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## MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

### TABLE OF CONTENTS

#### Page Number

#### NOTICE SECTION

##### STATE AUDITOR, Title 6

6-120 Notice of Proposed Adoption - Valuation of Life Insurance Policies. No Public Hearing Contemplated. 2488-2521

##### PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-133 Notice of Public Hearing on Proposed Amendment - Orthodontia for Medicaid Recipients. 2522-2528

37-134 Notice of Public Hearing on Proposed Amendment - Orthodontia Care for Children Special Health Services (CSHS) Recipients. 2529-2531

37-135 Notice of Proposed Amendment - Families Achieving Independence in Montana (FAIM). No Public Hearing Contemplated. 2532-2558

##### PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-151 Notice of Public Hearing on Proposed Amendment - Practice Before the Public Service Commission. 2559-2560

##### REVENUE, Department of, Title 42

42-2-648 Notice of Public Hearing on Proposed Amendment and Repeal - Lodging Facility Use Tax Rules. 2561-2569

RULE SECTION

COMMERCE, Department of, Title 8

NEW (Division of Banking and Financial  
Institutions) Deferred Deposit Lending. 2570-2572

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD Dam Safety - Hydrologic Standard for  
Emergency and Principal Spillways. 2573

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

Corrected Notice of Adoption - AFDC Foster  
Care - Excluded Earned Income. 2574

AMD Low Income Energy Assistance Program (LIEAP). 2575

REVENUE, Department of, Title 42

NEW Ethics of Department of Revenue Employees. 2576-2580

AMD Elderly Homeowner Credit. 2581

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2582-2583

How to Use ARM and MAR. 2584

Accumulative Table. 2585-2595

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

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of rules pertaining	)	ADOPTION
to the Valuation of Life	)	
Insurance Policies	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 16, 1999, the state auditor and commissioner of insurance proposes to adopt rules pertaining to valuation of life insurance policies.

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

RULE I PURPOSE (1) The purpose of these rules is to provide:

(a) tables of select mortality factors and rules for their use;

(b) rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and

(c) rules concerning a minimum standard for the valuation of plans with secondary guarantees.

(2) The method for calculating basic reserves defined in these rules will constitute the commissioners' reserve valuation method for policies to which these rules are applicable.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, and 33-2-537, MCA

RULE II APPLICABILITY (1) [Rules I through VII] shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2000, subject to the following exceptions:

(a) these rules shall not apply to any individual life insurance policy issued on or after [the effective date of these rules] if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before [the effective date of these rules], that guarantees the premium rates of the new policy. These rules also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(b) these rules shall not apply to any universal life policy that meets all the following requirements:

(i) secondary guarantee period, if any, is 5 years or

less;

(ii) specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in [Rule III(6)] and the applicable valuation interest rate; and

(iii) the initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.

(c) these rules shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(d) these rules shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(e) these rules shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(2) [Rules I through VII] shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2000, subject to the following conditions:

(a) calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with the provisions of [Rule V].

(b) calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of [Rule VI].

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, and 33-2-537, MCA

#### RULE III DEFINITIONS For purposes of these rules:

(1) "Basic reserves" means reserves calculated in accordance with 33-2-525, MCA.

(2) "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in (6) of this rule, (or any other valuation mortality table adopted by the national association of insurance commissioners (NAIC) after [the effective date of these rules])

and promulgated by rule by the commissioner for this purpose) and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in [Rule IV(2)].

(a) The length of a particular contract segment shall be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$  (if  $G_t$  never exceeds  $R_t$  the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where  $G_t$  and  $R_t$  are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t$  = 1, 2, ...;  $t$  is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$  = Guaranteed gross premium per thousand of face amount for year  $t$  of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$$

However,  $R_t$  may be increased or decreased by one percent in any policy year, at the company's option, but  $R_t$  shall not be less than one;

where:

$x$ ,  $k$  and  $t$  are as defined above, and

$q_{x+k+t-1}$  = valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of [Rule IV(2)(b)] if [Rule IV(3)] is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  shall be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  shall be deemed to be 0.

(3) "Deficiency reserves" means the excess, if greater than 0, of minimum reserves calculated in accordance with 33-

2-526, MCA over basic reserves.

(4) "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

(5) "Maximum valuation interest rates" means the interest rates defined in 33-2-527, MCA (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies.

(6) "1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without 10-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

(7) "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in [Rule VI], if any, or else the minimum premium described in [Rule VI].

(8) "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(a) the present value of the death benefits within the segment; plus

(b) the present value of any unusual guaranteed cash value [(Rule V(4))] occurring at the end of the segment; less

(c) any unusual guaranteed cash value occurring at the start of the segment; plus

(d) for the first segment only, the excess of (8) (a) over (b), as follows:

(i) a net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy;

(ii) a net 1-year term premium for the benefits provided for in the first policy year;

(e) the length of each segment is determined by the "contract segmentation method," as defined in this rule;

(f) the interest rates used in the present value

calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy;

(g) for both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

(9) "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

(10) "10-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

(11) "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(a) guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(b) modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of (11)(b)(i) over (11)(b)(ii), as follows:

(i) a net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age 1 year higher than the age at issue of the policy;

(ii) a net 1-year term premium for the benefits provided for in the first policy year;

(c) the interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

(12) "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, and 33-2-537, MCA



RULE IV GENERAL CALCULATION REQUIREMENTS FOR BASIC RESERVES AND PREMIUM DEFICIENCY RESERVES (1) At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after [the effective date of these rules] and promulgated by rule by the commissioner for this purpose). If select mortality factors are elected, they may be:

(a) the 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;  
(b) the select mortality factors in [Rule VII]; or

(2) deficiency reserves, if any, are calculated for each policy as the excess, if greater than 0, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality. If select mortality factors are elected, they may be:

(a) the 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;  
(b) the select mortality factors in [Rule VII] of these rules;

(c) for durations in the first segment,  $X\%$  of the select mortality factors in [Rule VII], subject to the following:

(i)  $X$  may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

(ii)  $X$  shall not be less than 20%;

(iii)  $X$  shall not decrease in any successive policy years;

(iv)  $X$  is such that, when using the valuation interest rate used for basic reserves, (2) (c) (iv) (A) is greater than or equal to (2) (c) (iv) (B) as follows:

(A) the actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of  $X$ ;

(B) the actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

(v)  $X$  is such that the mortality rates resulting from the application of  $X$  are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first 5 years after the valuation date;

(vi) the appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of (2)(c);

(vii) the appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of (2)(c); and

(viii) the appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums;

(ix) if X is less than 100% at any duration for any policy, the following requirements shall be met:

(A) the appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of ARM 6.6.6504(4); and

(B) the appointed actuary shall annually opine for all policies subject to these rules as to whether the mortality rates resulting from the application of X meet the requirements of (2)(c). This opinion shall be supported by an actuarial report, subject to appropriate actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience;

(C) any other table of select mortality factors adopted by the NAIC after [the effective date of these rules] and promulgated by rule by the commissioner for the purpose of calculating deficiency reserves.

(3) This rule applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than 10 years, the appropriate 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

(4) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

(5) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than 1 year after the date of the change shall be the greatest of the following:

(a) reserves calculated ignoring the guarantee;

(b) reserves assuming the guarantee was made at issue; and

(c) reserves assuming that the policy was issued on the date of the guarantee.

(6) The commissioner may require that the company

document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to [the effective date of these rules]. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of ARM 6.6.6505.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, and 33-2-537, MCA

**RULE V. CALCULATION OF MINIMUM VALUATION STANDARD FOR POLICIES WITH GUARANTEED NONLEVEL GROSS PREMIUMS OR GUARANTEED NONLEVEL BENEFITS (OTHER THAN UNIVERSAL LIFE POLICIES)**

(1) Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in (1)(a) or (b) below may be made:

(a) treat the unitary reserve, if greater than 0, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than 0, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or

(b) treat the guaranteed cash surrender value, if greater than 0, applicable at the end of each segment as a pure endowment and subtract the guaranteed cash surrender value, if greater than 0, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) The deficiency reserve at any duration shall be calculated:

(a) on a unitary basis if the corresponding basic reserve determined by (1) is unitary;

(b) on a segmented basis if the corresponding basic reserve determined by (1) is segmented; or

(c) on the segmented basis if the corresponding basic reserve determined by (1) is equal to both the segmented reserve and the unitary reserve;

(d) this rule shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality specified in [Rule IV(2)] and rate of interest;

(e) deficiency reserves, if any, shall be calculated for each policy as the excess if greater than 0, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in [Rule IV(2)];

(f) for deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

(3) Minimum value. Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the 10-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

(4) Unusual pattern of guaranteed cash surrender values:

(a) for any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where  $n$  is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(b) the reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:

(i)  $n$  is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(A) the date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(B) the mandatory expiration date of the policy; and

(ii) the net premium for a given year during the  $n$  year period is equal to the product of the net to gross ratio and the respective gross premium; and

(iii) the net to gross ratio is equal to (4) (b) (iii) (A) divided by (4) (b) (iii) (B) as follows:

(A) the present value, at the beginning of the  $n$  year

period, of death benefits payable during the  $n$  year period plus the present value, at the beginning of the  $n$  year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the  $n$  year period;

(B) the present value, at the beginning of the  $n$  year period, of the scheduled gross premiums payable during the  $n$  year period.

(c) for purposes of this rule, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

- (i) 110% of the scheduled gross premium for that year;
- (ii) 110% of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
- (iii) 5% of the first policy year surrender charge, if any.

(5) Optional exemption for yearly renewable term (YRT) reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(a) calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;

(b) basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in (3);

(c) deficiency reserves.

(i) For each policy year, calculate the excess, if greater than 0, of the valuation net premium over the respective maximum guaranteed gross premium.

(ii) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with (5)(c)(i) above.

(6) For purposes of this rule, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without 10-year select mortality factors, or any other table adopted after [the effective date of these rules] by the NAIC and promulgated by rule by the commissioner for this purpose.

(7) A reinsurance agreement shall be considered YRT reinsurance for purposes of this rule if only the mortality risk is reinsured.

(8) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.

(9) Optional exemption for attained-age-based yearly renewable term (YRT) life insurance policies. At the option of the company, the following approach for reserves for attained-

age-based YRT life insurance policies may be used:

(a) calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;

(b) basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in (3);

(c) deficiency reserves.

(i) For each policy year, calculate the excess, if greater than 0, of the valuation net premium over the respective maximum guaranteed gross premium.

(ii) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with (9)(c)(i) above.

(10) For purposes of this rule, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without 10-year select mortality factors, or any other table adopted after [the effective date of these rules] by the NAIC and promulgated by rule by the commissioner for this purpose.

(11) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this rule if:

(a) the premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and

(b) the premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same risk class, plan of insurance and attained age.

(12) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this rule may be used after the initial period if:

(a) the initial period is constant for all insureds of the same risk class and plan of insurance; or

(b) the initial period runs to a common attained age for all insureds of the same risk class and plan of insurance; and

(c) after the initial period of coverage, the policy meets the conditions of (11) above.

(13) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after January 1, 2000.

(14) Exemption from unitary reserves for certain  $n$  year renewable term life insurance policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

(a) the policy consists of a series of  $n$  year periods, including the first period and all renewal periods, where  $n$  is the same for each period, except that for the final renewal period,  $n$  may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10 years

and less than twice the size of the earlier  $n$  year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(b) the guaranteed gross premiums in all  $n$  year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the 10-year select mortality factors; and

(c) there are no cash surrender values in any policy year.

(15) Exemption from unitary reserves for certain juvenile policies: Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

(a) the insured is age 24 or younger;

(b) until the insured reaches the end of the juvenile period, which shall occur at or before age 25, the gross premiums and death benefits are level, and there are no cash surrender values; and

(c) after the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, and 33-2-537, MCA

RULE VI. CALCULATION OF MINIMUM VALUATION STANDARD FOR FLEXIBLE PREMIUM AND FIXED PREMIUM UNIVERSAL LIFE INSURANCE POLICIES THAT CONTAIN PROVISIONS RESULTING IN THE ABILITY OF A POLICYOWNER TO KEEP A POLICY IN FORCE OVER A SECONDARY GUARANTEE PERIOD (1) Policies with a secondary guarantee include:

(a) a policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;

(b) a policy in which the minimum premium at any duration is less than the corresponding 1-year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without 10-year select mortality factors; or

(c) a policy with any combination of (1)(a) and (b).

(2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be

considered to have been made at issue. Reserves described in (7) and (8) below shall be recalculated from issue to reflect these changes.

(3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(4) For purposes of this rule, the minimum premium for any policy year is the premium that, when paid into a policy with a 0 account value at the beginning of the policy year, produces a 0 account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

(5) The 1-year valuation premium means the net 1-year premium based upon the original schedule of benefits for a given policy year. The 1-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in [Rule IV(2)(b) and (c)] may not be used to calculate the 1-year valuation premiums.

(6) The 1-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

(7) Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in [Rule III(3)].

(8) Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in [Rule V(2)] with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(9) The minimum reserves during the secondary guarantee period are the greater of:

(a) the basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(b) the minimum reserves required by other rules or regulations governing universal life plans.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, and 33-2-537, MCA



RULE VII SELECT MORTALITY FACTORS (1) This rule contains tables of select mortality factors that are the bases to which the respective percentage of [Rule IV(1)(b), (2)(b) and (2)(c)] are applied.

(2) The 6 tables of select mortality factors contained herein include:

- (a) male, aggregate;
- (b) male, nonsmoker;
- (c) male, smoker;
- (d) female, aggregate;
- (e) female, nonsmoker; and
- (f) female, smoker. These tables apply to both age last birthday and age nearest birthday mortality tables.

(3) For sex-blended mortality tables, compute select mortality factors in the same proportion as the underlying mortality. For example, for the 1980 CSO-B Table, the calculated select mortality factors are 80% of the appropriate male table in this rule, plus 20% of the appropriate female table in this rule.

(4) The tables listed in (2)(a) through (f) are as follows:

(a) Male, Aggregate

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	96	98	98	99	99	100	100	100	100	100	92	92	93	93	96	97	98	98	99	100
19	83	84	84	87	87	87	79	79	79	81	81	82	82	82	85	88	91	94	97	100
20	69	71	71	74	74	69	69	67	69	70	71	71	71	71	74	79	84	90	95	100
21	66	68	69	71	66	66	67	66	67	70	70	70	70	71	71	77	83	88	94	100
22	65	66	66	63	63	64	64	64	65	68	68	68	68	69	71	77	83	88	94	100
23	62	63	59	50	62	62	63	63	64	65	65	67	67	69	70	76	82	88	94	100
24	60	56	56	59	59	60	61	61	61	64	64	64	66	67	70	76	82	88	94	100
25	52	53	55	56	58	58	60	60	60	63	62	63	64	67	69	75	81	88	94	100
26	51	52	55	56	58	58	57	61	61	62	63	64	66	69	66	73	80	86	93	100
27	51	52	55	57	58	60	61	61	60	63	63	64	67	66	67	74	80	87	93	100
28	49	51	56	58	60	60	61	62	62	63	64	66	65	66	68	74	81	87	94	100
29	49	51	56	58	60	61	62	62	62	64	64	62	66	67	70	76	82	88	94	100
30	49	50	56	58	60	60	62	63	63	64	62	63	67	68	71	77	83	88	94	100
31	47	50	56	58	60	62	63	64	64	62	63	66	68	70	72	78	83	89	94	100
32	46	49	56	59	60	62	63	66	62	63	66	67	70	72	73	78	84	89	95	100
33	43	49	56	59	62	63	64	62	65	66	67	70	72	73	75	80	85	90	95	100
34	42	47	56	60	62	63	61	63	66	67	70	71	73	75	76	81	86	90	95	100
35	40	47	56	60	63	61	62	65	67	68	71	73	74	76	76	81	86	90	95	100
36	38	42	56	60	59	61	63	65	67	68	70	72	74	76	77	82	86	91	95	100
37	38	45	56	57	61	62	63	65	67	68	70	72	74	76	76	81	86	90	95	100
38	37	44	53	58	61	62	65	66	67	69	69	73	75	76	77	82	86	91	95	100
39	37	41	53	58	62	63	65	65	66	68	69	72	74	76	76	81	86	90	95	100
40	34	40	53	58	62	63	65	65	66	68	68	71	75	76	77	82	86	91	95	100

Male, Aggregate

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	34	41	53	58	62	63	65	64	64	66	68	70	74	76	77	82	86	91	95	100	
42	34	43	53	58	61	62	63	63	64	66	69	72	75	77	82	86	91	95	100		
43	34	43	54	59	60	61	63	62	64	66	67	72	74	77	82	86	91	95	100		
44	34	44	54	58	59	60	61	60	61	62	64	67	71	74	77	82	86	91	95	100	
45	34	45	53	58	59	60	60	60	59	60	63	66	71	74	77	82	86	91	95	100	
46	31	43	52	56	57	58	59	59	59	60	63	67	71	74	75	80	85	90	95	100	
47	32	42	50	53	55	56	57	58	59	60	65	68	71	74	75	80	85	90	95	100	
48	32	41	47	52	54	56	57	57	57	61	65	68	72	73	74	79	84	90	95	100	
49	30	40	46	49	52	54	55	56	57	61	66	69	72	73	74	79	84	90	95	100	
50	30	38	44	47	51	53	54	56	57	61	66	71	72	73	75	80	85	90	95	100	
51	28	37	42	46	49	53	54	56	57	61	66	71	72	73	75	80	85	90	95	100	
52	28	35	41	45	49	51	54	56	57	61	66	71	72	74	75	80	85	90	100	100	
53	27	35	39	44	48	51	53	55	57	61	67	71	74	75	76	81	86	100	100	100	
54	27	33	38	44	48	50	53	55	57	61	67	72	74	75	76	81	100	100	100	100	
55	25	32	37	43	47	50	53	55	57	61	68	72	74	75	78	100	100	100	100	100	
56	25	32	37	43	47	49	51	54	56	61	67	70	73	74	100	100	100	100	100	100	
57	24	31	38	43	47	49	51	54	56	59	66	69	72	100	100	100	100	100	100	100	
58	24	31	38	43	48	48	50	53	56	59	64	67	100	100	100	100	100	100	100	100	
59	23	30	39	43	48	48	51	53	55	58	63	100	100	100	100	100	100	100	100	100	
60	23	30	39	43	48	47	50	52	53	57	100	100	100	100	100	100	100	100	100	100	
61	23	30	39	43	49	49	50	52	53	75	100	100	100	100	100	100	100	100	100	100	
62	23	30	39	44	49	49	51	52	75	75	100	100	100	100	100	100	100	100	100	100	
63	22	30	39	45	50	50	52	75	75	75	100	100	100	100	100	100	100	100	100	100	
64	22	30	39	45	50	51	75	75	75	75	100	100	100	100	100	100	100	100	100	100	
65	22	30	39	45	50	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100	

Male, Aggregate

Issue Age	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
66	22	30	39	45	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
67	22	30	39	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
68	23	32	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
69	23	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
70	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
71	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
72	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
73	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
74	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
75	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
76	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
77	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
78	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
79	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

## (b) Male, Nonmoker

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
Age	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	93	95	96	98	99	100	100	90	92	92	92	92	95	95	96	97	98	98	99	100
19	80	81	83	86	87	87	79	79	79	81	81	82	83	83	86	89	92	94	97	100
20	65	68	69	72	74	69	69	67	69	70	71	71	72	72	75	80	85	90	95	100
21	63	66	68	71	66	66	67	66	67	70	70	70	71	71	73	78	84	89	95	100
22	62	65	66	62	63	64	64	64	67	68	68	68	70	70	73	78	84	89	95	100
23	60	62	58	60	62	62	63	63	64	67	68	68	67	69	71	77	83	88	94	100
24	59	55	56	58	59	60	61	61	63	65	67	66	66	69	71	77	83	88	94	100
25	52	53	55	56	58	58	60	60	61	64	64	64	64	67	70	76	82	88	94	100
26	51	53	55	56	58	60	61	61	61	63	64	64	66	69	67	74	80	87	93	100
27	51	52	55	58	60	60	61	61	62	63	64	66	67	66	67	74	80	87	93	100
28	49	52	57	58	60	61	63	62	62	64	66	66	63	66	68	74	81	87	94	100
29	49	51	57	60	61	61	62	62	63	64	66	63	65	67	68	74	81	87	94	100
30	49	51	57	60	61	62	63	63	63	64	62	63	66	68	70	76	82	88	94	100
31	47	50	57	60	60	62	63	64	64	62	63	65	67	70	71	77	83	88	94	100
32	46	50	57	60	62	63	64	64	62	63	65	66	68	71	72	78	83	89	94	100
33	45	49	56	60	62	63	64	62	63	65	66	68	71	73	74	79	84	90	95	100
34	43	48	56	62	63	64	62	62	65	66	67	70	72	74	74	79	84	90	95	100
35	41	47	56	62	63	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100
36	40	47	56	62	59	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100
37	38	45	56	58	59	61	62	63	66	67	67	69	71	73	74	79	84	90	95	100
38	38	45	53	58	61	62	63	65	65	67	68	70	72	74	73	78	84	89	95	100
39	37	41	53	58	61	62	63	64	65	67	68	70	71	73	73	78	84	89	95	100
40	34	41	53	58	61	62	63	64	64	66	67	69	71	73	72	78	83	89	94	100

