998
Billings			7/1/2001
Qualifications (if required):	representing Custer Country		
Youth Justice Advisory Council (Justice)			
Ms. Valerie Rasch	Governor	Horsfall	7/8/1998
Billings			6/10/1999
Qualifications (if required):	representative of a public agency concerned with detention services		
Ms. Donna Maddux	Governor	Mrgudic	7/8/1998
Whitefish			6/10/1999
Qualifications (if required):	representative of the education community		
Miss Rachaelle Williams	Governor	Poynter	7/8/1998
Billings			6/10/1999
Qualifications (if required):	youth representative		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 1998 through NOVEMBER 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
AIDS Advisory Council (Public Health and Human Services) Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/26/1998
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/26/1998
Mr. David G. Rice, Havre Qualifications (if required): public member	Governor	11/26/1998
Ms. Verbena Savior, Poplar Qualifications (if required): public member	Governor	11/26/1998
Ms. Pam Carter, Bozeman Qualifications (if required): public member	Governor	11/26/1998
Dr. Connie O'Connor, Helena Qualifications (if required): public member	Governor	11/26/1998
Mr. David Herrera, Billings Qualifications (if required): public member	Governor	11/26/1998
Ms. Rita Munzenrider, Kalispell Qualifications (if required): public member	Governor	11/26/1998
Ms. Terri Dunn, Whitefish Qualifications (if required): public member	Governor	11/26/1998
Rep. John Bohlinger, Billings Qualifications (if required): legislator	Governor	11/26/1998

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 1998 through NOVEMBER 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
AIDS Advisory Council (Public Health and Human Services)	cont.	
Ms. Jeri Snell, Miles City Qualifications (if required): public member	Governor	11/26/1998
Ms. Pam Bragg, Helena Qualifications (if required): public member	Governor	11/26/1998
Dr. R.D. Marks, Missoula Qualifications (if required): public member	Governor	11/26/1998
Ms. Kim Kovanda, Columbus Qualifications (if required): student representative	Governor	11/26/1998
Dr. Raymond Geyer, Great Falls Qualifications (if required): public member	Governor	11/26/1998
Mr. Kevin Petersen, Clancy Qualifications (if required): public member	Governor	11/26/1998
Ms. Shelly Johnson, Fairfield Qualifications (if required): public member	Governor	11/26/1998
Alternative Health Care Board (Commerce)		
Dr. Tom Rasmussen, Helena Qualifications (if required): public member	Governor	9/1/1998
Ms. Kathee Dunham, Arlee Qualifications (if required): direct midwife	Governor	9/1/1998

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 1998 through NOVEMBER 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Medical Examiners (Commerce) Dr. James Bonnet, Kalispell Qualifications (if required): doctor/surgeon	Governor	9/1/1998
Mr. David B. Huebner, Great Falls Qualifications (if required): doctor of podiatry	Governor	9/1/1998
Dr. Donald Grewell, Billings Qualifications (if required): doctor of osteopathy	Governor	9/1/1998
Board of Outfitters (Commerce) Mr. Roy Ereaux, Malta Qualifications (if required): representing District 4	Governor	10/1/1998
Mr. Max Barker, Augusta Qualifications (if required): representing District 3	Governor	10/1/1998
Board of Psychologists (Commerce) Dr. Marian Martin, Billings Qualifications (if required): licensed psychologist	Governor	9/1/1998
Family Support Services Advisory Council (Public Health and Human Services) Ms. Sylvia Danforth, Miles City Qualifications (if required): service provider	Governor	9/11/1998
Mr. Ted Maloney, Missoula Qualifications (if required): representative at large	Governor	9/11/1998
Mr. Dan McCarthy, Helena Qualifications (if required): state agency representative	Governor	9/11/1998