## Male, Nonsmoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	34	41	53	58	61	61	62	62	63	65	65	67	69	71	71	77	83	88	94	100	100
42	34	43	53	58	60	61	62	61	61	63	64	66	67	69	71	77	83	88	94	100	100
43	32	43	53	58	60	61	60	60	60	60	62	64	66	68	69	75	81	88	94	100	100
44	32	44	52	57	59	60	60	59	59	58	60	62	65	67	69	75	81	88	94	100	100
45	32	44	52	57	59	60	59	57	57	59	61	63	66	68	74	81	87	94	100	100	100
46	32	42	50	54	56	57	57	56	55	56	59	61	63	65	67	74	80	87	93	100	100
47	30	40	48	52	54	55	55	54	54	55	59	61	62	63	66	73	80	86	93	100	100
48	30	40	46	49	51	52	53	53	54	55	57	61	62	63	63	70	78	85	93	100	100
49	29	39	43	48	50	51	50	51	53	54	57	61	61	62	62	70	77	85	92	100	100
50	29	37	42	45	47	48	49	50	51	54	57	61	61	61	61	69	77	84	92	100	100
51	27	35	40	43	45	47	48	50	51	53	57	60	61	61	62	70	77	85	92	100	100
52	27	34	39	42	44	45	48	49	50	53	56	60	60	62	62	70	77	85	100	100	100
53	25	31	37	41	44	45	47	49	50	51	56	59	61	61	62	70	77	100	100	100	100
54	25	30	36	39	43	44	47	48	49	51	55	59	59	61	62	70	100	100	100	100	100
55	24	29	35	38	42	43	45	48	49	50	56	58	59	61	62	100	100	100	100	100	100
56	23	29	35	38	42	42	44	47	48	50	55	57	58	59	100	100	100	100	100	100	100
57	23	28	35	38	42	42	43	45	47	49	53	55	56	100	100	100	100	100	100	100	100
58	22	28	33	37	41	41	43	45	45	47	51	53	100	100	100	100	100	100	100	100	100
59	22	26	33	37	41	41	42	44	44	46	50	100	100	100	100	100	100	100	100	100	100
60	20	26	33	37	41	40	41	42	42	45	100	100	100	100	100	100	100	100	100	100	100
61	20	26	33	37	41	40	41	42	42	45	100	100	100	100	100	100	100	100	100	100	100
62	19	25	32	38	40	40	41	42	75	75	100	100	100	100	100	100	100	100	100	100	100
63	19	25	33	36	40	40	41	75	75	75	100	100	100	100	100	100	100	100	100	100	100
64	18	24	32	36	39	40	75	75	75	75	100	100	100	100	100	100	100	100	100	100	100
65	18	24	32	36	39	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100	100
66	18	24	32	36	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100	100
67	18	24	32	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100	100
68	18	24	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100	100
69	18	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100	100
70	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100	100

Male, Nonsmoker

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
Age																				
71	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
72	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
73	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
74	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
75	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
76	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
77	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
78	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
79	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

(c)  
Male, Smoker  
Duration

Issue	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
19	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
20	98	100	100	100	100	100	100	99	99	99	99	100	99	99	99	100	100	100	100	100	100
21	95	98	99	100	95	96	96	95	96	97	97	96	96	96	96	96	97	98	98	99	100
22	92	95	96	90	90	93	93	92	93	95	95	93	93	92	93	93	94	96	97	99	100
23	90	92	85	88	88	89	89	89	90	90	90	90	89	90	92	92	94	95	97	98	100
24	87	81	82	85	84	86	88	86	86	88	88	86	86	88	89	89	91	93	96	98	100
25	77	78	79	82	81	83	83	82	83	85	84	84	84	84	85	86	89	92	94	97	100
26	75	77	79	82	82	83	83	82	83	84	84	84	84	84	85	81	85	89	92	96	100
27	73	75	78	82	82	83	83	82	82	82	82	84	84	84	80	81	85	89	92	96	100
28	71	73	79	82	81	82	83	81	81	82	82	82	82	80	80	81	85	89	92	96	100
29	69	72	78	81	81	82	82	81	81	81	81	77	80	80	80	81	85	89	92	96	100
30	68	71	78	81	81	81	82	81	81	81	76	77	80	80	81	81	85	89	92	96	100
31	65	70	77	81	79	81	82	81	81	76	77	79	81	81	81	83	86	90	93	97	100
32	63	67	77	78	79	81	81	81	76	77	77	80	83	83	83	85	88	91	94	97	100
33	60	65	74	78	79	79	81	76	77	77	79	80	83	85	85	85	88	91	94	97	100
34	57	62	74	77	79	79	79	75	76	77	79	81	83	85	87	87	90	92	95	97	100
35	53	60	73	77	79	75	75	75	76	77	79	80	82	84	86	88	90	93	95	98	100
36	52	59	71	75	74	75	75	75	76	77	79	79	81	83	85	87	90	92	95	97	100
37	49	58	70	71	74	74	74	75	76	77	78	79	81	84	86	86	89	92	94	97	100
38	48	55	66	70	72	74	74	74	75	76	78	79	81	83	85	87	90	92	95	97	100
39	45	50	65	70	72	72	74	74	74	75	77	79	81	84	86	86	89	92	94	97	100
40	41	49	63	68	71	72	72	73	74	74	76	78	80	83	85	86	89	92	94	97	100



Male, Smoker

Issue Age	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	40	49	63	68	71	72	72	72	73	75	76	78	81	84	85	88	91	94	97	100
42	40	49	62	68	70	71	71	71	71	73	75	76	81	83	85	88	91	94	97	100
43	39	50	62	67	69	69	70	70	70	71	73	76	79	83	85	88	91	94	97	100
44	39	50	60	66	68	69	68	69	69	69	71	74	79	81	85	88	91	94	97	100
45	37	50	60	66	68	68	68	67	67	67	69	73	78	82	85	88	91	94	97	100
46	37	48	58	63	65	67	66	66	66	67	71	74	78	81	84	87	90	94	97	100
47	36	47	55	61	63	64	64	64	65	67	71	75	79	81	84	87	90	94	97	100
48	35	46	53	58	60	62	63	63	63	67	72	75	79	81	83	86	90	93	97	100
49	34	45	51	56	58	59	61	62	63	67	72	77	80	81	83	86	90	93	97	100
50	34	43	49	53	55	57	60	61	63	67	73	78	80	81	81	85	89	92	96	100
51	32	42	47	52	55	57	60	61	63	67	73	78	80	83	84	87	90	94	97	100
52	32	40	46	50	54	56	60	61	63	67	73	78	81	84	85	88	91	94	100	100
53	30	37	44	49	54	56	59	61	65	67	74	79	83	85	87	90	92	100	100	100
54	30	36	43	48	53	55	59	61	65	67	74	80	84	85	89	91	100	100	100	100
55	29	35	42	47	53	55	59	61	65	67	75	80	84	86	90	100	100	100	100	100
56	28	35	42	47	53	55	57	60	63	68	74	79	83	85	100	100	100	100	100	100
57	28	35	42	47	53	54	57	60	64	67	74	78	81	100	100	100	100	100	100	100
58	26	33	43	48	54	54	56	59	63	67	73	78	100	100	100	100	100	100	100	100
59	26	33	43	48	54	53	57	59	63	66	73	100	100	100	100	100	100	100	100	100
60	25	33	43	48	54	53	56	58	62	66	100	100	100	100	100	100	100	100	100	100
61	25	33	43	49	55	55	57	59	63	75	100	100	100	100	100	100	100	100	100	100
62	25	33	43	50	56	56	58	61	75	75	100	100	100	100	100	100	100	100	100	100
63	24	33	45	51	56	56	59	75	75	75	100	100	100	100	100	100	100	100	100	100
64	24	34	45	51	57	57	75	75	75	75	100	100	100	100	100	100	100	100	100	100
65	24	34	45	52	57	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
66	24	35	45	53	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
67	25	35	45	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
68	25	35	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
69	27	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
70	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100

Male, Smoker

Duration

Issue

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
72	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
73	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
74	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
75	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
76	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
77	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
78	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
79	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

## Female, Aggregate

(d)

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
Age	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	99	100	100	100	100	100	100	100	93	95	96	97	97	100	100	100	100	100	100	100
18	83	83	84	84	84	84	86	78	78	79	82	84	85	88	88	90	93	95	98	100
19	55	66	68	68	68	68	63	63	64	66	69	71	72	74	75	80	85	90	95	100
20	48	50	51	51	51	47	48	48	49	51	56	57	58	61	63	70	78	85	93	100
21	47	48	50	51	47	47	48	49	51	53	57	60	61	64	64	71	78	86	93	100
22	44	47	48	45	47	47	48	49	53	54	60	61	63	64	66	73	80	86	93	100
23	42	45	44	45	47	47	49	51	53	54	61	64	64	67	69	75	81	88	94	100
24	39	40	42	44	47	47	50	51	54	56	64	64	66	69	70	76	82	88	94	100
25	34	38	41	44	47	47	50	53	56	57	64	67	69	71	73	78	84	89	95	100
26	34	38	41	45	49	49	51	56	58	59	66	69	70	73	70	76	82	88	94	100
27	34	38	41	47	50	51	54	57	59	60	69	70	73	70	71	77	83	88	94	100
28	34	37	43	47	53	53	56	59	62	63	70	73	70	72	74	79	84	90	95	100
29	34	38	43	49	54	56	58	60	63	64	73	70	72	74	75	80	85	90	95	100
30	35	38	43	50	56	56	59	63	66	67	70	71	74	75	76	81	86	90	95	100
31	35	38	43	51	56	58	60	64	67	65	71	72	74	75	76	81	86	90	95	100
32	35	39	45	51	56	59	63	66	65	66	72	72	75	76	76	81	86	90	95	100
33	36	39	44	52	58	62	64	65	66	67	72	74	75	76	76	81	86	90	95	100
34	36	40	45	52	58	63	63	66	67	68	74	74	76	76	76	81	86	90	95	100
35	36	40	45	53	59	61	65	67	68	70	75	74	75	76	75	80	85	90	95	100
36	36	40	45	53	55	62	65	67	68	70	74	74	74	75	75	80	85	90	95	100
37	36	41	47	52	57	62	65	67	68	69	72	72	73	75	74	79	84	90	95	100
38	34	41	44	52	57	63	66	68	69	70	72	71	72	74	75	80	85	90	95	100
39	34	40	45	53	58	63	66	68	69	69	70	70	70	73	74	79	84	90	95	100
40	32	40	45	53	58	65	65	67	68	69	70	69	70	73	73	78	84	89	95	100

Female, Aggregate

Age	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	32	40	45	53	57	63	64	67	68	68	69	69	69	73	74	79	84	90	95	100
42	32	40	45	52	56	61	63	65	66	68	69	68	70	74	75	80	85	90	95	100
43	31	39	45	51	55	59	61	65	65	66	68	69	74	77	82	86	91	95	100	100
44	31	39	45	50	54	58	61	63	64	66	67	68	71	75	78	82	87	91	96	100
45	31	38	44	49	53	56	59	62	63	65	67	68	71	77	79	83	87	92	96	100
46	29	37	43	48	51	54	59	62	63	65	67	69	71	77	78	82	87	91	96	100
47	28	35	41	46	49	54	57	61	62	66	68	69	71	77	77	82	86	91	95	100
48	28	35	41	44	49	52	57	61	63	66	68	71	72	75	77	82	86	91	95	100
49	26	34	39	43	47	52	55	61	63	67	69	71	72	75	75	80	85	90	95	100
50	25	32	38	41	46	50	55	61	63	67	69	72	72	75	74	79	84	90	95	100
51	25	32	38	41	45	50	55	61	63	66	68	69	71	74	74	79	84	90	95	100
52	23	30	36	41	45	51	56	61	62	65	66	68	68	73	73	78	84	89	100	100
53	23	30	36	41	47	51	56	61	62	63	65	66	68	72	72	78	83	100	100	100
54	22	29	35	41	47	53	57	61	61	62	62	66	66	69	70	76	100	100	100	100
55	22	29	35	41	47	53	57	61	61	61	62	63	64	68	69	100	100	100	100	100
56	22	29	35	41	45	51	56	59	60	61	62	63	64	67	100	100	100	100	100	100
57	22	29	35	41	45	50	54	56	58	59	61	62	63	100	100	100	100	100	100	100
58	22	30	36	41	44	49	53	56	57	57	61	62	100	100	100	100	100	100	100	100
59	22	30	36	41	44	48	51	53	55	55	59	100	100	100	100	100	100	100	100	100
60	22	30	36	41	43	47	50	51	53	55	100	100	100	100	100	100	100	100	100	100
61	22	29	35	39	42	46	49	50	52	80	100	100	100	100	100	100	100	100	100	100
62	20	28	33	39	41	45	47	49	80	80	100	100	100	100	100	100	100	100	100	100
63	20	28	33	38	41	44	46	80	80	80	100	100	100	100	100	100	100	100	100	100
64	19	27	32	36	40	42	80	80	80	80	100	100	100	100	100	100	100	100	100	100
65	19	25	30	35	39	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
66	19	25	30	35	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
67	19	25	30	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
68	19	25	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
69	19	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
70	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Female, Aggregate

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

(e) Female, Nonsmoker

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
Age	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	96	98	98	98	98	99	99	99	99	99	99	99	99	99	99	99	99	99	99	100
17	96	98	98	98	98	99	99	99	99	99	99	99	99	99	99	99	99	99	99	100
18	78	80	80	80	80	81	81	74	75	75	78	79	82	83	85	88	91	94	97	100
19	60	62	63	63	63	65	65	59	60	60	64	67	67	70	72	78	83	89	94	100
20	42	44	45	45	45	42	42	42	40	40	50	51	53	56	58	66	75	83	92	100
21	41	42	44	45	41	42	42	44	47	47	51	53	54	57	59	67	75	84	92	100
22	39	41	44	41	41	42	44	45	49	49	54	56	57	58	60	68	76	84	92	100
23	38	41	38	40	41	42	44	46	49	50	56	57	58	60	62	70	77	85	92	100
24	36	36	38	40	41	42	46	47	50	51	58	59	60	62	63	70	78	85	93	100
25	32	34	37	40	41	43	46	49	51	53	59	60	62	63	64	71	78	86	93	100
26	32	34	37	41	43	45	47	50	53	53	60	62	63	64	62	70	77	85	92	100
27	32	34	38	43	46	47	49	51	53	55	62	63	64	62	62	70	77	85	92	100
28	30	34	39	43	47	49	51	53	56	58	63	63	61	62	63	70	78	85	93	100
29	30	35	40	45	50	51	52	55	58	59	64	61	62	63	63	70	78	85	93	100
30	31	35	40	46	51	52	53	56	59	60	62	62	63	65	65	72	79	86	93	100
31	31	35	40	46	51	53	55	58	60	58	62	62	63	65	65	72	79	86	93	100
32	32	35	40	45	51	53	56	59	57	58	62	63	63	65	64	71	78	86	93	100
33	32	36	41	47	52	55	58	55	58	59	63	63	65	65	65	72	79	86	93	100
34	33	36	41	47	52	55	55	57	58	59	63	65	64	65	64	71	78	86	93	100
35	33	36	41	47	52	53	57	58	59	61	63	64	64	64	64	71	78	86	93	100
36	33	36	41	47	49	53	57	58	59	61	63	64	63	64	63	70	78	85	93	100
37	32	36	41	44	49	53	57	58	59	60	62	62	61	62	63	70	78	85	93	100
38	32	37	39	45	50	54	57	58	60	60	61	61	61	62	61	69	77	84	92	100
39	30	35	39	45	50	54	57	58	60	59	60	60	59	60	61	69	77	84	92	100
40	28	35	39	45	50	54	56	57	59	59	60	59	59	59	60	68	76	84	92	100

Female, Nonsmoker

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	28	35	39	45	49	52	55	55	58	57	58	59	58	59	60	68	76	84	92	100
42	27	35	39	44	49	52	54	55	56	57	57	57	58	60	61	69	77	84	92	100
43	27	34	39	44	47	50	53	54	55	55	56	57	56	60	61	69	77	84	92	100
44	26	34	38	42	47	50	52	53	54	55	55	55	56	61	62	70	77	85	92	100
45	26	33	38	42	45	48	51	51	52	53	54	55	56	61	62	70	77	85	92	100
46	24	32	37	40	43	47	49	51	52	53	54	55	56	60	61	69	77	84	92	100
47	24	30	35	39	42	45	47	49	51	53	54	55	56	59	60	68	76	84	92	100
48	23	30	35	37	40	44	47	49	50	53	54	55	55	59	57	66	74	83	91	100
49	23	29	33	35	39	42	45	48	50	53	54	55	55	57	56	65	74	82	91	100
50	21	27	32	34	37	41	44	48	50	53	54	55	55	56	55	64	73	82	91	100
51	21	26	30	34	37	41	44	48	49	51	53	53	54	55	55	64	73	82	91	100
52	20	25	30	33	37	41	44	47	48	50	50	51	51	55	53	62	72	81	100	100
53	19	24	29	32	37	41	43	47	48	48	49	49	49	51	52	62	71	100	100	100
54	18	24	29	32	37	41	43	45	47	47	47	49	49	49	51	61	100	100	100	100
55	18	23	28	32	37	41	43	45	45	45	46	46	46	47	50	100	100	100	100	100
56	18	23	28	32	36	39	42	44	44	45	46	46	46	46	49	100	100	100	100	100
57	18	23	28	31	35	38	41	42	44	44	45	45	45	46	100	100	100	100	100	100
58	17	23	26	31	35	36	38	41	41	42	45	45	45	100	100	100	100	100	100	100
59	17	23	26	30	33	35	38	39	40	41	44	100	100	100	100	100	100	100	100	100
60	17	23	26	30	32	34	36	38	39	40	100	100	100	100	100	100	100	100	100	100
61	17	22	25	29	32	33	35	36	38	80	100	100	100	100	100	100	100	100	100	100
62	16	22	25	28	30	32	34	35	80	80	100	100	100	100	100	100	100	100	100	100
63	16	20	24	28	30	32	34	80	80	80	100	100	100	100	100	100	100	100	100	100
64	14	21	24	27	29	30	80	80	80	80	100	100	100	100	100	100	100	100	100	100
65	15	19	23	25	28	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
66	15	19	23	25	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
67	15	19	22	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
68	13	18	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
69	13	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
70	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Female, Nonsmoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100



Female, Smoker

(f)

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
Age	0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	99	100	100	100	100	100	100	95	96	97	100	100	100	100	100	100	100	100	100	100
19	87	89	92	92	92	92	84	84	86	86	92	93	95	96	99	99	99	100	100	100
20	74	77	80	80	80	73	73	73	75	77	83	83	86	88	90	92	94	96	98	100
21	71	74	78	78	71	71	73	74	77	79	85	86	88	89	90	92	94	96	98	100
22	68	71	75	70	71	71	73	74	78	79	88	90	89	89	92	94	95	97	98	100
23	65	69	67	70	70	70	73	77	79	81	89	90	90	92	92	94	95	97	98	100
24	62	60	64	69	70	70	74	77	79	81	92	90	92	93	93	94	96	97	99	100
25	53	58	63	67	69	70	74	78	81	82	92	93	93	95	95	96	97	98	99	100
26	53	58	63	69	71	72	75	79	82	82	93	93	95	96	90	92	94	96	98	100
27	52	56	63	70	74	74	78	81	82	84	93	95	95	90	92	94	95	97	98	100
28	52	56	64	71	75	77	79	82	85	86	95	95	90	92	92	94	95	97	98	100
29	51	56	64	71	78	78	81	84	86	88	95	90	90	92	92	94	95	97	98	100
30	51	56	64	72	79	79	82	85	88	89	90	90	92	93	93	94	96	97	99	100
31	51	56	64	72	78	81	84	84	88	84	90	90	92	93	93	94	96	97	99	100
32	51	56	64	71	78	81	85	86	84	85	90	90	92	94	93	94	96	97	99	100
33	51	57	62	71	78	82	85	83	84	85	90	92	93	93	93	94	96	97	99	100
34	51	56	62	71	78	82	81	83	85	86	90	92	92	94	93	94	96	97	99	100
35	51	56	62	71	78	79	83	84	85	86	90	91	91	93	93	94	96	97	99	100
36	49	56	62	71	74	79	83	84	85	86	90	90	91	93	92	94	95	97	98	100
37	48	55	62	67	74	79	83	84	85	86	89	90	89	92	91	93	95	96	98	100
38	47	55	57	66	72	77	81	84	86	86	87	88	88	90	91	93	95	96	98	100
39	45	50	57	66	72	77	81	83	85	86	86	87	86	89	90	92	94	96	98	100
40	41	50	57	66	72	77	81	83	84	85	86	86	86	89	89	91	93	96	98	100

## Female, Smoker

Duration

Issue

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	40	50	57	65	71	76	79	81	83	84	85	86	85	89	90	92	94	96	98	100
42	40	49	57	65	69	74	77	80	82	83	84	85	86	90	92	94	95	97	98	100
43	39	49	55	63	69	73	76	78	80	82	83	84	85	92	93	94	96	97	99	100
44	39	48	55	62	67	71	75	78	80	80	82	84	86	93	96	97	98	98	99	100
45	37	47	55	61	65	70	73	76	78	80	81	84	86	94	97	98	98	99	99	100
46	36	46	53	59	63	68	71	75	77	79	83	85	86	93	96	97	98	98	99	100
47	34	44	51	57	62	66	70	75	77	80	83	85	86	93	94	95	96	98	99	100
48	34	44	50	54	60	64	69	74	77	80	84	86	87	92	92	94	95	97	98	100
49	33	42	48	53	58	63	68	74	77	81	84	86	87	92	91	93	95	96	98	100
50	31	41	46	51	57	61	67	74	77	81	85	87	87	91	90	92	94	96	98	100
51	30	39	45	51	56	61	67	74	75	80	83	85	85	90	90	92	94	96	98	100
52	29	38	45	50	56	62	68	74	75	79	81	83	84	90	90	92	94	96	100	100
53	28	37	43	49	57	62	68	73	74	77	79	81	83	89	89	91	93	100	100	100
54	28	36	43	49	57	63	69	73	74	75	78	80	81	87	89	91	100	100	100	100
55	26	35	42	49	57	63	69	73	73	74	76	78	79	86	87	100	100	100	100	100
56	26	35	42	49	56	62	67	71	72	74	76	78	79	85	100	100	100	100	100	100
57	26	35	42	49	55	61	66	69	72	73	76	78	79	100	100	100	100	100	100	100
58	28	36	43	49	55	59	63	68	69	72	76	78	100	100	100	100	100	100	100	100
59	28	36	43	49	54	57	63	67	68	70	76	100	100	100	100	100	100	100	100	100
60	28	36	43	49	53	57	61	64	67	69	100	100	100	100	100	100	100	100	100	100
61	26	35	42	48	52	56	59	63	66	80	100	100	100	100	100	100	100	100	100	100
62	26	33	41	47	51	55	58	62	80	80	100	100	100	100	100	100	100	100	100	100
63	25	33	41	46	51	55	57	80	80	80	100	100	100	100	100	100	100	100	100	100
64	25	33	40	45	50	53	80	80	80	80	100	100	100	100	100	100	100	100	100	100
65	24	32	39	44	49	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
66	24	32	39	44	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
67	24	32	39	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
68	24	32	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
69	24	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
70	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Female, Smoker

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, and 33-2-537, MCA

3. These rules will become effective on January 1, 2000.

4. These proposed rules regarding valuation of life insurance policies, based on the National Association of Insurance Commissioners' (NAIC) model rules for Valuation of Life Insurance Policies (commonly referred to as "Triple X" rules), fix a problem with the Standard Valuation Law that has enabled some insurers to hold reserves on term products and universal life plans with secondary guarantees at inadequate levels. These rules are needed to establish consistency in reserving practices for these products. Twenty-five other states have already adopted these or similar rules.

5. Concerned persons may submit their data, views or arguments concerning the proposed adoption in writing to Darla Sautter, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than December 2, 1999.

6. If a person who is directly affected by the proposed adoption wishes to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Darla Sautter, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than December 2, 1999.

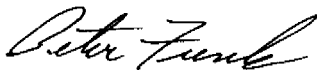
7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative rule review committee of the legislature; from a governmental subdivision or agency; or from 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 have been determined to be 20 persons based on the 200 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

8. 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,

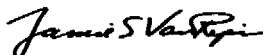
or both. Such written requests may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, Montana 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

9. The commissioner is in the process of complying with the notice provision requirements in 2-4-302, MCA.

MARK O'KEEFE, State Auditor  
And Commissioner of Insurance



By: \_\_\_\_\_  
Peter Funk  
Deputy Insurance Commissioner



By: \_\_\_\_\_  
Janice S. VanRiper  
Rules Reviewer

Certified to the Secretary of State October 25, 1999.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 46.12.605	)	ON PROPOSED AMENDMENT
and 46.12.606 pertaining to	)	
orthodontia for medicaid	)	
recipients	)	

TO: All Interested Persons

1. On November 24, 1999, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on November 15, 1999, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

46.12.605 DENTAL SERVICES, REIMBURSEMENT (1) through (9) remain the same.

(10) Payment for orthodontia will be as follows:

(a) Full band orthodontia for medicaid recipients who have cleft lip/palate, craniofacial anomalies or malocclusions caused by traumatic injury and interceptive orthodontia for medicaid recipients who have posterior crossbite with shift, anterior crossbite and/or anterior deep bite at 80% or greater vertical incisor overbite, will be reimbursed at 85% of the provider's usual and customary charge, subject to the maximum allowable charge as published in the department's orthodontic coverage and reimbursement guidelines, December 1999.

(b) Payment will be based upon a treatment plan submitted by the provider which will include at a minimum, a description of the plan of treatment, estimated usual and customary charge and time line for treatment. The department will reimburse 40% of the medicaid allowed amount up front for application of appliances, the remainder being paid in monthly installments as determined by the time line defined in the provider's treatment plan for completing orthodontic care.

(c) Recipients are limited to an overall lifetime cap of

\$7000.00 for interceptive and full band orthodontia phases unless otherwise provided by these rules. Services included in the separate phases including monthly visits, are as listed in the department's orthodontic coverage and reimbursement guidelines. Surgeries are not included in this lifetime cap.

(d) Maximum allowable charges for each phase of orthodontic treatment, time lines for orthodontic phases of care, and the services included in each phase of orthodontic care are listed in the department's orthodontic coverage and reimbursement guidelines. The department hereby adopts and incorporates herein by reference the department's orthodontic coverage and reimbursement guidelines updated through December 1999. The guidelines, issued by the department to all providers of orthodontic services, inform providers of the requirements applicable to the delivery of services. A copy of the department's orthodontic coverage and reimbursement guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

46.12.606 DENTAL SERVICES, COVERED PROCEDURES (1) through (6) remain the same.

(7) Full band orthodontia for recipients 21 and younger who have malocclusion caused by traumatic injury or needed as part of treatment for a medical condition with orthodontic implications are covered in the department's orthodontic coverage and reimbursement guidelines, published December 1999. The department hereby adopts and incorporates herein by reference the department's orthodontic coverage and reimbursement guidelines updated through December 1999. The guidelines, issued by the department to all providers of orthodontic services, informs providers of the requirements applicable to the delivery of services. A copy of the department's orthodontic coverage and reimbursement guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(8) Unless otherwise provided by these rules, interceptive orthodontia is limited to children 12 years of age or younger with one or more of the following condition(s):

(a) posterior crossbite with shift;

(b) anterior crossbite;

(c) anterior deep bite at 80% or greater vertical incisor overbite;

(d) Class II malocclusion greater than 5 mm.

(9) All full band orthodontia for cleft lip/palate, congenital anomalies, cases related to malocclusion caused by traumatic injury and cases related to interceptive orthodontia must receive prior authorization from the department's designated peer reviewer to determine individual eligibility for such orthodontia services.

(10) Orthodontic treatment not progressing to the extent of the treatment plan and which jeopardizes the health of the recipient may result in termination of orthodontic treatment. If termination of orthodontic treatment occurs, medicaid will not authorize any future orthodontic requests for that recipient.

(7) remains the same but is renumbered (11).

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

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

3. ARM 46.12.605

The proposed amendment to ARM 46.12.605 adds subsection 10 which describes the department's proposed reimbursement methodology for orthodontia. The department proposes to reimburse orthodontia services at 85% of usual and customary charges subject to the maximum allowable limits. Currently, some Medicaid eligible children are receiving orthodontia through Special Health Services because providers will not accept the current medicaid reimbursement rates. Therefore, the department believes the proposed amendment is necessary to update the Medicaid rates to mirror reimbursement rates adopted by Special Health Services. If the Medicaid and Special Health Services rates are the same, there will be no reason for providers to refuse Medicaid reimbursement and that will alleviate the necessity of shifting services and costs to Special Health Services. The Department believes Medicaid services are more properly reimbursed under the Medicaid program.

The department considered two other options. The first involved leaving the reimbursement rate for children at 80% of usual and customary charges. But, that option provided no incentive to providers to accept Medicaid recipients for orthodontic treatment. Thus, the services would still have been paid under Special Health Services higher rate of 85% reimbursement. That option, then, would not have accomplished the Department's goal of shifting medicaid costs back to the Medicaid program while maintaining a network of providers for recipients. The department also considered reimbursing above 85% of usual and customary charges. That option was also rejected. Because of the department's experience with Special Health Services reimbursement methodology, the department was aware that providers would accept 85%. The taxpayers should not be required to pay any more than is necessary in order to ensure reasonable and adequate access to services. Because providers have already demonstrated a willingness to accept the 85% reimbursement rate, the department chose that option.

Aligning the reimbursement methodology with that used by Special Health Services will provide an incentive to providers to accept Medicaid reimbursement for Medicaid eligible patients which will, in turn, free up funding for Special Health Services in order to allow that program to serve persons without health care



coverage.

The proposed amendment provides that Medicaid will pay 85% of the provider's usual and customary charge for the total orthodontic care. The new reimbursement methodology would apply to orthodontia approved on or after January 1, 2000. Under the proposed amendment 40% of the amount Medicaid pays for the orthodontic treatment would be paid when the orthodontic appliances are placed, the rest would be paid in monthly installments throughout the time specified in the provider's treatment plan until the orthodontic treatment has been completed. If a recipient loses Medicaid eligibility, and they qualify for assistance under the Special Health Services division criteria, payment will be made by Special Health Services. However, if a patient does not qualify under Special Health Services and Medicaid eligibility is lost, the family must pay for services, including monthly installments due after the loss of eligibility.

The department incorporates by reference the orthodontic coverage and reimbursement guidelines to be published December 1999, so that the entire content of those guidelines need not be reproduced in the rule.

The proposed ARM 46.12.605(10)(c) indicates a lifetime cap of \$7000 for all phases of orthodontic treatment. This amount was determined by Special Health Services to be appropriate after consulting with orthodontists for children with cleft lip/palate or other medical anomalies requiring orthodontia. The department considered a lower cap, but determined that less coverage may result in significant difficulty obtaining medical treatment for persons suffering from cleft lip/palate or other serious medical conditions with orthodontic implications. Thus, the department set the cap at \$7000.

The proposed amendment to the reimbursement methodology for orthodontia services is necessary to equate the Medicaid reimbursement schedule with the schedule used by Special Health Services in order to ensure that payments for Medicaid recipients are paid by the Medicaid program. By adopting the same schedule as Special Health Services, the amendment avoids the shifting of costs of orthodontia to Special Health Services. In addition, the department believes this option best serves the goals of the Medicaid program while maintaining access to orthodontic services as the reimbursement level proposed in the amendment has been determined to be already acceptable to the community of orthodontia providers. The department considered retaining the current reimbursement methodology, but rejected that notion in favor of shifting Medicaid costs back to the Medicaid program and creating a methodology which would satisfy providers of orthodontia treatment in order to ensure that Medicaid recipients with a medical need for orthodontia will have an adequate network of providers available.

ARM 46.12.606

The proposed amendment to ARM 46.12.606 redefines the orthodontic services which are to be reimbursed according to the methodology proposed in the amendment to ARM 46.12.605. The proposed subsections (7) and (8) define orthodontia services reimbursed by the Medicaid program, incorporating by reference the department's orthodontic coverage and reimbursement guidelines. Again, the new criteria for establishing eligibility for orthodontic treatment under medicaid will not take effect until January 1, 2000. The guidelines are incorporated in order to eliminate the need to reproduce them in their entirety in the rule. After January 1, 2000, the department will no longer use the handicapped malocclusion index to determine orthodontic services eligibility because that index may permit reimbursement for orthodontic services that could be construed as cosmetic. The department believes the new criteria (limiting coverage of orthodontia services) will better define those that have a medical need for orthodontic treatment. Federal regulations require that services provided by the medicaid program be "medically necessary." That requirement is better served by the new criteria proposed in the amendment.

The proposed subsection (9) specifies that the department's peer reviewer must preauthorize certain orthodontic services. Preauthorization is not a new requirement as it has been required by Medicaid for years. The proposed amendment simply spells out in the rule what has already been required in practice. Though the department could have continued to require preauthorization without specifying such in the rule, adding subsection (9) provides notice to the public that preauthorization is required.

The proposed subsection (10) indicates that orthodontia treatment not progressing as indicated in the patient's treatment plan and jeopardizing the health of the recipient will be terminated and no future orthodontia will be authorized by the department for that recipient.

To a large extent, the success of any orthodontic treatment depends on the recipient. If the recipient fails to appear for fittings, band tightenings or other treatment maintenance, the orthodontic treatment will not progress. Likewise, if the recipient fails to maintain appropriate dental hygiene, the teeth will decay around the braces and the orthodontic treatment will be wasted. Therefore, the department believes it is necessary to terminate orthodontia if the treatment is not progressing or if it is ineffective. This is the only prudent option to ensure that taxpayers funds are not wasted as there is no use in banding teeth or expending additional funds on teeth which are allowed to rot. Consequently, the department did not consider other options regarding termination of ineffective treatments.

If orthodontic treatment is ineffective, paying for additional services would be imprudent and wasteful of medicaid funds. Therefore, when treatment is not progressing as hoped, and the recipient's health is being impacted, orthodontic treatment should be discontinued and some other means of addressing the recipient's needs should be considered. The proposed amendment is necessary to allow termination of orthodontic services in those cases.

The proposed amendments to ARM 46.12.606 are necessary to adopt new criteria to better ensure that recipients of orthodontia have a medical need for the services they receive. The proposed amendments are also necessary to ensure that those recipients who are in greatest need of orthodontia receive services. Furthermore, the change in reimbursement methodology ensures that Medicaid can maintain access to the community of orthodontia providers.

For interceptive orthodontia, the department paid approximately \$27,000 during State fiscal year 1998 and 1999 combined for 186 eligible recipients. Under the proposed rule, using criteria established by the dental providers, interceptive orthodontia services will be limited to those patients with a posterior crossbite with shift, an anterior crossbite or an anterior deep bite at 80% or greater vertical incisor overbite. The department believes this will control the number of patients receiving interceptive orthodontic services by limiting services to persons with a medical need; and thus, will result in cost savings to the program. However, it is possible that the increase in reimbursement from a fee to a percent of charges will result in some increase in Medicaid costs. Still, the department believes that covering interceptive orthodontia for these recipients will reduce the need for full orthodontic services later which are, of course, more costly.

The department estimates that there were 146 Medicaid recipients who had orthodontic appliances placed in state fiscal years 1997 and 1998. Under the existing criteria, a significant number of these recipients were covered by Special Health Services. During fiscal year 1997, Special Health Services covered orthodontia for 13 recipients. And in fiscal year 1998, Special Health Services covered similar services for 20 Medicaid recipients. It is estimated that Special Health Services will cover 30 Medicaid recipients for orthodontia in fiscal year 1999. The State of Montana would be better served if services for Medicaid recipients are paid for by the Medicaid program, thus, freeing up Special Health Services funds for other uses.

Assuming the average orthodontic treatment plan costs approximately \$4500 in charges, the Department estimates that Medicaid would pay approximately \$114,750 ( $\$4500 \times 85\% \times 30$ ) each year using the new criteria to determine eligibility for orthodontic services. During state fiscal year 1997 and 1998, Medicaid paid approximately \$143,000 for orthodontic banding and

adjustments. The department believes that the current criteria allows a significant number of services which could be construed as cosmetic. Therefore, by strengthening the eligibility criteria, the department believes that the new methodology proposed by this rule amendment will limit coverage of orthodontia services to those with medical need; and though there will be an increase in the reimbursement percentage, the proposed amendments will result in a cost savings to the Medicaid program.

In addition, as mentioned above, aligning the reimbursement percentage with that paid by Special Health Services will provide an incentive to providers to accept Medicaid reimbursement for Medicaid eligibles which will free up Special Health Services allowing that program to serve persons without health care coverage.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 2, 1999. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Silva  
Rule Reviewer

Laurie Elvinger  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 25, 1999.

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

In the matter of the ) NOTICE OF PUBLIC HEARING  
amendment of ARM 16.24.107 ) ON PROPOSED AMENDMENT  
pertaining to orthodontia )  
care for children special )  
health services (CSHS) )  
recipients )

TO: All Interested Persons

1. On November 24, 1999, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on November 15, 1999, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

16.24.107 PAYMENT LIMITS AND REQUIREMENTS (1) through (5) remain the same.

~~(6) CSHS will pay up to the following limits for orthodontics:~~

<del>(a) initial exam</del>	<del>\$ 25</del>
<del>(b) records (per phase)</del>	<del>165</del>
<del>(c) phase I orthodontics (expansion)</del>	<del>525</del>
<del>monthly phase I</del>	<del>60</del>
<del>(d) phase II partial banding</del>	<del>570</del>
<del>monthly phase II</del>	<del>65</del>
<del>(e) phase III full banding</del>	<del>900</del>
<del>monthly phase III</del>	<del>85</del>
<del>(f) retainer repair or replacement</del>	<del>120</del>
<del>(g) maintenance visit</del>	<del>35 (maximum \$115/yr.)</del>
<del>(h) specialty treatment by report,</del>	<del>85%</del>

(6) CSHS will pay up to the following limits for orthodontia care:

(a) Orthodontia for CSHS recipients who have cleft lip/palate and/or craniofacial anomalies or malocclusions caused

by birth outcome or genetic predisposition will be reimbursed at 85% of the provider's usual and customary charge, subject to the maximum allowable charge published in the department's orthodontic coverage and reimbursement guidelines updated through December 1999.

(b) Payment will be based upon a treatment plan submitted by the provider that meets the requirements of the department's orthodontic coverage and reimbursement guidelines and that includes, at a minimum, a description of the plan of treatment, the provider's estimated usual and customary charge, and a time line for treatment. The department will reimburse 40% of the CSHS allowed amount up front for the application of appliances, the remainder being paid in monthly installments as determined by the time line established in the provider's treatment plan for completing orthodontic care.

(c) Recipients are limited to:

(i) an overall lifetime cap of \$7,000 for all orthodontia phases; and

(ii) the maximum for each phase cited in the department's orthodontic coverage and reimbursement guidelines updated through December 1999.

(d) Maximum allowable charges for each phase of orthodontic treatment, time lines for orthodontic phases of care, and the services included in each phase of orthodontic care are listed in the department's orthodontic coverage and reimbursement guidelines. The department hereby adopts and incorporates by reference the department's orthodontic coverage and reimbursement guidelines updated through December 1999. The guidelines, issued by the department to all providers of orthodontic services, inform providers of the requirements applicable to the delivery of services under the medicaid program. A copy of the department's orthodontic coverage and reimbursement guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(7) through (14) remain the same.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

3. The changes in orthodontia payment limits and standards in ARM 16.24.107(6) reflect the updated reimbursement methodology developed by the Special Health Services program with the assistance of practicing dentists and orthodontists throughout the state and are necessary to ensure children needing such care have access to it within the state. The Special Health Services program last updated its rules in 1994 and has not updated service provisions or reimbursement schedules for orthodontic care since then. Reimbursement for services, as they currently are listed in the rule, is no longer appropriate or adequate given the increase in costs since 1994 and changes in advance remedial care, early intervention, and continued interdisciplinary care. In addition, aligning the

reimbursement methodology with that used by the Medicaid program--a methodology which is also being revised for the same reasons in MAR Notice No. 37-133 in this issue of the Register--was chosen instead of continuing to use an independent standard. That choice was made because a coordinated standard makes it easier for orthodontists serving both Medicaid-eligible and non-Medicaid-eligible children if the process and payments are the same in both programs, which in effect also ensures that Medicaid-eligible children are treated the same as those eligible for the CSHS program.