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 1998 through NOVEMBER 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Sandi Marisdotter, Helena	Governor	9/11/1998
Qualifications (if required): service provider		
Ms. Linda Botten, Bozeman	Governor	9/11/1998
Qualifications (if required): service provider		
Ms. Sue Forest, Missoula	Governor	9/11/1998
Qualifications (if required): representative of personnel preparation		
Mr. Pete Surdock, Helena	Governor	9/11/1998
Qualifications (if required): state agency representative		
Ms. Maria Pease, Lodge Grass	Governor	9/11/1998
Qualifications (if required): parent representative		
Ms. Chris Volinkaty, Missoula	Governor	9/11/1998
Qualifications (if required): service provider		
Ms. Barbara Stefanic, Laurel	Governor	9/11/1998
Qualifications (if required): related services agency representative		
Mr. John Holbrook, Helena	Governor	9/11/1998
Qualifications (if required): state insurance governance representative		
Ms. Colleen Thompson, Glasgow	Governor	9/11/1998
Qualifications (if required): related agency representative		
Ms. Christine Gutschenritter, Great Falls	Governor	9/11/1998
Qualifications (if required): related agency representative		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 1998 through NOVEMBER 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) Ms. Jackie Jandt, Helena Qualifications (if required): state agency representative	Governor	9/11/1998
Ms. Lynda Hart, Helena Qualifications (if required): state agency representative	Governor	9/11/1998
Rep. Matt McCann, Harlem Qualifications (if required): legislator	Governor	9/11/1998
Ms. Sharon Wagner, Helena Qualifications (if required): state agency representative	Governor	9/11/1998
Ms. Georgia Rutherford, Browning Qualifications (if required): parent representative	Governor	9/11/1998
Ms. Millie Kindle, Malta Qualifications (if required): parent representative	Governor	9/11/1998
Ms. Gwen Beyer, Polson Qualifications (if required): parent representative	Governor	9/11/1998
Ms. Beth Kenney, Helena Qualifications (if required): parent representative	Governor	9/11/1998
Mr. Phil Matteis, Florence Qualifications (if required): health/medical services representative	Governor	9/11/1998
Historical Preservation Review Board (Historical Society) Mr. John Robert Horner, Bozeman Qualifications (if required): paleontologist	Governor	10/1/1998

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 1998 through NOVEMBER 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Preservation Review Board (Historical Society) Ms. Theo Hugs, Fort Smith Qualifications (if required): historian	Governor	10/1/1998
Historical Records Advisory Council (Historical Society) Mr. Timothy Bernardis, Crow Agency Qualifications (if required): public member	Governor	9/24/1998
Ms. Connie Erickson, Helena Qualifications (if required): public member	Governor	9/24/1998
Ms. Peggy Lamberson Bourne, Great Falls Qualifications (if required): public member	Governor	9/24/1998
Mr. Robert M. Clark, Helena Qualifications (if required): public member	Governor	9/24/1998
Ms. Kathryn Otto, Helena Qualifications (if required): state archivist	Governor	9/24/1998
Mr. Brian Cockhill, Helena Qualifications (if required): representative of the Historical Society	Governor	9/24/1998
Ms. Marie L. Torosian, St. Ignatius Qualifications (if required): public member	Governor	9/24/1998
Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	9/24/1998
Lewis and Clark Bicentennial Commission (Historical Society) Mr. Hal J. Stearns, Missoula Qualifications (if required): public member	Governor	10/1/1998

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 1998 through NOVEMBER 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Lewis and Clark Bicentennial Commission (Historical Society) cont. Mr. Leif Johnson, West Yellowstone Qualifications (if required): public member	Governor	10/1/1998
Mr. Curley Youpee, Poplar Qualifications (if required): enrolled member of a Montana Indian Tribe	Governor	10/1/1998
Noxious Weed Seed Free Advisory Council (Agriculture) Mr. Bob McNeill, Dillon Qualifications (if required): outfitters/guides	Director	9/17/1998
Mr. Dennis Cash, Bozeman Qualifications (if required): ex officio	Director	9/17/1998
Mr. Ray Ditterline, Bozeman Qualifications (if required): ex officio	Director	9/17/1998
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Harry Woll, Kalispell Qualifications (if required): forage producer	Director	9/17/1998
Mr. Don Walker, Glendive Qualifications (if required): forage producer	Director	9/17/1998
Mr. Dennis Perry, Choteau Qualifications (if required): feed pellets and cube products	Director	9/17/1998
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences) Mr. James L. Worthington, Laurel Qualifications (if required): representative of municipality	Governor	10/16/1998
Mr. Curt Myran, Miles City Qualifications (if required): representative of municipality	Governor	10/16/1998