There are 27 orthodontists within Montana, approximately 17 of whom have participated in the program in recent years. The fees paid those professionals due to the change in fee structure will increase slightly, on the average, but it is difficult, if not impossible, to accurately estimate the cumulative impact on them since how much is paid to the orthodontists is based upon the highly varied treatment patterns developed for their individual patients.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 2, 1999. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

*Dawn Silva*  
Rule Reviewer

*Laurie Thayer*  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 25, 1999.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 46.18.106,	)	AMENDMENT
46.18.107, 46.18.109,	)	
46.18.113, 46.18.118,	)	
46.18.122, 46.18.126,	)	
46.18.129, 46.18.134,	)	NO PUBLIC HEARING
46.18.140, 46.18.306,	)	CONTEMPLATED
46.18.309 and 46.18.326	)	
pertaining to Families	)	
Achieving Independence in	)	
Montana (FAIM)	)	

TO: All Interested Persons

1. On December 4, 1999, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on November 22, 1999, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

46.18.106 FAIM: FINANCIAL ASSISTANCE. INTENTIONAL PROGRAM VIOLATION AND DISQUALIFICATION HEARINGS (1) through (1)(b) remain the same.

(2) If a FAIM participant in pathways, community services program, or job supplement program appears to have committed an IPV as defined in (1), the county office of public assistance (OPA) must initiate administrative disqualification hearing (ADH) procedures to determine if the person should be disqualified from receiving cash ~~and medical~~ assistance, and/or any other FAIM benefits, excluding food stamps. Disqualification from receiving food stamps shall be governed by the federal regulations pertaining to food stamp disqualifications at 7 CFR 273.16, as amended through January 1, 1998, which are hereby adopted and incorporated by reference. Section 273.16 of 7 CFR covers all aspects of food stamp administrative disqualification hearings. Copies of 7 CFR 273.16 may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O.



Box 4210, Helena, MT 59604-4210.

(3) The individual subject to the ADH must be contacted in writing and requested to appear for a pre-hearing meeting at the local county office of public assistance. During the pre-hearing meeting, the county office will provide to the individual the following:

(a) through (e) remain the same.

(f) an explanation of the disqualification period and repayment obligation if the individual is found to have committed an ~~IVP~~ IPV at an ADH or signs a waiver of the individual's right to an ADH.

(4) through (12) remain the same.

(13) During the disqualification period, the income and resources of the disqualified individual shall be counted in their entirety, but the disqualified individual shall not be ~~included as a member of~~ considered available to the assistance unit in determining the size of the assistance unit.

(14) During the disqualification period, the disqualified individual shall lose ~~medical as well as his or her portion of the monthly cash assistance~~ payment and/or any other FAIM financial benefits.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

46.18.107 FAIM FINANCIAL ASSISTANCE: FAIM PROGRAMS AND TIME LIMITS (1) and (2) remain the same.

(3) The pathways program is a time limited program comprised of the following elements:

(a) cash assistance for a maximum of 24 months, unless an exemption listed in ARM 46.18.108 applies, which months need not be consecutive;

(b) through (5) remain the same.

(6) A family is not eligible for assistance in pathways or CSP if the family includes an adult who has received cash assistance in a program funded under the temporary assistance for needy families block grant in any state or states, including tribal programs, for 60 months or more, whether or not the months are consecutive, except as provided in ARM 46.18.108. However, in calculating the number of months that an adult has received such assistance, the department shall not count any month when the person received assistance if during that month:

(a) remains the same.

(b) the person was an adult and lived ~~in~~ within the exterior borders of an Indian country reservation or an Alaskan native village where at least 50% of the adults were not employed.

(i) A person living within the exterior borders of an Indian reservation ~~or within the city limits of Hardin, Dodson, or Harlem, Montana,~~ is considered to be living in Indian country.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601 and 53-4-603, MCA

46.18.109 FAIM FINANCIAL ASSISTANCE: GENERAL ELIGIBILITY REQUIREMENTS (1) remains the same.

(2) The following are not eligible for FFA:

(a) through (d) remain the same.

(e) teenage parents who are not living with their parent or parents, legal guardian, or other adult relative who would qualify to be a guardian of a minor child under Title 72, chapter 5, of ~~Montana Code Annotated~~ MCA, unless the teenage parent has been authorized to live in an alternative setting by the county's living arrangement review committee because:

(i) and (ii) remain the same.

AUTH: Sec. 53-2-201 and 53-4-212, MCA

IMP: Sec. 53-4-201, 53-4-211 and 53-4-231, MCA

46.18.113 FAIM FINANCIAL ASSISTANCE: INCLUSION IN ASSISTANCE UNIT (1) through (3) remain the same.

(4) The needs, income and resources of persons receiving supplemental security income (SSI) payments under Title XVI of the Federal Social Security Act shall not be included in determining the need and amount of the assistance payment of ~~an~~ AFDC FAIM financial assistance for the period for which SSI benefits are received. The needs, income and resources of persons with respect to whom federal, state or local foster care payments ~~are made or persons with respect to whom federal, state or local adoption assistance payments~~ are made shall not be included in determining need and amount of the assistance payment.

(5) remains the same.

AUTH: Sec. 53-2-201 and 53-4-212, MCA

IMP: Sec. 53-2-201, 53-2-613, 53-4-211 and 53-4-601, MCA

46.18.118 FAIM FINANCIAL ASSISTANCE: RESOURCES

(1) remains the same.

(2) In determining eligibility for FAIM financial assistance, the department will count the equity value as defined in ARM 46.18.103 of all resources available to any member of the filing unit, unless there is a specific provision for the exclusion of the resource elsewhere in this rule. A resource is considered available both when actually available and when the applicant or participant has a legal interest in the resource and the legal ability to make it available for support and maintenance. In the case of qualified aliens, as defined in ARM 46.18.140, the income and resources of the alien's sponsor and the alien's sponsor's spouse must be considered in determining the eligibility of the alien. A sponsor is any person over the age of 18 who petitions for admission of an alien under section 213 of the Immigration and Nationality Act.

(3) remains the same.

(4) The following resources are not counted in determining eligibility:

(a) the filing unit's home, which is the usual residence of the filing/assistance unit, regardless of its value;

(b) through (d) remain the same.

~~(e) real property the filing unit is making a good faith effort to sell, but only for 6 months and only if they agree to use the proceeds from the sale to repay the department for any benefits received; the remainder is considered a resource in the month received;~~

(f) through (o) remain the same but are renumbered (e) through (n).

(5) through (7) remain the same.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-606, MCA

46.18.122 FAIM FINANCIAL ASSISTANCE: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) through (4)(b) remain the same.

(5) The GMI standards, NMI standards and benefits standards used to determine eligibility and amount of cash assistance are as follows:

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

Number of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 640	\$ 231
2	862	379
3	1,086	522
4	1,308	664
5	1,532	794
6	1,754	919
7	1,976	1,043
8	2,200	1,158
9	2,309	1,267
10	2,414	1,375
11	2,509	1,467
12	2,601	1,561
13	2,686	1,645
14	2,764	1,722
15	2,842	1,800
16	2,908	1,867

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>Number of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 655	\$ 237
2	881	385
3	1,104	529
4	1,328	673
5	1,552	805
6	1,776	931
7	2,002	1,056
8	2,226	1,173
9	2,335	1,282
10	2,442	1,389
11	2,536	1,484
12	2,631	1,576
13	2,714	1,661
14	2,794	1,741
15	2,871	1,819
16	2,940	1,885

(b) Gross monthly income standards to be used for child only assistance units are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.

GROSS MONTHLY INCOME STANDARDS TO BE USED  
FOR CHILD ONLY ASSISTANCE UNITS

<u>NUMBER OF PERSONS IN HOUSEHOLD</u>	<u>WITH SHELTER OBLIGATION PER MONTH</u>
1	\$ 237
2	463
3	696
4	929
5	1,162
6	1,393
7	1,632
8	1,861
9	1,974
10	2,081
11	2,187
12	2,287
13	2,388
14	2,481
15	2,575
16	2,658

GROSS MONTHLY INCOME STANDARDS TO BE USED  
FOR CHILD ONLY ASSISTANCE UNITS

<u>NUMBER OF PERSONS IN HOUSEHOLD</u>	<u>WITH SHELTER OBLIGATION PER MONTH</u>
<u>1</u>	<u>\$ 237</u>
<u>2</u>	<u>470</u>
<u>3</u>	<u>707</u>
<u>4</u>	<u>944</u>
<u>5</u>	<u>1,177</u>
<u>6</u>	<u>1,412</u>
<u>7</u>	<u>1,652</u>
<u>8</u>	<u>1,883</u>
<u>9</u>	<u>1,926</u>
<u>10</u>	<u>2,103</u>
<u>11</u>	<u>2,211</u>
<u>12</u>	<u>2,311</u>
<u>13</u>	<u>2,412</u>
<u>14</u>	<u>2,507</u>
<u>15</u>	<u>2,601</u>
<u>16</u>	<u>2,684</u>

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.

~~NET MONTHLY INCOME STANDARDS WHEN ADULTS  
ARE INCLUDED IN THE ASSISTANCE UNIT~~

<del>NUMBER OF PERSONS IN HOUSEHOLD</del>	<del>WITH SHELTER OBLIGATION PER MONTH</del>	<del>WITHOUT SHELTER OBLIGATION PER MONTH</del>
<del>1</del>	<del>\$ 346</del>	<del>\$ 125</del>
<del>2</del>	<del>466</del>	<del>205</del>
<del>3</del>	<del>587</del>	<del>282</del>
<del>4</del>	<del>707</del>	<del>359</del>
<del>5</del>	<del>828</del>	<del>429</del>
<del>6</del>	<del>948</del>	<del>497</del>
<del>7</del>	<del>1,068</del>	<del>564</del>
<del>8</del>	<del>1,189</del>	<del>626</del>
<del>9</del>	<del>1,248</del>	<del>685</del>
<del>10</del>	<del>1,305</del>	<del>743</del>
<del>11</del>	<del>1,356</del>	<del>793</del>
<del>12</del>	<del>1,406</del>	<del>844</del>
<del>13</del>	<del>1,452</del>	<del>889</del>
<del>14</del>	<del>1,494</del>	<del>931</del>
<del>15</del>	<del>1,536</del>	<del>973</del>
<del>16</del>	<del>1,572</del>	<del>1,009</del>

NET MONTHLY INCOME STANDARDS WHEN ADULTS  
ARE INCLUDED IN THE ASSISTANCE UNIT

<u>NUMBER OF PERSONS IN HOUSEHOLD</u>	<u>WITH SHELTER OBLIGATION PER MONTH</u>	<u>WITHOUT SHELTER OBLIGATION PER MONTH</u>
1	\$ 354	\$ 128
2	476	208
3	597	286
4	718	364
5	839	435
6	960	503
7	1,082	571
8	1,203	634
9	1,262	693
10	1,320	751
11	1,371	802
12	1,422	852
13	1,467	898
14	1,510	941
15	1,552	983
16	1,589	1,019

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.

~~NET MONTHLY INCOME STANDARDS TO BE USED FOR  
CHILD ONLY ASSISTANCE UNITS~~

<u>NUMBER OF CHILDREN IN HOUSEHOLD</u>	<u>PER MONTH</u>
1	\$ 125
2	250
3	376
4	502
5	628
6	753
7	882
8	1,006
9	1,067
10	1,125
11	1,182
12	1,236
13	1,291
14	1,341
15	1,392
16	1,437

NET MONTHLY INCOME STANDARDS TO BE USED FOR  
CHILD ONLY ASSISTANCE UNITS

<u>NUMBER OF CHILDREN IN HOUSEHOLD</u>	<u>PER MONTH</u>
1	\$ 128
2	254
3	382
4	510
5	636
6	763
7	893
8	1,018
9	1,079
10	1,137
11	1,195
12	1,249
13	1,304
14	1,355
15	1,406
16	1,451

(e) Benefit income standards to be used when adults are included in the assistance unit, are compared with the assistance unit's net countable income as defined in ARM 46.18.103.

BENEFITS STANDARDS TO BE USED WHEN ADULTS  
ARE INCLUDED IN THE ASSISTANCE UNIT

<u>NUMBER OF PERSONS IN HOUSEHOLD</u>	<u>WITH SHELTER OBLIGATION PER MONTH</u>	<u>WITHOUT SHELTER OBLIGATION PER MONTH</u>
1	\$ 272	\$ 98
2	366	161
3	461	221
4	555	282
5	650	337
6	744	390
7	838	443
8	933	491
9	980	538
10	1,024	583
11	1,064	623
12	1,104	663
13	1,140	698
14	1,173	731
15	1,206	764
16	1,234	792

BENEFITS STANDARDS TO BE USED WHEN ADULTS  
ARE INCLUDED IN THE ASSISTANCE UNIT

<u>NUMBER OF PERSONS IN HOUSEHOLD</u>	<u>WITH SHELTER OBLIGATION PER MONTH</u>	<u>WITHOUT SHELTER OBLIGATION PER MONTH</u>
<u>1</u>	<u>\$ 278</u>	<u>\$ 100</u>
<u>2</u>	<u>374</u>	<u>163</u>
<u>3</u>	<u>469</u>	<u>225</u>
<u>4</u>	<u>564</u>	<u>286</u>
<u>5</u>	<u>659</u>	<u>341</u>
<u>6</u>	<u>754</u>	<u>395</u>
<u>7</u>	<u>849</u>	<u>448</u>
<u>8</u>	<u>944</u>	<u>498</u>
<u>9</u>	<u>991</u>	<u>544</u>
<u>10</u>	<u>1,036</u>	<u>590</u>
<u>11</u>	<u>1,076</u>	<u>630</u>
<u>12</u>	<u>1,116</u>	<u>669</u>
<u>13</u>	<u>1,152</u>	<u>705</u>
<u>14</u>	<u>1,185</u>	<u>739</u>
<u>15</u>	<u>1,218</u>	<u>772</u>
<u>16</u>	<u>1,247</u>	<u>800</u>

(f) Benefit income standards to be used when no adults are included in the assistance unit, are compared to the assistance unit's net countable monthly income as defined in ARM 46.18.103.

BENEFIT STANDARDS TO BE USED FOR  
CHILD ONLY ASSISTANCE UNITS

<u>NUMBER OF PERSONS IN HOUSEHOLD</u>	<u>PER MONTH</u>
<u>1</u>	<u>\$ 98</u>
<u>2</u>	<u>196</u>
<u>3</u>	<u>295</u>
<u>4</u>	<u>394</u>
<u>5</u>	<u>493</u>
<u>6</u>	<u>591</u>
<u>7</u>	<u>692</u>
<u>8</u>	<u>790</u>
<u>9</u>	<u>890</u>
<u>10</u>	<u>983</u>
<u>11</u>	<u>920</u>
<u>12</u>	<u>970</u>
<u>13</u>	<u>1,013</u>
<u>14</u>	<u>1,053</u>
<u>15</u>	<u>1,093</u>
<u>16</u>	<u>1,128</u>



BENEFIT STANDARDS TO BE USED FOR  
CHILD ONLY ASSISTANCE UNITS

<u>NUMBER OF</u> <u>PERSONS IN</u> <u>HOUSEHOLD</u>	<u>PER MONTH</u>
<u>1</u>	<u>\$ 100</u>
<u>2</u>	<u>199</u>
<u>3</u>	<u>300</u>
<u>4</u>	<u>400</u>
<u>5</u>	<u>499</u>
<u>6</u>	<u>599</u>
<u>7</u>	<u>701</u>
<u>8</u>	<u>799</u>
<u>9</u>	<u>847</u>
<u>10</u>	<u>893</u>
<u>11</u>	<u>938</u>
<u>12</u>	<u>980</u>
<u>13</u>	<u>1,024</u>
<u>14</u>	<u>1,064</u>
<u>15</u>	<u>1,104</u>
<u>16</u>	<u>1,139</u>

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-241 and 53-4-601, MCA

46.18.126 FAIM FINANCIAL ASSISTANCE: EXCLUDED UNEARNED INCOME (1) This rule governs excluded unearned income for purposes of FAIM financial assistance but not food stamp benefits, which are governed by ARM ~~46-120-401~~ 46.18.401 et seq.

(2) In testing gross monthly income and net monthly income and in determining grant amount, the following unearned income shall be excluded:

(a) through (q) remain the same.

(r) payments received under the Alaska Native Claims Settlement Act, P.L. 92-203;

(s) payments received under the volunteers in service to America program (VISTA) pursuant to Title I of P.L. 93-113, section 404(g);

(t) through (w) remain the same.

(x) HUD Section 8 utility payments, regardless of whether the payee is a member of the assistance unit or someone else is the payee; and

(y) money received pursuant to a valid loan as defined in ARM 46.18.103; and

(z) remains the same.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

46.18.129 FAIM FINANCIAL ASSISTANCE: RESTRICTIONS ON ASSISTANCE PAYMENTS (1) Pathways, and community services program monthly benefit payments ~~and one-time employment-related~~

payments are made directly to eligible persons for their own use except in cases of protective payees. The check may not be mailed to the grantee in care of a creditor delivered through indirect representation. Payments may not be forwarded from one address to another.

(2) ~~Job supplement program payments and other cash~~ Cash assistance payments, including but not limited to employment and training supportive services payments, and one-time employment related payments, are made directly to the participant, protective payee or vendor.

(3) and (4) remain the same.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

46.18.134 FAIM FINANCIAL ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails without good cause as defined in ARM 46.18.136 to comply with a requirement of the individual's family investment agreement, the participant will be sanctioned by means of the reduction of the monthly FAIM assistance payment by an amount equal to the portion of the payment allocated to the needs of that member ~~and the loss of medicaid coverage for the participant~~, for a period of time as specified in (2) and (3).

(2) through (4) remain the same.

~~(5) In addition to the loss of financial assistance for the needs of the sanctioned individual as specified in (1) through (3) above, the sanctioned individual will also lose medicaid coverage during the penalty period set forth in (2). However, when the sanctioned individual cures the failure to comply before the applicable sanction period expires, medicaid eligibility will be reinstated back to the first day of the month in which the individual complies, unless the failure to comply involved something which is also an eligibility requirement for medicaid.~~

(5) In addition to the loss of financial assistance as specified in (1), the sanctioned individual will lose medicaid coverage during the penalty period set forth in (2) if the failure to comply involved child support enforcement, third party liability trauma questionnaires, or program compliance requirements. However, if the sanctioned individual cures the failure to comply by meeting child support enforcement, third party liability trauma questionnaires, or program compliance requirements, medicaid benefits will be reinstated back to the first day of the month in which the sanctioned individual complies if the individual is otherwise medicaid eligible.

~~(6) In addition to the loss of cash and medical assistance, the food stamp allotment for the sanctioned individual's household will be reduced by 25%.~~

(6) The food stamp allotment for a sanctioned individual's household will not increase as a result of cash assistance sanctioning.

(7) During the penalty period, child care assistance will

continue if:

(a) child care is necessary to allow the FAIM participant to perform employment-related or training activities, as defined in (8), which are required by the family investment agreement; and

(b) the sanctioned individual participates in specified employment-related or training activities throughout the penalty period. If the sanctioned individual fails to comply with any employment-related or training activity during the penalty period, child care assistance will be discontinued and will not be reinstated during the penalty period even if the sanctioned individual begins to comply or participate.

(8) "Employment-related or training activities", as specified in (7)(a), means educational or training activities required by the family investment agreement which are directly intended to promote economic self-sufficiency. "Employment-related or training activities" does not include family strengthening activities; child support enforcement; early periodic screening, diagnosis and treatment; program compliance; third party liability; participation log and travel; nor negotiation of a new family investment agreement.

(7)(9) When If a sanctioned individual requests a hearing to challenge the sanction and receives continued benefits pending the hearing, the sanction will not be imposed until a final decision is issued by the hearing officer or the board of public assistance appeals. When If a final decision upholding the sanction has been issued and it is possible to impose the sanction following the decision, the sanction will then be imposed in the usual manner in a later month or months. Assistance received for the sanctioned individual's needs pending the fair hearing decision will not be considered an overpayment provided the sanctioned individual was otherwise eligible to receive benefits. However, if the sanctioned individual is no longer eligible to receive benefits when the sanction is to be imposed, the benefits paid to the sanctioned individual during the pendency of the appeals process will be considered an overpayment.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-608, MCA

46.18.140 FAIM FINANCIAL ASSISTANCE; ELIGIBILITY, CITIZENSHIP REQUIREMENTS (1) Except as provided by this rule in (5), only U.S. citizens and qualified aliens are eligible for FAIM financial assistance.

(2) A qualified alien is a noncitizen who:

(a) remains the same.

(b) was granted asylum under section 208 of the INA;

(c) remains the same.

(d) has been lawfully admitted to the U.S. for permanent residence under the INA and either:

(i) is a veteran of the U.S. armed services as defined in 38 USC 101 who has received an honorable discharge which was not

~~granted on account of alienage;~~

~~(ii) is an active member of the U.S. armed services, other than active duty for training;~~

~~(iii) is a spouse or unmarried dependent of a veteran or active duty military personnel as described in (2)(d)(i) or (ii); or~~

~~(iv) has worked 40 qualifying quarters as defined in Title II of the Federal Social Security Act or is credited with 40 such quarters as follows:~~

~~(A) an alien shall be credited with all qualifying quarters worked by a parent of the alien while the alien was under age 18, subject to the provision of (2)(d)(iv)(C); and~~

~~(B) an alien shall be credited with all qualifying quarters worked by a spouse of the alien during their marriage, provided the alien is still married to that spouse or that spouse is deceased and subject to the provision of (2)(d)(iv)(C).~~

~~(C) An alien will not be credited with any qualifying quarter worked by a parent or spouse which occurred after December 31, 1996, if the parent or spouse received any federal means tested public assistance benefit as defined in ARM 46.10.103 during the qualifying quarter.~~

~~(3) The following classes of qualified aliens may receive FFA benefits, if otherwise eligible, only for a limited period of time as specified:~~

~~(a) refugees, for 5 years from the date of entry of into the U.S.;~~

~~(b) asylees, for 5 years from the date asylum in the U.S. was granted;~~

~~(c) aliens who have had deportation withheld, for 5 years after the date of entry of the order withholding deportation.~~

~~(4) The 5 year time limits specified in (3)(a) through (c) no longer apply if a refugee, asylee, or person whose deportation has been withheld becomes a naturalized citizen or changes to another status under which the alien may be eligible for FFA benefits.~~

~~(5) A noncitizen who is not a qualified alien as specified in this rule may receive medicaid benefits if the individual:~~

~~(a) was living in the U.S. on August 22, 1996; and~~

~~(6) Aliens legally admitted for permanent residence after August 22, 1996, are banned from receiving cash assistance for 5 years from the date of entry into the U.S.~~

(d) was granted parole for at least 1 year under section 21(d)(5) of the INA;

(e) was granted conditional entry under immigration law in effect before April 1, 1980;

(f) is a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980, if entry occurred within the last 7 years, including:

(i) any alien granted parole status as a Cuban/Haitian entrant; or

(ii) any alien granted any other special status for nationals of Cuba or Haiti; or

(iii) any alien who is a national of Cuba or Haiti and who:

(A) was paroled into the U.S., but has not acquired any other status; or

(B) is the subject of removal proceedings or has an application for asylum pending; and

(C) does not have a final order for removal entered;

(g) is an Amerasian immigrant who was admitted to the U.S. pursuant to section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988, if admitted within the last 7 years, including any alien lawfully admitted for permanent residence if the alien was a resident of Vietnam on December 22, 1987 and if the alien was born in Vietnam after January 1, 1962 and before January 1, 1976; and

(i) was fathered by a U.S. citizen; or

(ii) is the spouse, child, natural mother, or who acted as the mother, father or next of kin to the alien described in (2)(g)(i), if accompanying or following the alien described in (2)(g)(i) to the U.S. and if admission is necessary to maintain family unity;

(h) is an American Indian born in Canada if at least 50% American Indian blood and considered lawfully admitted for permanent residence;

(i) is a member of a federally recognized Indian tribe under the Indian Self Determination and Education Assistance Act and considered lawfully admitted for permanent residence;

(j) receives SSI benefits and who retains derivative eligibility for medicaid;

(k) is a battered spouse or child or a person who has been subjected to extreme cruelty in the U.S. pursuant to the requirements of 8 USC 1641(c), if:

(i) the applicant verifies that battery or extreme cruelty was inflicted on the applicant, applicant's child or the child applicant's parent by providing proof that a case was established by INS; and

(ii) there is a substantial connection between the abuse and the applicant's need for benefits; and

(iii) the applicant does not reside with the abuser;

(l) is lawfully admitted to the U.S. for permanent residence and:

(i) the alien entered the U.S. as a refugee within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(ii) the alien was granted asylum within the last 7 years and the asylee's status has changed to "lawfully admitted for permanent residence"; or

(iii) the alien had deportation withheld under section 243(h) of the INA within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(iv) the alien was admitted as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(v) the alien was admitted as an Amerasian immigrant under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988 within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(vi) the alien entered the U.S. before August 22, 1996; or

(vii) the alien entered the U.S. on or after August 22, 1996 and has resided in the U.S. for 5 years and can be credited with 40 qualifying quarters of work, cumulated as defined in (4) and (5);

(m) is a veteran of the U.S. armed forces and who received an honorable discharge not because of alienage;

(n) is a Hmong or other Highland Lao veteran who fought on behalf of the U.S. armed forces during the Vietnam conflict;

(o) is on active duty in the U.S. army, navy, air force, marine corps or coast guard and who is not on active duty for training purposes;

(p) is the spouse of a veteran or an alien on active duty as described in (2)(m) through (o);

(q) is the unmarried child of a veteran or alien on active duty as described in (2)(m) through (o).

(3) Qualified aliens entering the U.S. on or after August 22, 1996 are not eligible for medicaid benefits for a period of 5 years from the date of entry unless they are:

(a) refugees;

(b) asylees;

(c) aliens whose deportation was withheld under section 243(h) of the INA;

(d) honorably discharged veterans or aliens on active duty in the U.S. armed forces, or the spouse and/or unmarried child of honorably discharged veterans or aliens on active duty; or

(e) American Indians with at least 50% American Indian blood who were born in Canada.

(4) If the alien was a resident of the U.S. prior to August 22, 1996, the work quarter requirement does not apply in determining medicaid eligibility. If the alien entered the U.S. after August 22, 1996, the alien is not eligible for benefits for 5 years from the date of entry. If 5 years has passed since the alien entered the U.S., the work quarter requirement may be met, subject to (5), by cumulating quarters worked by:

(a) the alien;

(b) the alien's living parents (including stepparents) if the quarters were earned while the alien was under age 18;

(c) the alien's deceased parents (including stepparents) if the quarters were earned while the alien was under age 18;

(d) the alien's spouse if the quarters were earned during the marriage and if the alien is still married to that spouse or if the spouse is deceased.

(5) No work quarters may be credited for any period after December 31, 1996 if the alien or any of the persons listed in (4)(b) through (d) received any federal means-tested benefits during the period the work quarters were earned.

(6) An alien who meets all financial and non-financial

eligibility criteria is eligible to receive medicaid benefits only for a period of 7 years from the date INS designates the alien as one of the following and if the alien was:

(a) admitted to the U.S. as a refugee under section 207 of the INA; or

(b) granted asylum under section 208 of the INA; or

(c) withheld from deportation under section 243(h) of the INA; or

(d) admitted as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or

(e) admitted as an Amerasian Immigrant under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988.

AUTH: Sec. 53-2-201 and 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, and 53-4-231, MCA

46.18.306 FAIM EMPLOYMENT AND TRAINING ACTIVITIES

(1) Participants in FAIM employment and training activities, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their FIA and subject to availability in their community, participate in the following activities:

(a) through (f) remain the same.

(g) short-term skills training for a period not to exceed 6 months; ~~or~~

(h) individual or group job search-; ~~or~~

(i) educational activities to qualify for a high school diploma or G.E.D. equivalency and remedial adult educational activities.

~~(2) Participants who are members of a two-parent family may also, in accordance with their employability plan or FIA and subject to the approval of their case manager, participate in educational activities to qualify for a high school diploma or equivalency and remedial adult educational activities as determined appropriate by the case manager.~~

(3) and (4) remain the same but are renumbered (2) and (3).

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.309 FAIM EMPLOYMENT AND TRAINING: WORK EXPERIENCE PROGRAM (WEX) (1) and (2) remain the same.

(3) A participant's assignment to a work experience component site is subject to the following requirements:

~~(a) the participant may request a reassignment at any time which may be granted at the discretion of the participant's case manager;~~

~~(b) the site and the training activities in which the participant is engaged must be in compliance with all applicable federal, state or local health and safety standards;~~

~~(c) the participant's assignment shall take into~~

consideration the following:

- ~~(i) family circumstances;~~
- ~~(ii) extent of work experience;~~
- ~~(iii) length of detachment from the labor market; and~~
- ~~(iv) barriers to employment.~~

(a) the site must be in compliance with all applicable federal, state, or local health and safety standards;

(b) non-displacement should be established; and

(c) the work site and the sponsoring agency have entered into a written agreement.

~~(d)(4)~~ A participant shall not be assigned to a site until the department and the sponsoring agency have entered into an agreement.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.326 FAIM EMPLOYMENT AND TRAINING: SUPPORTIVE SERVICES ~~(1) Supportive services for child care and transportation shall be available if they are determined necessary for a person to participate in FAIM employment and training.~~

~~(a) Child care for FAIM employment and training activities may consist of state paid voucher child care or alternative child care developed in each community.~~

~~(b) Reimbursement for transportation may be provided in the pathways program. Reimbursement for transportation will not be provided in the community services program.~~

~~(c) Supportive services for WoRC participants are available as provided in the department's WoRC manual, section 8. The department hereby adopts and incorporates by reference the WoRC manual, section 8, as amended through March 1, 1998. Section 8 of the WoRC manual specifies what supportive services are available to FAIM participants. A copy of the WoRC manual, section 8, as amended through March 1, 1998, may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, Helena MT 59604 4210.~~

~~(2) Supportive services payments may be made for expenses determined necessary to participate in a FAIM activity or accept or maintain employment which includes but is not limited to:~~

~~(a) transportation costs;~~

~~(b) liability insurance for necessary private transportation;~~

~~(c) auto repair for necessary private transportation;~~

~~(d) tools for employment;~~

~~(e) clothing, personal grooming and hygiene;~~

~~(f) fees, transcripts, applications, birth certificates, GED or equivalency fees;~~

~~(g) medical physicals, prescriptions, eye glasses and immediate dental care; and~~

~~(3) Participants accepting a pathways employment related payment will be ineligible for a pathways or community services monetary grant for a period of 2 months for each month's worth~~



~~of benefits received.~~

~~(1) Funds are available to pay expenses that are, or may be, incurred in a benefit month, by a pathways/CSP participant to comply with his/her family investment agreement activities which include the mandatory eligibility requirements and employment/training activities.~~

~~(2) Supportive services funds may not be used to pay for:~~  
~~(a) any medical service or item; or~~

~~(b) fines of any type, including traffic, criminal, and library fines.~~

~~(4)(3) Supportive services and pathways employment-related payments may be provided as appropriate by the FIA coordinator or service provider as defined in the community operating plan.~~

~~(5) Provision of supportive services and pathways employment-related payments is contingent upon the availability of funding~~

~~(6) through (8) remain the same but are renumbered (4) through (6).~~

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

### 3. ARM 46.18.106

The FAIM program provides assistance to needy families in Montana with a view toward helping those families become self-sufficient. Persons who intentionally make misrepresentations about eligibility or who purposely violate certain program requirements are disqualified from receiving FAIM assistance. ARM 46.18.106 states the procedure and requirements for disqualification and defines "intentional program violation". Currently, the rule states that when a person is disqualified from FAIM for committing an intentional program violation, the person will also be disqualified from Medicaid. The FAIM program and the Medicaid program are two separate programs. Each has its own set of rules. The Department believes that persons should not be deprived of their health benefits simply because they have become disqualified from some other program though many of the eligibility requirements for the FAIM and Medicaid programs are the same, one could meet the eligibility requirements for Medicaid even though one has been disqualified from FAIM. Therefore, the proposed amendment is necessary to provide health care services for persons qualifying for Medicaid, even if they have become disqualified from FAIM. This option better protects the health needs of low-income Montanans.

Furthermore, the Department of Public Health and Human Services has not automatically discontinued Medicaid benefits for persons disqualified under ARM 46.18.106. Thus, the proposed amendment is also necessary to bring the rule into harmony with the Department's current policy. Though the Department could have disqualified those individuals who commit IPV's, that option does not protect the health of persons eligible for Medicaid. The

Department estimates the number of persons affected by this rule to be less than 200 per year. However, the Department has not been removing Medicaid benefits for disqualified FAIM participants in the recent past; therefore, the amendment should have no significant impact on affected persons' benefits. In addition, no significant economic impact will result from this amendment.

ARM 46.18.107

The FAIM program is funded, in part, by the federal government. As a consequence, the State is required to abide by certain federal requirements with respect to administration of the program. When the federal government first promulgated its rules governing the program, it provided a time-clock exclusion for some classes of beneficiaries based on the recognition that some classes of persons would have more difficulty becoming self-sufficient. Indians residing in Indian country where unemployment is high is one such class. To address the problem, the federal rules provided a time clock exclusion for adults residing in "Indian country" where unemployment was 50% or more. The original federal rule defined "Indian country" as the reservations and other "dependent Indian communities". See the Personal Responsibility and Work Reconciliation Act 408(2)(7)(d). No definition of "dependent Indian communities" was provided. Since the TANF statute was silent on the matter, the State looked to a Bureau of Indian Affairs definition and concluded that "dependent Indian communities" equated with a "near reservation" definition provided by the BIA statute. See 25 CFR 20.1(r). As a result, the State permitted persons living in Harlem, Hardin and Dodson, which are near reservation cities with high unemployment, to benefit from the time-clock exclusion.

Recently, the federal Supreme Court defined "dependent Indian communities". See Alaska v. Native Village of Venetie, 522 U.S. 520 (1998). The new definition does not allow the State to include the "near reservation" cities in the time-clock exclusion. The proposed rule amendment is necessary in order for the State to comply with federal law governing the FAIM program under the new definition of "dependent Indian communities". If the State fails to comply with the federal regulations, the State could suffer significant monetary sanction. See TANF Regulation 271.50; Montana Waiver Authority, Waiver Terms and Conditions, 1.0 through 1.2.

Since the new definition will be applied only prospectively, the proposed amendment will not presently have a significant fiscal impact. Benefits to recipients in near reservation cities will not be impacted until 60 months from October 1, 1999 since that is when the time-clock limitation will take effect. The Department estimates that approximately 25 families will be impacted by this amendment. In addition, when the time clock

exemption is applied, benefits will be reduced by approximately \$105,000.

The additional change, to (3)(a), is simply to clarify where in the administrative rules one can find the time-clock exemptions. It affords no substantive change; and has no significant fiscal impact.

#### ARM 46.18.109

The FAIM program provides assistance to needy families in Montana. Its purpose is to assist families reach the goal of self-sufficiency. It is important, however, that FAIM assistance not be used as a means whereby teenagers can avoid parental supervision by becoming pregnant in order to establish independent living arrangements at the expense of the program. To address that issue, ARM 46.18.109 provides benefits to teen parents who are not living with their parent or guardian only if the teen's independent living arrangement has been approved by the program administrators. ARM 46.18.109 describes what situations constitute adequate grounds for independent living arrangements for teen parents. To ensure that FAIM assistance is not an impetus for teen pregnancy, a living arrangement committee must approve any alternative setting before a teen parent qualifies for assistance. Though the program is administered by the State, each county has its own living arrangement committee. The proposed amendment is necessary to clarify which living arrangement review committee approves a particular alternative setting. The amendment specifies that the committee performing the review will be the county committee.

The proposed amendment will not result in additional costs. The county living arrangement review committee has been performing the reviews under the original rule. The amendment is simply necessary to clarify, in the rule, what has already been occurring in actuality.

#### ARM 46.18.113

The FAIM program replaced the old Aid to Families with Dependent Children (AFDC) program. As mentioned above, part of the funding for the program is provided by the federal government. Therefore, the program must be administered in accordance with rules established by the federal government. Those rules dictate eligibility requirements, including maximum household income for defined assistance units. The State of Montana negotiated waivers from some federal rules. Under Medicaid waiver number 1902(a)(17)(D) and FAIM Waiver Terms & Conditions, 2.2 subsection 28, the State is required to include the income and needs of stepparents and children when determining eligibility and benefit amount, but the State may exempt from income foster care payments made to an individual in the

assistance unit if the payments are made by a federal, state or local agency. The State was unable to obtain a waiver for adoption assistance payments made to a member of the assistance unit. Therefore, the proposed amendment to ARM 46.18.113 is required to bring the rule into compliance with the negotiated waivers and federal law.

Pursuant to the amendment, the State will include stepparent's and children's income and needs in the assistance unit. It will not, however, count foster care payments from federal, state or local agencies in the assistance unit's income, nor will the State consider the person receiving the foster care payments when determining benefit amount. The State will include adoption assistance payments made to an individual in the assistance unit for purposes of eligibility and will include the recipient's needs in the grant amount, if eligible.

The amendment clarifies what items of income are included in the assistance unit's resources for eligibility purposes and is necessary to comply with federal law and our waiver terms. No significant cost, savings, or benefits are expected to result from this change since only about 6 adoptive families per year apply for FAIM.

#### ARM 46.18.118

Federal law, as defined by our waiver terms, requires that families with more than \$3,000 available resources be deemed ineligible for FAIM assistance. ARM 46.18.118 determines what resources are counted in the assistance unit's "available resources" for purposes of eligibility. The federal rules recently changed to require the Department to include the income and resources of an alien's sponsor when determining eligibility for qualified aliens. See 42 USC 1382j. Thus, the proposed amendment is necessary to incorporate the federal rule change. In addition, the rules currently provide that equity in a house owned by the assistance unit will not be a countable resource when determining eligibility. However, the rule does not address the fact that the assistance unit may own more than one house. The proposed amendment would exempt only that amount of equity associated with the house where the assistance unit usually resides. Thus, under the amended rule, the equity in a second home would be considered available to the assistance unit and would be counted in determining eligibility.

In addition, in the past, the State has permitted households which would have been eligible for assistance except that the household held real property which put the household's resources over the \$3,000 limit to receive temporary assistance (for six months) in exchange for a promise to repay the State benefits once the real property was sold. The assistance unit was required to make a good faith effort to sell the property. The State acknowledges that real property is sometimes difficult to

liquidate. However, many households receiving the temporary benefits failed to repay them once their real property was sold. The administrative and legal efforts required by the State to enforce the agreements have simply become too costly. Many times the proceeds from the sale of the real estate are spent before the State can initiate legal action to collect the required repayment under the agreement. Moreover, much of the value of the repayment is lost due to collection costs associated with enforcing the agreement. Therefore, the amendment to ARM 46.18.118 is required in order to discontinue the conditional temporary benefits. Under the proposed amendment, the equity in real property held by a filing unit will be considered in determining eligibility, as required by federal law.

By discontinuing the policy of allowing conditional temporary benefits, the State will save approximately \$19,700 in monthly cash benefits. In addition, the State will save a conservative estimate of \$3,200 per year in administrative costs associated with efforts to collect the repayments. The Department estimates that the amendment will impact approximately 27 recipients. The remaining proposed amendments to this rule will not result in significant economic impact.

#### ARM 46.18.122

The legislature sets the amount of benefits to be provided to eligible households through the FAIM program. The individual benefit amounts are given as a percentage of the federal poverty level, i.e. 40.5% of poverty level. Since the federal poverty level is adjusted each year in order to take into consideration variables such as the cost of living, the program's benefit standards must be adjusted each year as well. ARM 46.18.122 lists the benefit standards. The proposed amendment to ARM 46.18.122 is necessary to adjust the benefit standards in order to account for the increase in the federal poverty level and still be in compliance with the legislature's mandate.

Because the benefit standards are increased, the costs of the FAIM program are increased. The Department of Public Health and Human Services estimates that the increase in the benefit standards, as proposed in this rule amendment, will add an additional cost of approximately \$470,800 to the FAIM program for fiscal year 2000. The Department estimates that approximately 16,000 people will be impacted by this amendment.

#### ARM 46.18.126

The FAIM program and Medicaid provide financial assistance and health care to needy families in Montana. In order to be eligible for these programs, households must meet certain criteria. For example, the household's gross and net income must be below named levels. ARM 46.18.126 lists the types of

unearned income that will not be included in the household's income amounts when determining eligibility. Some time ago, the AWEF program was incorporated into the FAIM employment and training program. Therefore, the proposed amendment to 46.18.126 is necessary to delete the reference to the AWEF program and correct the rule. The proposed amendment is also necessary to correct the citation to the food stamp rules. ARM 46.128.401 does not exist. The proposed amendment would correctly cite ARM 46.18.401 as the location of the food stamp rules. The remaining amendments to the rule are simply to provide continuity to the language and to correct the grammar so that the rule is clear and easily understood. Because the proposed amendment is simply a clarification of the rule, no significant fiscal impact results from the amendment, and no identifiable group of persons will be impacted by the amendment.

#### ARM 46.18.129

The Job Supplement Program does not provide monthly cash payments to eligible families. The only cash payment available under that program is a one-time employment related payment to be used to assist the participant in obtaining or maintaining employment. ARM 46.18.129 makes mention of "job supplement program payments"; and thus, needs to be corrected. The proposed amendment to ARM 46.18.129 is necessary to correct the rule. The amendment deletes the reference to "job supplement program payments" while the one-time employment related payment is addressed under "cash assistance payments". No additional costs or benefits will result from the proposed amendment, and no identifiable group of persons will be impacted by the amendment.

#### ARM 46.18.134

As previously mentioned, the FAIM program provides assistance to low-income Montanans. Its purpose is to assist needy families to become self-sufficient. In order to accomplish that goal, participants must enter into a family investment agreement in which the participant agrees to undertake certain activities directed toward creating self-sufficiency. If the participant fails to meet the obligations of the family investment agreement, the participant will be sanctioned. ARM 46.18.134 describes the means and manner of sanctions.

In 1999, the Montana legislature enacted Senate Bill 353, which is codified at 53-4-717, MCA. That bill provides that sanctioning of FAIM participants will not include the loss of medicaid benefits except as federal law requires. Therefore, the proposed amendment to ARM 46.18.134 is necessary to address the sanction limitations mandated in Senate Bill 353. The amendment lists the three circumstances whereby federal law requires the sanctioning of medicaid benefits and specifies that medicaid benefits will only be lost if non-compliance involves

one of the three circumstances.

The remaining amendments clarify the various aspects of sanctioning. For example, child care assistance will continue during any penalty period provided the sanctioned individual is participating in employment-related or training activities in compliance with his or her family investment agreement. Child care assistance, then, serves to motivate the sanctioned individual to comply during the penalty period. The amendment makes it clear that compliance is required throughout the penalty period. If the participant fails to participate in employment-related or training activities, then child care is not necessary as it is provided only for those activities. Subsection (6) clarifies that food stamps allotments will not increase during a penalty period because the household of the sanctioned individual has reduced income due to the sanction.

The current rule states that sanctions would be applied in later months if upheld upon review and would not be treated as overpayment. The Department has encountered a significant number of cases where it is impossible for the Department to impose the sanction at a later date. For example, a FAIM recipient may become ineligible for assistance while the review is pending. In that circumstance, the Department could not apply the sanction after review if the sanction is upheld. Therefore, the continued benefits paid to the recipient must be treated as an overpayment. Otherwise, the Department would have no way to recoup benefits paid to recipients who were not entitled to receive them. The proposed amendment addresses this situation, allowing for overpayment when sanctions cannot be imposed at a later date.

This amendment clarifies the existing sanction procedures and brings them into compliance with 53-4-717, MCA. The Department estimates that approximately 400 individuals are under sanction for the FAIM program at any given time. This amendment will impact the benefits of those 400 individuals; however, the amount of additional Medicaid benefits which may be paid during sanctions as a result of this amendment is unknown.

#### ARM 46.18.140

As previously mentioned, the federal government provides grant money to assist the State of Montana in funding the FAIM program. Under federal law, only U.S. citizens and certain qualified aliens are eligible to receive benefits from the program. In 1998, the U.S. Congress passed the Balanced Budget Act, redefining the categories of aliens that qualify for assistance under the program. ARM 46.18.140 defines the citizenship requirements for eligibility. It also lists the categories of aliens which are eligible. The proposed amendment to ARM 46.18.140 is necessary to bring the rule into compliance with the new categories of qualified aliens defined by the

Balanced Budget Act of 1998. The State is required to follow the guidelines as given by the Balanced Budget Act or risk loss of the federal grant money supporting the program. See TANF regulation 271.50. The proposed amendment to ARM 46.18.140 incorporates the new classes of aliens who are eligible for benefits based on the new federal law.

The proposed amendment clarifies the rule in accordance with federal law. Montana, however, receives applications for assistance from few, if any, persons who fit into the new categories of qualified aliens. As a result, the Department estimates that the proposed amendment will have no significant impact on costs of the program or benefits received.

#### ARM 46.18.306

In order to qualify for FAIM assistance, adult members of a household must agree to undertake certain activities which will increase the likelihood of self-sufficiency. ARM 46.18.306 lists the kinds of employment and training activities that participants may engage in under their family investment agreement. The rule currently distinguishes between single-parent families and two-parent families with respect to allowing high school equivalency education to qualify as a participating activity. The proposed amendment to ARM 46.18.306 abolishes that distinction in order to allow both single-parents and parents of two-parent households to participate in high school equivalency educational activities. The State acknowledges that self-sufficiency is especially difficult to attain if one does not have a high school diploma or GED equivalent, whether one is a single-parent or not. Though the rule could remain as it is, the State wishes to encourage single-parents to pursue a high school diploma or equivalent. Such educational milestones are often necessary in order to obtain employment. Thus, the proposed amendment to ARM 46.18.306 is necessary in order to further the State's policy of encouraging high school diplomacy or equivalent.

This amendment will not result in significant fiscal impact and the number of persons who may engage in GED or high school equivalency education as a result of this amendment is unknown.

#### ARM 46.18.309

Under the WEX program, the Department contracts with certain employers to allow FAIM participants to gain on-the-job training at the employers' place of business. The contract between the State and the employer expressly discusses all of the information currently contained in ARM 46.18.309. Consequently, the Department feels it is unnecessary and redundant to include the information in the rule as well. Though the Department could have left ARM 46.18.309 as it currently is, the proposed amendment deletes the information which is already addressed in



the contracts. The proposed amended rule is therefore clearer and more easily understood. Since the amendment simply removes duplicate information, no fiscal impact will result from the change in the rule. The Department estimates that there are approximately 280 individuals enrolled in the WEX program on any given month. Those persons will not experience any change in their benefits as a result of this amendment.

ARM 46.18.326

Eligible FAIM participants can receive supportive services funds to pay expenses that are incurred in furtherance of the participant's active pursuit of self-sufficiency. ARM 46.18.326 currently defines how and when those funds are used and distributed. In an effort to allow the various counties to better tailor the program funds to the needs in each particular county, the Department believes the Community Advisory Council should be given the responsibility of developing guidelines regarding how the funds should be used in a particular county. The guidelines must be in accordance with State rules and the federal regulations which prohibit use of the funds for medical services, medical items, and fines. The proposed amendment to ARM 46.18.326 would accomplish that task while listing the federal limitations on use of the funds. Under the proposed amendment, the county or WoRC Contractor can provide funds to a participant as long as funds are available and there is a demonstrated need for enabling funds in order for the participant to comply with his or her family investment agreement. Each county, then, may develop guidelines for specific use of the funds to best meet the needs of participants in the county and the guidelines can vary from county to county. The State could have retained control over the funds, but that option inhibited needs-based, detailed, and responsive use of the funds. Each county is unique and has unique needs. The State cannot develop a single set of guidelines which fits the varied needs in the individual counties. The proposed amendment to ARM 46.18.326 would allow the counties to develop their own set of guidelines so long as they comport with the general use requirements set out in the proposed amendment.

There should be no additional costs associated with this amendment as the amount of benefits to be distributed remains the same. The entity guiding distribution simply shifts from the State to the county. The Department estimates that there are approximately 4880 individuals enrolled in employment and training activities during any given month. The benefits received by those persons will not change as a result of this amendment.

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

than 5:00 p.m. on December 2, 1999. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 2, 1999.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 160 based on the 1600 individuals affected by rules covering FAIM.

Dawn Silva  
Rule Reviewer

Lauri Elvinger  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 25, 1999.

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

In the Matter of Proposed                     ) NOTICE OF PUBLIC HEARING  
Amendment of a Rule Pertaining        ) ON PROPOSED AMENDMENT  
to Practice Before the                    ) OF ARM 38.2.314  
Public Service Commission                )

TO: All Concerned Persons

1. On Thursday, December 16, 1999, at 1:30 p.m., in the Bollinger Room, Public Service Commission offices, 1701 Prospect Avenue, Helena, Montana, the Montana Public Service Commission (Commission or PSC) will hold a hearing to consider the proposal identified in the above titles and described in the following paragraphs, all related to practice before the PSC.

2. The Public Service Commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Service Commission no later than 5:00 p.m. on December 13, 1999 to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, Commission Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number 406-444-6170, TTD number 406-444-6199, fax number 406-444-7618.

3. The rule proposed for amendment provides as follows:

38.2.314 PRACTICE BEFORE THE COMMISSION (1) ~~Any person may appear at hearings before the commission in his own behalf, by attorney authorized to practice in this state, by an agent thereto authorized in writing, or by a Class B interstate commerce commission practitioner. Any practice before the commission which constitutes the practice of law must be done in accordance with Montana laws governing the practice of law. Inquiries and applications for admission to practice law in Montana, which includes practice of law before the commission, may be made to the state bar of Montana.~~

~~(2) An attorney from another jurisdiction may appear at hearings before the commission upon a showing that he or she has been specially admitted to practice in Montana for purpose of the pending matter. Such non resident attorney must associate a licensed Montana attorney in the proceeding. (See, MCA, Sec. 37-61-208, and Application of A.S.A.R.C.O., 164 M-139, 520 P.2d 103 (1973).)~~

AUTH: 69-2-101 and 69-3-103, MCA  
IMP: 69-2-101, 69-3-103, and 69-12-204, MCA

4. Rationale: The amendment is reasonably necessary as the existing rule is inconsistent with current statutes governing the practice of law and rules of the Montana Supreme Court governing admission to the bar.

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than December 16, 1999. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-99.10.10-RUL.")

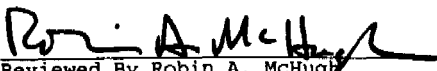
6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC 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 that the person wishes to receive notices regarding telecommunications, electricity, natural gas, pipelines, sewer, water, railroads, motor carriers or general administrative rulemakings. Such written request may be mailed or delivered to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to the PSC at 406-444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

9. The bill sponsor notification requirements of 2-4-302, MCA, do not apply.

  
Dave Fisher, Chairman

  
Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 25, 1999.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the Matter of the Proposed )	NOTICE OF PUBLIC HEARING
Amendment of ARM 42.14.101, )	ON THE PROPOSED AMENDMENT
42.14.102, 42.14.103, 42.14. )	AND REPEAL
104, 42.14.105, 42.14.106, )	
42.14.107, 42.14.108, )	
42.14.109, and 42.14.111; )	
Repeal of ARM 42.14.112 )	
relating to Lodging Facility )	
Use Tax Rules )	

TO: All Concerned Persons

1. On November 30, 1999, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the East Wing of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.14.101, 42.14.102, 42.14.103, 42.14.104, 42.14.105, 42.14.106, 42.14.107, 42.14.108, 42.14.109 and 42.14.111, and the repeal of ARM 42.14.112 relating to accommodation tax rules.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department not later than 5:00 p.m., November 19, 1999, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406)444-2460; fax (406)444-3696; or e-mail canderson@state.mt.us. An alternative accessible format of this Notice of Public Hearing for any person needing it to participate in this rule-making action is available upon request.

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

42.14.101. DEFINITIONS For purposes of this sub-chapter the following definitions apply:

~~(9)(1)~~ The "average daily accommodation charge" (ADAC) is the average room rate for single occupancy for all units rented for single occupancy in a facility.

For example: 40 unit facility  
10 units are never rented for single occupancy  
30 units rented for single and other occupancy

of the 30 rented for single and other occupancy:

10 units rent for \$15.00/night	= \$150.00
20 units rent for \$12.00/night	= 240.00
Total rate charged for all rooms	= \$390.00 = \$13.00 ADAC
divided by number of units	30

~~(1)(2)~~ As used in the regulations "fFacility" means a building or a group of buildings or an area recognized as a single entity.

~~(7)(3)~~ The term "gGross receipts" means total gross accommodation charges for use of lodging facilities, whether the charges were received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature.

~~(6)(4)~~ The phrase "iIntended for ... resident dwelling purposes" means a home, some permanent abode or residence, in which one has the intention of remaining, as further defined in 15-65-101, MCA.

~~(3)(5)~~ The word "lLodging" means accommodation intended for the purpose of sleeping or resting.

~~(2)(6)~~ The term "lLodging facilities" means a unit or units used within a facility. This is also a single area within a campground.

~~(8)(7)~~ The term "nNon-taxable receipts" means exempt accommodation charges as defined in ARM 42.14.103 ~~of this chapter.~~ Also included are accommodation charges deemed uncollectible and written off the records of the facility during a specific quarterly period, and any discounts which may have been included in gross receipts but not part of the net accommodation charge to the user.

(8) "Outfitting facility" means a facility that may:

(a) use one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnish sleeping accommodations to guests;

(c) offer hunting, fishing, or recreational services in conjunction with the services of an outfitter; or

(d) is a small establishment or a seasonal establishment.

~~(5)(9)~~ The term "oOwner or operator of a facility" means any person or organization who rents a lodging facility to the public and is ultimately responsible for the financial affairs of the facility. Such person may be an individual, corporation, partnership, estate, trust, association, joint venture or other unincorporated group or entity. Owner or operator also includes all religious, education, charitable and social organizations or societies which are not excluded by the provisions of Title 15, chapter 65, MCA and all governmental entities at the federal, state and local levels.

~~(4)(10)~~ As used in the regulations the terms "pPublic" or "general public" are synonymous. If a facility is charging for lodging facilities and other services, it is presumed to serve the general public unless proven otherwise.

~~(10)(11)~~ The term "uUser" means the person(s) renting and paying for the lodging facilities.

AUTH: 15-65-102, MCA

IMP: 15-65-101, MCA

#### 42.14.102 WHO MUST COLLECT THE TAX AND FILE RETURNS

(1) Every owner ~~or~~ operator of a facility operating in Montana must collect the accommodations lodging facility use

tax, rounded to the nearest penny, from the users of facilities and file returns with the department ~~of revenue~~ as required in ARM 42.14.107.

(2) To determine taxability of a facility, the owner/ or operator should consider the type of operation.

If the operation is:	Use Step:
Hotel, motel, hostel, public lodginghouse or bed and breakfast facility	(a) and (b)
Resort, condominium inn, dude ranch, guest ranch facility, <u>outfitting facility</u>	(c)
Campground	(d)
Dormitory	(e)

(a) Compute the average daily accommodation charge (ADAC). If the ADAC is less than 60% of the allowable state reimbursement for the standard cost of in state lodging, and the facility is a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility, no further step is required. The owner/ or operator of the facility is not required to collect the tax. The exemption applies only to a hotel, motel, hostel, public lodginghouse or bed and breakfast facility.

(b) If the ADAC is more than 60% of the allowable state reimbursement for the standard cost of in state lodging, and the facility is a hotel, motel, hostel, public lodginghouse or bed and breakfast facility, the second step is to look to the length of the rental period of the lodging facilities.

(i) If it is rented solely for 30 days or more the lodging facilities are not taxable.

(ii) If it is rented for less than 30 days the lodging facilities are taxable unless specifically exempted by ARM 42.14.103.

(c) If the facility is a resort, condominium inn, dude ranch, ~~or~~ guest ranch, or outfitting facility, look at the length of the rental period of the lodging facilities as stated above in (b)(i) and (ii).

(d) If the facility is owned or operated by a non-profit or religious organization and the lodging facilities are rented primarily to youth under 18 years of ages for camping, no further step is needed. The facility is exempt from the tax. If not, look at length of the rental period as stated above in (b)(i) and (ii).

(e) If the facility is a dormitory and the lodging facilities are rented to users enrolled in a regular academic program or a program of continuing education, no further step is needed, charges for the lodging facilities are exempt, see ARM 42.14.103. If not, tax must be collected on the accommodations charges.

Some Examples:	<u>Taxable</u>
Health facility	No
Religious Camps - primarily for youth	No

- occasionally for youth	Yes
Youth hostel	Yes
Federal campground	Yes
Campground - overnight trade	Yes
- permanent space	No
Rooms rented to government employees	Yes
Dormitory - lodging facilities rental	
to non-enrolled students	Yes
- lodging facilities rental	
to enrolled students	No

(3) through (5) remain the same.

AUTH: 15-65-102, MCA

IMP: 2-18-501, 15-65-101 and 15-65-111, MCA

42.14.103 EXEMPT FACILITIES/ACCOMMODATION CHARGES (1) An owner/ or operator of a facility or campground shall not collect the tax for lodging if the lodging facilities are rented to the user for a period of 30 consecutive days or more. Rental agreements cannot be combined for the purpose of determining the length of the rental period. Intention to rent for a period of 30 or more continuous days is documented by a lease, contract or historical evidence of continuous rental.

(2) An owner/ or operator of a health facility shall not collect the tax.

(3) Accommodation charges Lodging facility use tax for lodging facilities at dormitories furnished to the following are exempt:

(a) Persons enrolled in a regular academic program or a program of continuing education; or

(b) Participants in an education program to improve the work of the educational institution by developing the professional knowledge and skills of the employees of the institution hosting the program; or

(c) Participants in an educational program reserved exclusively for students of accredited educational institutions.

(4) An owner/ or operator of a hotel, motel, hostel, public lodginghouse or bed and breakfast facility whose average daily accommodation charge is less than 60% of the allowable state reimbursement for the standard cost of in state lodging per day is not required to collect the tax.

(5) An owner/ or operator of a youth camp primarily used by youth (under the age of 18) for camping shall not collect the tax.

~~(6) Accommodation charges collected before July 1, 1987 even though for reserved lodging after July 1, 1987 are not taxable. Deposits made before July 1, 1987 which include accommodations and other charges must be allocated. The proportionate amount of accommodation charges is deemed collected prior to July 1, 1987.~~

~~(7)(6)~~ An accommodation charge for lodging furnished federal government entities is exempt from the tax if and only if the accommodation charge is billed and directly paid by the governmental entity.



(8)(7). An accommodation charge for lodging for an enrolled member of a federally recognized Indian tribe in a facility located within the exterior boundaries of an Indian reservation is exempt from the tax. The owner ~~or~~ operator must record the individual's enrollment number on the record of the accommodation charge.

(9)(8). An accommodation charge for lodging furnished to foreign diplomats, entitled under international law or a bilateral treaty, is exempt upon showing of a tax-exempt card issued by the U.S. state department.

(10)(9). An owner or operator of a camping area which is temporarily located pursuant to a permit issued by an agency of the U.S. government is not required to collect the tax.

AUTH: 15-65-102, MCA

IMP: 2-18-501, 15-65-101, 15-65-111, MCA

42.14.104 MULTIPURPOSE FACILITIES (1) ~~An accommodation charge~~ A lodging facility use tax for a room used for a purpose other than lodging (such as meeting rooms) are not subject to the tax.

(2) ~~An accommodation charge~~ A lodging facility use tax for a room used for lodging and another purpose is subject to the tax.

(3) Rooms supplied with beds are presumed to be rented for purpose of lodging unless the contrary is conclusively established by the owner ~~or~~ operator.

AUTH: 15-65-102, MCA

IMP: 15-65-111, MCA

42.14.105 COMBINED CHARGE FOR SERVICES (1) When ~~accommodations charges~~ lodging facility use taxes are combined with food, beverage, recreation or other charges which are a substantial portion of the charge, the owner or operator may allocate the ~~accommodation charge~~ lodging facility use tax using one of the following:

(a) A flat rate of the allowable state reimbursement for the standard cost of in state lodging per day per person;

(b) 25 percent of all charges per day per person; or

(c) A charge justified by reasonable documentation. An owner or operator must have each charge itemized and available for review.

(2) ~~Accommodation charges~~ Lodging facility use taxes do not include separately stated service charges which are not an integral part of the use or occupancy of the room or campground space such as separately stated telephone, television, food, beverage or personal laundry charges.

(3) The department may disallow an owner or operator's method of allocating the ~~accommodation charge~~ lodging facility use tax under (1) above if the department has reasonable cause to believe that the method of allocation was chosen solely to qualify the facility for a tax exemption on the basis of the ADAC. In such cases, the department will select a method of allocating the ~~accommodation charge~~ lodging facility use tax that reasonably reflects the ~~accommodation charge~~ lodging

facility use tax for comparable facilities.

(4) ~~Accommodation charges~~ Lodging facility use taxes do include amounts charged for bath house facilities or temporary use of tangible personal property used in conjunction with the room such as a charge for an extra bed.

(5) In the case of campgrounds charges for water, electrical or sewer hookups and bath house facilities are included in the amount subject to tax.

AUTH: 15-65-102, MCA

IMP: 2-18-501 and 15-65-111, MCA

42.14.106 FACILITY REGISTRATION (1) Every owner/ or operator required to impose the ~~accommodation~~ lodging facility use tax must register and file an application for a state identification number on the form provided by the department for each facility owned/operated in Montana.

(2) Any owner/ or operator who has acquired the business of another facility shall not use his predecessor's state identification number. The owner/ or operator must register before the due date of the first report. This applies to both new businesses and businesses which have been purchased.

(3) and (4) remain the same.

(5) Not being registered does not relieve an owner/ or operator from the collection and reporting requirements.

AUTH: 15-65-102, MCA

IMP: 15-65-114, MCA

42.14.107 QUARTERLY REPORTS AND PAYMENTS - DUE DATES

(1) Every owner/ or operator is required to make, for each calendar quarter or portion of a quarter in operation, a report to the Department of Revenue, Mitchell Building, Helena, MT, 59620. The report must include gross ~~accommodation charges~~ lodging facility use taxes.

(2) The owner/ or operator shall remit the amount of said tax with the quarterly report. The report will cover quarterly periods ending March 31, June 30, September 30 and December 31 and must be postmarked no later than the last day of the month following the close of the quarter. Reports must be made on forms supplied by the department.

(3) remains the same.

(4) No extension of time for remittance of ~~accommodation tax~~ lodging facility use tax proceeds may be granted by the department.

(5) remains the same.

(6) The owner/ or operator must file a final quarterly report for the last quarter of operation and state the last date of business. Failure to do so will result in a liability to the owner or operator for an estimated tax, penalty and interest.

AUTH: 15-65-102, MCA

IMP: 15-65-112, and 15-65-114 and 15-65-115, MCA

42.14.108 PENALTIES AND INTEREST (1) ~~Failure to file the return and/or pay the tax collected, will result in a penalty of 10% of the tax that was collected or that should have been~~

collected.

~~(2) Interest is 1% per month or any portion of a month on the tax due.~~

~~(3) The penalty may be abated waived pursuant to ARM 42.3.101 through 42.3.114, and 42.3.120.~~

AUTH: 15-65-102, MCA

IMP: 15-65-114 and 15-65-115, MCA

42.14.109 RECORDS REQUIRED - AUDIT (1) Each owner/ or operator of a facility shall maintain records necessary to document gross receipts from ~~accommodation charges lodging facility use tax~~. For example: an owner/ or operator may be required to substantiate gross receipts reported for a particular quarter. Reconstruction of the reported gross receipts from the original ~~accommodations lodging facility use tax~~ receipts will be required for audit purposes.

(2) remains the same.

(3) ~~Beginning 7/1/87 through 6/30/88, the owner or operator of a facility must notify the user of the 4% accommodation charge lodging facility use tax. After 6/30/88 Beginning June 30, 1988, to insure there is a record of the amount of tax charged, the tax shall be separately stated on the receipt, invoice or other document provided to the user to insure there is a record of the amount of tax charged.~~

(4) The records shall be maintained by the owner/ or operator of a facility for a period of five years and shall be subject to audit by the department ~~of revenue~~ for that period.

AUTH: 15-65-102, MCA

IMP: 15-65-113, MCA

42.14.111 SUMMARY REPORT REQUIRED (1) The department ~~of revenue~~ shall provide the ~~tourism advisory council department of commerce~~ a quarterly report within 90 days of the close of a quarter of the tax collected:

(a) within the city limits of cities and consolidated city-counties;

(b) within the counties; and

(c) within tourism regions.

(2) The ~~tourism advisory council department of commerce~~ must notify the department ~~of revenue~~ of any tourism boundary change 30 days before the end of quarter.

AUTH: 15-65-102, MCA

IMP: ~~15-65-112~~ 15-65-121, MCA

4. The Department proposes to repeal the following rule:

42.14.112 FORMULA can be found at page 42-1412 of the Administrative Rules of Montana.

AUTH: 15-65-102, MCA

IMP: 15-65-121, MCA

5. The Department is proposing the amendments to the rules to clarify that outfitters are included in the lodging facility use tax and to make general housekeeping changes as necessary.

ARM 42.14.101 is being amended to define "outfitting facilities". The rule is further amended to alphabetize the definitions in compliance with rule formatting requirements.

ARM 42.14.102 is amended to add the terms "outfitting facility" and make general housekeeping corrections.

ARM 42.14.103 is being amended to strike (6) which is no longer applicable. Subsection (6) applied to charges prior to July 1, 1987 when the law was first enacted.

ARM 42.14.107 is being amended to clarify that an estimated liability for the tax, penalty and interest will be assessed against an owner or operator who fails to timely file a final quarterly report with the department.

ARM 42.14.108 is being amended because the language found in (1) and (2) are now covered in 15-65-114, MCA which was amended during the 1999 legislative session. The new law refers to waiver and deletes the term abate or abatement so the department is amending its rules to be consistent with the changes to the law.

Amendments to ARM 42.14.104, 42.14.105, 42.14.106, 42.14.109 and 42.14.111 are housekeeping changes.

The Department is proposing to repeal ARM 42.14.112 because the formula is no longer applicable.

6. Interested parties may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson  
Department of Revenue  
Director's Office  
P.O. Box 5805  
Helena, Montana 59604-5805

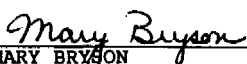
and must be received no later than December 3, 1999.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue 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 that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or faxed to the address or number in section 2 above, or may be made by completing a request form at any rules hearing held by the department of revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

  
CLEO ANDERSON  
Rule Reviewer

  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State October 25, 1999

BEFORE THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of rules pertaining to	)	RULES PERTAINING TO
Deferred Deposit Lending	)	DEFERRED DEPOSIT
	)	LENDING

TO: All Concerned Persons

1. On September 9, 1999, the Montana Division of Banking and Financial Institutions published a notice of proposed adoption of new rules pertaining to Deferred Deposit Lending at page 1849 of the 1999 Montana Administrative Register, issue no. 17.

2. A public hearing was held on October 6, 1999, at 10:00 a.m. at the Department of Commerce.

3. The division has adopted New Rules I through VI (8.80.1101 through 8.80.1106) exactly as proposed.

4. The following comments were received:

Comment 1: Two comments were received that address the consumer disclosure pamphlet and the written agreement required by statute to be specified or approved by the Department. Both commentators desire the flexibility to create their own form for consumer disclosure pamphlet and written agreement.

Response: Section 31-1-721(1) and (2), MCA, provide that the licensee is required to deliver a pamphlet to the consumer prepared by or at the direction of the department and a written agreement on a form specified or approved by the department. The Department developed forms for a consumer pamphlet and written agreement that licensees may utilize. The licensee is also able to prepare it's own pamphlet and agreement that covers the required disclosures set forth in 31-1-721, MCA. The statutory language is sufficient to inform licensees and the public of the provisions required by statute. It is not necessary to repeat statutory language in a rule.

Comment 2: One comment was received regarding the effective date of the Deferred Deposit Loan Act and the application of the effective date to loans entered into by the licensee with consumers.

Response: The proposed rules do not address the applicability of the Deferred Deposit Loan Act to transactions prior to the effective date of the act. The Deferred Deposit Loan Act

became effective October 1, 1999. All transactions by licensees after October 1, 1999 should be in compliance with the act.

Comment 3: Two comments were received about the ability of a licensee to utilize a collection agency to collect on a bad check.

Response: Section 31-1-723(2), MCA, sets forth the parameters of a licensee to utilize civil remedies to collect on a loan in default. Remedies generally available to any other creditor would also be available to the licensee. It is not necessary to repeat statutory language in a rule.

Comment 4: One comment was received regarding the process of the department's review and approval of the application for licensure and the ability to provide information to the department on the application if the department required further information.

Response: The proposed rule pertaining to the application procedure required to engage in deposit lending is clear. If the application is deficient, the department will notify the applicant and permit the applicant to supplement the application to assure compliance with the administrative rules and the statute.

5. Therefore, the Division adopts the new rules as proposed.

DEPARTMENT OF COMMERCE  
PETER BLOUKE, DIRECTOR

By:



ANNIE M. BARTOS, CHIEF COUNSEL  
Department of Commerce

By:

A handwritten signature in cursive script that reads "Annie M. Bartos".

ANNIE M. BARTOS  
Rule Reviewer

Certified to Secretary of State October 25, 1999.



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

In the matter of the amendment     )     NOTICE OF AMENDMENT  
of ARM 36.14.502 pertaining to     )  
dam safety and the hydrologic     )  
standard for emergency and     )  
principal spillways     )

TO: All Concerned Persons

1. On September 23, 1999, the Department of Natural Resources and Conservation published notice of the proposed amendment concerning dam safety and the hydrologic standard for emergency and principal spillways at page 2031 of the 1999 Montana Administrative Register, Issue Number 18. On October 7, 1999, the department published a corrected notice at page 2226 of the 1999 Montana Administrative Register, Issue Number 19.

2. The agency has amended ARM 36.14.502 as proposed.

AUTH: Sec. 85-15-110, MCA

IMP: Sec. 85-15-210, MCA

3. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

Donald D. MacIntyre  
DONALD D. MACINTYRE  
Rule Reviewer

Arthur R. Clinch  
ARTHUR R. CLINCH  
Director

Certified to the Secretary of State October 25, 1999.

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

In the matter of the the	)	CORRECTED NOTICE OF
adoption of rules I through	)	ADOPTION
XXV, and the repeal of ARM	)	
46.10.303 and 46.10.307	)	
pertaining to AFDC foster	)	
care	)	

TO: All Interested Persons

1. On May 6, 1999, the Department of Public Health and Human Services published notice of the proposed adoption and repeal of the above-stated rules at page 964 of the 1999 Montana Administrative Register, issue number 9, and on July 1, 1999, notice of the adoption and repeal on page 1514 of the 1999 Montana Administrative Register, issue number 13, pertaining to foster care.

2. This corrected notice is being filed to correct an error in RULE XVI (37.49.412).

3. The rule is corrected as follows:

37.49.412 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED EARNED INCOME (1) through (2)(d) remain as adopted.

~~(2)~~ (3) Income tax refunds are not considered as either earned or unearned income but are considered a resource to the filing unit.

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

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

4. The correction noted in this notice is the result of an inadvertent typo made by the Department in the previous rulemaking notices. The last subsection of the rule was numbered as (2) and should have been (3).

5. All other rule changes adopted and repealed remain the same.

Dawn Silva  
Rule Reviewer

Laurie E. Hungen  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 25, 1999.

TO: All Interested Persons

- Tawn Ileva  
Rule Reviewer

Certified to the Secretary of State October 25, 1999.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the Matter of the Adoption ) NOTICE OF ADOPTION  
of New Rules I (42.2.801), II )  
(42.2.802), III (42.2.803), )  
IV (42.2.804), V (42.2.805), )  
VI (42.2.806), and VII (42.2. )  
807) relating to Ethics of )  
Department of Revenue )  
Employees )

TO: All Concerned Persons

1. On July 22, 1999, the Department published notice of the proposed adoption of Rules I (42.2.801) through VII (42.2.807) relating to ethics of Department of Revenue employees at page 1651 of the 1999 Montana Administrative Register, issue no. 14.

2. Written comments received are summarized as follows along with the response of the Department:

COMMENT No. 1: Rule I (42.2.801)(5) does not address what happens if an employee does not recognize a potential ethical issue, if someone reports it before you do, or if someone vindictively reports something before the employee can or does.

RESPONSE No. 1: This language is part of the statement of intent. It was not designed to instruct employees in the process of recognition but simply to explain the intent of the rules. The language clearly outlines the department's intent for adopting the rules and the department has determined no additional clarification of this section is necessary. The consequences of failure to comply with the ethics standards is provided for in Rule VII (42.2.807). There is no violation of the standards simply because someone reports it first or because someone else acts vindictively.

COMMENT No. 2: The language in Rule I (42.2.801)(6) creates an employee duty which is disproportionately large when compared to that of the employer. The language reflects an attitude of distrust of employees by leadership.

RESPONSE No. 2: As indicated in Rule I (42.2.801)(1), the intent of these rules is to provide guidance to department employees concerning the ethical standards to which they will be held. This particular subsection was developed to explain existing Montana case law that defines an employee's duty of loyalty to an employer. The definition does not reflect a departmental attitude, but simply summarizes judicial determinations of an employee's duty of loyalty to an employer. Rule I (42.2.801(3)) clearly indicates the department's underlying trust in its employees.

COMMENT No. 3: The definitions in Rule II (42.2.802) use the words being defined as part of the definitions themselves.

RESPONSE No. 3: The comment is correct. Where possible, changes have been made to make the definitions in Rule II (42.2.802) more clear and concise.

COMMENT No. 4: Rule II (42.2.802)(2) addresses an individual's personal political and financial interests. This should not concern the department. An individual's private interests, undertaken outside of working hours, should remain private.

RESPONSE No. 4: The department has no interest in an employee's private financial or political interests unless those interests create or appear to create a conflict of interest in relation to the employee's employment with the department. Employees need only disclose those private pecuniary or political interests that create or appear to create a conflict of interest. The following subsection (3) of ARM 42.2.802 clearly limits any disclosure to those situations when an employee knows or should know that their interests cause or appear to cause a conflict of interest. Also see the response to comment no. 6.

COMMENT No. 5: The language in Rule II (42.2.802)(3) was questioned by a number of individuals. Typical comments include those regarding the ambiguity of how an individual will know when an ethical issue should have become known and what is "reasonable." Most comments center on the seemingly subjective nature of this phrase.

RESPONSE No. 5: It is understandable that employees are not comfortable with this language. However, it is necessary to have some standard application to determine when disclosure is required. The reasonable person standard is a commonly used standard. When utilizing the reasonable person standard, an individual must ask, "what would a person of ordinary caution, judgement, and observation, confronted by like circumstances and exercising reasonable care do in that same situation?" A reasonable person is a profile of ordinariness. A reasonable person is never reckless or absent minded, but is charged with exceptional foresight.

COMMENT No. 6: Comments received regarding Rule II (42.2.802)(8) addressed the concerns addressed in comment no. 4.

RESPONSE No. 6: These concerns are addressed in the response no. 4. The rule has been further amended to ensure employee understanding that only those private political interests which create or appear to create a conflict of interest need be disclosed. The department has no interest in an employee's private political interests if those interests do not create or appear to create a conflict of interest.

COMMENT No. 7: Rule III (42.2.803)(3) appears to make it

impossible for a State employee to actively seek alternate employment outside the department.

RESPONSE No. 7: Subsection (3) of 42.2.803 applies to individuals who chose to undertake outside work while remaining employed with the department. An employee may not actively seek outside employment they know will create a conflict.

Every department employee has the right to seek alternative employment. If an employee finds work outside the department with the intention of terminating their employment with the department, issues of conflict will not arise. Once an employee has terminated their association with the department, there is no basis for a conflict.

COMMENT No. 8: Rule IV (42.2.804)(1)(a) and (d) appear to prohibit all department employees from seeking any outside work. Additionally, commentators asked if an employee must terminate outside work if that work leads to a conflict of interest at a later date.

RESPONSE No. 8: Department employees are not prohibited from seeking outside employment so long as that employment does not create or appear to create a conflict of interest. If the employee undertakes apparently non-conflicting outside employment which later is found to create a conflict, the employee should terminate the outside employment unless the conflict could be cured by assigning another employee in place of the conflicted employee. If the activity created an actual conflict that could not be avoided by reassignment of personnel, the conflicted employee would have to discontinue the conflicting activity.

COMMENT No. 9: A comment concerning Rule V (42.2.805) indicated that the best interests of the State should not be determined solely by department leadership.

RESPONSE No. 9: It is customarily the leaders of an organization who determine the organization's policy. Ultimately someone must make policy decisions and the leaders are in the best position to determine what is in the best interests of the State. This rule requires only the duty of loyalty of employees to their employers that Montana courts have already recognized and which is described in the statement of intent located in Rule I (42.2.801).

COMMENT No. 10: The Ethics Panel described in Rule VI (42.2.806)(1) appears to be comprised entirely of department employees. The department should consider including one or more non-employees on the panel.

RESPONSE No. 10: This is a good suggestion. The department has determined that one non-employee panel member would enhance the effectiveness of the Ethics Review Panel.

COMMENT No. 11: It is suggested that the word "betray" in Rule VII (42.2.807) is too strong a word.

RESPONSE No. 11: The department agrees with this comment and will replace the word "betray" with the phrase "break faith with."

3. The Department amends II (42.2.802) and VII (42.2.807) as follows:

RULE II (42.2.802) DEFINITIONS - ETHICS OF DEPARTMENT OF REVENUE EMPLOYEES Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

(1) "Code of ethics" means any ethical accepted professional standards of conduct, requirements or prohibitions applicable to state public employees that the Montana legislature has adopted. The code of ethics is currently codified in Title 2, chapter 2, MCA as well as other sections of law including 16-1-304, MCA.

(2) "Conflict of interest" means any situation where an employee's private pecuniary or political interests as defined in (8) below conflict with the interests of the department.

(3) "Disclosure" means written disclosure documentation by an employee to the employee's supervisor or the ethics review panel and the secretary of state (2-2-131, MCA) of any matters in which the employee knows or should reasonably know is a conflict of interest, will give the impression of a conflict of interest, or presents any other ethical issue. A written disclosure includes electronic mail as well as hard copy.

(4) through (7) remain the same.

(8) "Political interests" as used in these rules mean those interests that go beyond the employee's private political beliefs. Private political beliefs are not of concern to the department. As used here, the term is restricted to those situations where an employee is publicly advocating a political position as part of an organized effort, such as This might include being an officer or other leader of a political or public interest organization which is advocating a particular political viewpoint when such public advocacy creates a conflict of interest or will give the impression of a conflict of interest or other ethical issue.

AUTH: 2-15-112 and 15-1-201, MCA

IMP: 2-2-101, 2-2-104, 2-15-112, 15-1-201 and 15-1-202, MCA

RULE VII (42.2.807) CONSEQUENCES FOR FAILURE TO COMPLY WITH ETHICAL STANDARDS (1) An employee who betrays breaks faith with the trust given them by the public, the state and the department by violating these rules or the code of ethics shall be subject to appropriate disciplinary action. The disciplinary action may include, but is not limited to, written warning, suspension without pay, demotion or immediate termination of employment depending on the severity of the violation. In the case of a contractor, the disciplinary action may include

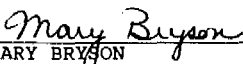
immediate termination of the contract and other action as allowed by law and the terms of the contract.

AUTH: 2-15-112 and 15-1-201, MCA

IMP: 2-2-101, 2-2-104, 2-2-121, 2-2-201, 2-15-112, 15-1-201 and 15-1-202, MCA

4. Therefore, the Department has adopted Rules I (42.2.801), III (42.2.803), IV (42.2.804), V (42.2.805), VI (42.2.806) as proposed and adopts rules II (42.2.802) and VII (42.2.807) with the amendments listed above.

  
CLEO ANDERSON  
Rule Reviewer

  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State October 25, 1999



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the Matter of the Amendment) NOTICE OF AMENDMENT  
of ARM 42.15.507 relating to )  
Elderly Homeowner Credit )

TO: All Concerned Persons

1. On September 23, 1999, the Department published notice of the proposed amendment of ARM 42.15.507 relating to elderly homeowner credit at page 2035 of the 1999 Montana Administrative Register, issue no. 18.

2. No comments were received regarding the rule.

3. The Department has adopted the rule as proposed.

  
\_\_\_\_\_  
CLEO ANDERSON  
Rule Reviewer

  
\_\_\_\_\_  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State October 25, 1999

**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**  
**Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

**Business and Labor Interim Committee:**

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

**Education Interim Committee:**

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

**Children, Families, Health, and Human Services Interim Committee:**

- ▶ Department of Public Health and Human Services.

**Law, Justice, and Indian Affairs Interim Committee:**

- ▶ Department of Corrections; and
- ▶ Department of Justice.

**Revenue and Taxation Interim Committee:**

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

**State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:**

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

**Environmental Quality Council:**

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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      | 1. Consult ARM topical index.                 |
| Subject    | Update the rule by checking the accumulative  |
| Matter     | table and the table of contents in the last   |
|            | Montana Administrative Register issued.       |
| Statute    | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and     |
| Department | 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, 1999. This table includes those rules adopted during the period July 1, 1999 through September 30, 1999 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, 1999, 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 1998 and 1999 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.

### GENERAL PROVISIONS, Title 1

- 1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2432
- 1.3.101 and other rules - Model Rules of Procedure - Amendment of the Sample Forms Attached to the Model Rules, p. 600, 1225

### ADMINISTRATION, Department of, Title 2

- I and other rules - State Procurement, p. 2124
- I Acquiring Services to Operate the State Charitable Giving Campaign, p. 561, 1292
- 2.21.306 and other rule - Disaster Leave for Trained American Red Cross Volunteers, p. 2315
- 2.21.1423 and other rules - Persons with Disabilities Preference Policy, p. 2312
- 2.21.3602 and other rules - Veterans' Employment Preference Policy, p. 2304

(Public Employees' Retirement Board)

- 2.43.403 and other rules - Membership, Service Credit, and Service Purchases in Retirement Systems Administered by the Board - Service Purchases - Social Security Coverage for the Employees of the State and Its Political Subdivisions, p. 932, 1504

- 2.43.437 Purchase of Military Service by Members of the Retirement Systems Administered by the Public Employees' Retirement Board, p. 2301

(Teachers' Retirement Board)

- I and other rules - Teachers' Retirement System, p. 1565, 2243

AGRICULTURE, Department of, Title 4

- 4.10.1001 and other rules - Pesticide Enforcement, p. 1, 404  
4.12.1428 Assessment Fees on All Produce, p. 2934, 507  
4.12.3501 and other rules - Grading of Seed Potatoes, p. 677, 1505

(Agriculture Development Council)

- 4.16.701 Agricultural Marketing Development Program; Purpose, Goals, and Criteria, p. 1458, 1764

STATE AUDITOR, Title 6

- 6.6.126 Unethical Practices, p. 1272, 2245  
6.6.302 and other rules - Life Insurance and Annuities Replacement, p. 1575  
6.6.801 and other rules - Annuity Disclosures, p. 16, 508  
6.6.1110 Determination of Reasonableness of Benefits in Relation to Premium Charged in Credit Disability and Credit Life Insurance, p. 1717  
6.6.1105 Allowable Exclusions and Restrictions, p. 1274, 2246  
6.6.4001 Valuation of Securities, p. 205, 639  
6.6.4102 Continuing Education Fees, p. 1600, 2247

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 2139  
6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 3174, 509

COMMERCE, Department of, Title 8

- 8.2.208 Renewal Dates, p. 1719, 2435

(Board of Alternative Health Care)

- 8.2.208 and other rules - Renewal Dates - Naturopathic Physician Continuing Education Requirements - Licensing by Examination - Definitions - Midwives Continuing Education Requirements - Licensure of Out-of-State Applicants - Direct Entry Midwife Protocol Standard List, p. 1460, 2038  
8.4.301 Fees, p. 431, 1121  
8.4.503 Direct-Entry Midwife Apprenticeship Requirements, p. 1933

(Board of Athletics)

8.8.2806 Fees, p. 433, 1506

(Board of Barbers)

8.10.405 Fee Schedule, p. 435, 2040

(Board of Cosmetologists)

8.14.814 Fees - Initial, Renewal, Penalty and Refund Fees,  
p. 439, 2043

(State Electrical Board)

8.18.407 Fee Schedule, p. 441, 1200

(Board of Hearing Aid Dispensers)

8.20.402 Fees, p. 443, 1765

8.20.408 and other rule - Unprofessional Conduct - Continuing  
Educational Requirements, p. 2350, 343

8.20.417 Definitions, p. 207

(Board of Landscape Architects)

8.24.409 Fee Schedule, p. 445, 1122

(Board of Medical Examiners)

8.28.420 and other rules - Fee Schedule - Fees, p. 447, 1766

8.28.1501 and other rules - Definitions - Post-Graduate  
Training Program, p. 2143

8.28.1508 Quality Assurance of Advanced Practice Registered  
Nurse Practice, p. 22, 1294

(Board of Funeral Service)

8.30.407 Fee Schedule, p. 450, 1201

(Board of Nursing)

8.28.1508 Quality Assurance of Advanced Practice Registered  
Nurse Practice, p. 22, 1294

8.32.301 and other rules - Nurse Practitioner Practice -  
Standards Relating to the Licensed Practical Nurse's  
Role in Intravenous (IV) Therapy - Prohibited IV  
Therapies, p. 1467

8.32.1409 Prohibited IV Therapies, p. 563, 680, 2437

8.32.1702 and other rules - Nursing Tasks That May Be  
Delegated - General Nursing Tasks That May Not Be  
Delegated - Nursing Tasks Related to Gastrostomy  
Feeding That May Be Delegated, p. 2150

(Board of Nursing Home Administrators)

8.34.414 and other rule - Examinations - Fee Schedule,  
p. 453, 1123

(Board of Optometry)

8.36.417 and other rules - Licensure of Out-of-State  
Applicants - Approved Programs or Courses -  
Therapeutic Pharmaceutical Agents - Approved Course  
and Examination - Approved Drugs, p. 2153

8.36.601 and other rule - Continuing Education Requirements -  
New Licensees, p. 3180, 511

8.36.804      Approved Drugs, p. 1187

(Board of Outfitters)

- 8.39.501      and other rules - Outfitter Licenses - Qualifications - Examinations - Outfitter Acting as Guide - Renewal - Amendment to Operations Plan - Inactive - Guide or Professional Guide License - Fees for Outfitter Operations Plan - N.C.H.U. - Guide or Professional Guide - Outfitter Records - Safety Provisions - Standards for Outfitters - Guides and Professional Guides - Unprofessional Conduct and Misconduct - Moratorium - Review of New Operations Plan - Proposed Expansion of Net Client Hunting Use Under Existing and New Operations Plans - Sale and Purchase of an Outfitting Operation, p. 2318
- 8.39.508      and other rules - Licensure--Renewal - Guide or Professional Guide License - Safety Provisions - Standards for Outfitters, Guides and Professional Guides - Unprofessional Conduct and Misconduct, p. 241, 809

(Board of Pharmacy)

- 8.40.401      and other rules - Practice of Pharmacy, p. 2353, 3103, 3200, 344
- 8.40.404      Fee Schedule, p. 455, 1124
- 8.40.608      and other rules - Renewals - Non-compliance - Application for Registration - Wholesale Drug Distributor Licensing, p. 1721, 2438
- 8.40.702      Definitions, p. 2330

(Board of Professional Engineers and Land Surveyors)

- 8.48.1105      Fee Schedule, p. 1936
- 8.48.1105      Fee Schedule, p. 457

(Board of Private Security Patrol Officers and Investigators)

- 8.50.437      Fee Schedule, p. 459, 2044

(Board of Psychologists)

- 8.52.616      Fee Schedule, p. 461, 1125

(Board of Public Accountants)

- 8.54.410      and other rule - Fee Schedule - Statement of Permit Holders, p. 463, 1203, 1508
- 8.54.416      and other rules - Licensure of Foreign-Trained Applicants - Credit for Formal Individual Study Programs - Basic Requirement, p. 2332

(Board of Real Estate Appraisers)

- 8.57.101      and other rule - Board Organization - Continuing Education, p. 1189
- 8.57.412      Fees, p. 465, 1657

(Board of Realty Regulation)

- 8.58.301      and other rules - Definitions - Applications - Fees - Inactive Licenses - Trust Account Requirements -



- Continuing Education - Grounds for License Discipline - General License Administration Requirements - Pre-licensing Education - License Renewal - Inactive Licenses-Reactivation - Continuing Property Management Education - Trust Account Requirements for Property Management - Grounds for License Discipline for Property Management Licensees - Foreign Land Sales Practices Act, p. 24, 405
- 8.58.415A Continuing Real Estate Education, p. 2337
- (Board of Respiratory Care Practitioners)
- 8.59.402 Definitions, p. 997
- (Board of Sanitarians)
- 8.60.413 Fees, p. 999, 2248
- (Board of Speech-Language Pathologists and Audiologists)
- 8.62.402 and other rules - Definitions - Supervisor Responsibility - Schedule of Supervision - Non-allowable Functions of Speech Aides - Functions of Audiology Aides, p. 3239, 408
- 8.62.407 and other rules - Qualifications for Probationary License - Fees - Unlicensed Person, p. 1470, 2249
- (Board of Veterinary Medicine)
- 8.64.401 and other rules - Definitions - Continuing Education - Unprofessional Conduct, p. 3185, 411
- 8.64.402 Fee Schedule, p. 467, 1126
- 8.64.508 and other rule - Unprofessional Conduct - Record-keeping Standards, p. 565, 1509
- (Building Codes Division)
- 8.70.101 and other rules - Building Codes Division, p. 1001, 1885
- (Weights and Measures Bureau)
- 8.77.103 Weights and Measures Bureau - NIST Handbook 44, p. 469, 1295
- 8.77.103 Weights and Measures Bureau - NIST Handbook 44, p. 325
- (Division of Banking and Financial Institutions)
- I-VI Deferred Deposit Lending, p. 1849
- (Board of County Printing)
- 8.91.301 and other rules - County Printing, p. 2339
- (Local Government Assistance Division)
- I 2000/2001 Treasure State Endowment (TSEP) Program, p. 2342
- I Administration of the 1999 Treasure State Endowment Program (TSEP), p. 1473
- I Administration of the 1999 Federal Community Development Block Grant Program, p. 3245, 1204, 1511

- 8.94.3001 and other rules - Monumentation of Surveys - Form, Accuracy, and Descriptive Content of Records Survey, p. 2156

(Board of Investments)

- 8.97.910 and other rules - INTERCAP Program, p. 2169  
8.97.1101 and other rules - Board of Investments, p. 1018

(Travel Promotion and Development Division)

- 8.119.101 Tourism Advisory Council, p. 471, 1296  
8.119.101 Tourism Advisory Council, p. 327

EDUCATION, Title 10

(Board of Public Education)

- I-CCLXXXIV and other rules - Content and Performance Standards for Literature, Writing, Speaking and Listening, Media Literacy, Science, Health, Technology, World Languages, Reading and Mathematics, p. 1030, 2440

(State Library Commission)

- 10.102.101 and other rules - Library Standards, p. 1724

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- 12.6.901 Limiting the Motor-Propelled Water Craft to No-Wake Speed from Porcupine Bridge to the Mouth of the Swan River, p. 1732, 1938  
12.9.801 Creating Game Damage Hunt Rosters, p. 473, 1297

(Fish, Wildlife, and Parks Commission and Department of Fish, Wildlife, and Parks)

- 12.3.123 and other rule - License Refunds, p. 43, 413

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-IV Solid Waste - Payment of Certain Abandoned Vehicle Removal Charges, p. 1791, 2452  
I-VI CECRA - Listing, Delisting and Ranking Rules for Comprehensive Environmental Cleanup and Responsibility Act (CECRA) Facilities, p. 1264, 2941, 837  
I-XIII and other rules - Comparable/Syngas Fuel Exclusion - Remedial Action Plans - Military Munitions - Hazardous Waste Management, p. 1940  
17.40.203 Wastewater Operator Certification, p. 1494, 1804  
17.56.101 and other rule - Underground Storage Tanks - Underground Storage Tank Repairs, p. 1496, 2046  
17.56.1001 Underground Storage Tanks - Underground Storage Tanks Fee Schedule, p. 1853

(Board of Environmental Review)

- I and other rules - Public Water Supply - Public Water and Sewage System Requirements, p. 578, 1895

- I Water Quality - Temporary Water Quality Standards for Daisy Creek, the Stillwater River, and Fisher Creek, p. 482, 1218
- I & II and other rules - Air Quality - Air Quality Transportation - General Conformity Determinations, p. 244, 1216
- 17.8.102 and other rules - Air Quality - Air Quality Incorporation by Reference Rules, p. 1191, 2250
- 17.8.301 and other rules - Air Quality - Maximum Achievable Control Technology (MACT) Approval for Hazardous Air Pollutants, p. 572, 1658
- 17.8.504 and other rule - Air Quality - Air Quality Permit Application Operation Fees, p. 1612, 2254
- 17.8.601 and other rules - Air Quality - Open Burning, p. 568, 1660
- 17.8.705 and other rules - Air Quality - De Minimis Changes that May Be Made to a Facility Without an Application to Revise the Facility's Air Quality Permit, p. 261, 1206
- 17.24.101 and other rules - Metal Mines - Metal Mines Reclamation Act, p. 2178
- 17.24.101 and other rules - Hard Rock - Hard Rock Mining Reclamation, p. 2376, 2994, 640
- 17.24.301 and other rules - Coal and Uranium Mining Program Rules for the Industrial and Energy Minerals Bureau, p. 2995, 811
- 17.24.303 and other rules - Coal and Uranium - Coal and Uranium Mining Organizational Changes, p. 1782
- 17.30.105 and other rule - Water Quality - Certification Options - General Prohibitions to Surface Water Quality Standards and Procedures, p. 1608, 2256
- 17.30.602 and other rules - Water Quality - Trigger Values p. 1603, 2275
- 17.30.602 and other rules - Water Quality - Montana Surface Water Quality Standards - Nondegradation - Ground Water Pollution Control System, p. 477, 1617, 2257
- 17.30.1341 Water Quality - Permit Requirements of Lagoons, p. 1198, 1661
- 17.38.215 Public Water Supply - Bacteriological Quality Samples for Public Water Supply Systems, p. 257, 1222
- (Department of Environmental Quality and Board of Environmental Review)
- 17.4.101 Incorporation by Reference of the Attorney General's Model Rules, p. 2173
- (Petroleum Tank Release Compensation Board)
- 17.58.101 and other rules - Procedures and Criteria for Compensation of Petroleum Tank Remedial Costs, p. 1475, 2279
- 17.58.336 and other rules - Review and Determination of Claims and Charges, p. 682, 1512

TRANSPORTATION, Department of, Title 18

- I-III        Setting Policy for Waiver and Suspension of Motor Fuel Penalties, p. 2666, 513
- I-IV        and other rules - Special Fuel Users Tax, Dealers and LPG Tax, p. 2797, 645, 1298
- I-V        Procedures for Dealers of Compressed Natural Gas (CNG) and Liquefied Petroleum Gas (LPG), p. 2671, 515, 651

CORRECTIONS, Department of, Title 20

- I-XLIV     Operation and Physical Condition of a Private Correctional Facility - Security, Safety, Health, Treatment and Discipline of Persons Confined in a Private Correctional Facility, p. 1276, 1902

JUSTICE, Department of, Title 23

- I            and other rules - Insurance Required Prior to the Public Display of Fireworks - Fire Code, p. 2190
- I-IV        Permitting the Referral of Department of Justice Debts to the Department of Administration or Other Agency Designated by Law, p. 399, 984
- 1.3.101     and other rules - Model Rules of Procedure - Amendment of the Sample Forms Attached to the Model Rules, p. 600, 1225
- 23.14.401   Adding Two Members to the Peace Officers Standards and Training Advisory Council, p. 1734, 2284
- 23.16.1802   and other rules - Responsible Party for Video Gambling Machine Taxes and Record Keeping, p. 1739, 2048

LABOR AND INDUSTRY, Department of, Title 24

- I-XI        and other rules - Workers' Compensation Administrative Assessment for the State Fiscal Years 1992 through 1999, p. 1859
- 24.11.442   and other rule - Unemployment Insurance Benefit Claims, p. 1856
- 24.16.9003   and other rule - Incorporation by Reference to Federal Davis-Bacon Wage Rates, p. 611
- 24.16.9007   Prevailing Wage Rates - Nonconstruction Services, p. 1289
- 24.16.9007   Montana's Prevailing Wage Rates - Non-construction Services, p. 615
- 24.30.102   Occupational Safety and Health Standards for Public Sector Employment, p. 617, 1291
- 24.35.202   and other rules - Independent Contractor Central Unit, p. 621, 684

LIVESTOCK, Department of, Title 32

- I & II       Inspector Examination - Certification, p. 47, 1299A

(Board of Livestock)

I-XI Chronic Wasting Disease, p. 265, 652

MILITARY AFFAIRS, Department of, Title 34

I-VI Administration of the Education Benefit Program for  
the Montana National Guard, p. 1619, 2051  
I-VI Administration of the Education Benefit Program for  
the Montana National Guard, p. 49

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.2.101 Department Model Procedural Rules, p. 2224  
36.12.801 and other rules - New Appropriation Verification  
Procedures, p. 1796, 2285  
36.14.502 Dam Safety - Hydrologic Standard for Emergency and  
Principal Spillways, p. 2031, 2226

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I & II and other rules - State Facility Reimbursement,  
p. 492, 1300  
I-IV and other rules - Nursing Facilities, p. 696, 1393  
I-V Independent Review of Health Care Decisions, p. 2344  
I-VII Use of Automated External Defibrillators, p. 1643,  
1913  
I-XXI Network Adequacy in Managed Care, p. 1627, 2052  
I-XXV and other rules - AFDC Foster Care, p. 964, 1514,  
2286  
I-XLI and other rules - Coverage and Reimbursement of  
Mental Health Services for Medicaid Eligible and  
Certain Other Low Income Individuals, p. 723, 1301,  
1806  
16.29.101 and other rules - Public Health Control Measures for  
Dead Human Bodies, p. 2428, 345  
16.30.801 and other rules - Control of Transmission of  
Infectious Diseases to Emergency Medical Service  
Providers, p. 488, 1127  
16.38.307 State Laboratory Fees for Analyses, p. 628, 1229  
20.11.111 State Facility Reimbursement, p. 1502, 1805  
37.12.310 and other rule - Laboratory License Fees - Duration  
of a License, p. 625, 1230  
37.70.406 and other rules - Low Income Energy Assistance  
Program (LIEAP), p. 1877  
37.70.406 and other rules - Low Income Energy Assistance  
Program, p. 2551, 414  
37.80.201 and other rules - Child Care Subsidy Programs,  
p. 1798, 2454  
37.80.202 Child Care Assistance, p. 685, 1378  
46.12.502A and other rules - Resource Based Relative Value  
Scale (RBRVS), p. 800, 1379  
46.12.503 and other rules - Inpatient Hospital Services,  
p. 1744, 2078  
46.12.503 and other rules - Inpatient Hospitals, p. 690, 1388  
46.12.572 and other rule - Ambulatory Surgical Centers,  
p. 944, 1516

- 46.12.601 and other rules - Medicaid Dental Services, p. 955, 1522
- 46.12.3215 Medicaid Health Plan Enrollment, p. 1624, 2080
- 46.20.106 and other rules - Montana Mental Health Access Plan, p. 3252, 355

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Establishing the Meaning and Effect of the "Landfill Closure Provision" in Class D Motor Carrier Authorities, p. 1291A, 2455
- I-III and other rules - Operator Service Providers, p. 1754, 2081
- I-V Unauthorized Product or Service Chargers on Telephone Bills, p. 1749, 2086
- I-VIII Implementing Senate Bill 406 ("Electricity Buying Cooperative Act") and House Bill 221 Pertaining to Electricity Default Suppliers - Electricity Default Supplier Licensing and Selection, p. 2228
- I-IX and other rule - Consumer Information and Protection Rules Application to Restructured Electric and Natural Gas Industries, p. 3191, 1233
- 38.5.3801 and other rules - Emergency Amendment and Adoption - Slamming, p. 362, 517, 1767
- 38.5.3801 and other rules - Slamming, p. 329, 1523

REVENUE, Department of, Title 42

- I-III Establishment of a Negotiated Rulemaking Committee Relating to Universal System Benefits Programs, p. 1761
- I-III and other rules - Class Eight Property Exemption - Depreciation Schedules for Personal Property, p. 2351
- I-V and other rules - Property Tax Assessment, p. 2385
- I-VII and other rules - Centrally Assessed Property, p. 2405
- I-VII Ethics of Department of Revenue Employees, p. 1651
- I-IX and other rules - Office of Dispute Resolution, p. 2374
- I-XII Universal System Benefits Programs, p. 2396
- I-XIII Emergency Adoption - Universal System Benefits Programs, p. 1662
- 42.12.106 and other rules - Liquor Licenses, p. 335
- 42.15.507 Elderly Homeowner Credit, p. 2035
- 42.20.454 and other rules - Real and Personal Property Tax Rules, p. 3263, 309

SECRETARY OF STATE, Title 44

- 1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2432
- 44.14.101 and other rule - Retention of Records Stored on Digital Media, p. 341, 1768

(Commissioner of Political Practices)

- 44.10.321 and other rules - Reporting of Contributions and Expenditures, p. 635, 2287
- 44.10.331 Limitations on Receipts from Political Committees, p. 2241