

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to definition of "alter" for mortgage licensees) NOTICE OF PROPOSED ADOPTION
)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On August 28, 2017, the Department of Administration proposes to adopt the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 31, 2017, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail banking@mt.gov.

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

NEW RULE I DEFINITION OF "ALTER" FOR MORTGAGE LICENSEES

(1) The word "alter" as used in 32-9-124(1)(l), MCA, means that loan documents may not be revised by:

- (a) using correction fluid, correction tape, or any other means of changing or covering over a date or signature not on the original;
- (b) inserting a signature or date not on the original; or
- (c) making any other change to a document.

(2) To correct an error in a loan document, the licensee shall either:

- (a) reprint the document, have it re-signed, and retain the original document noting in the file why the document was reprinted and re-signed; or
- (b) strike out the error, put the correct text beside it, and initial and date the change.

AUTH: 32-9-130, MCA

IMP: 32-9-124, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes this new rule because it has seen a number of cases recently in which mortgage brokers altered documents by using correction fluid, correction tape, and cutting and pasting signatures and dates on documents. The date on which documents are received by the borrower sets the clock running for purposes of federal rules requiring disclosures be made within a certain number of days after various forms have been received. The division has a zero-tolerance policy for the use of any means of

altering mortgage documents. Attempting to evade penalties for not complying with the date restrictions in federal law by altering dates or dates signed is unacceptable. The proper method to correct an incorrect entry is to either reprint the document and have it re-signed or to strike out the entry made in error, put the correct entry beside it, and initial and date the change. The division will view any attempt to alter documents using correction fluid, correction tape, or cutting and pasting as a violation of 32-9-124, MCA, and will seek enforcement penalties against any licensee who engages in this behavior.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., August 7, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., August 7, 2017.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate 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 directly affected has been determined to be 352 persons based on the 3,523 existing mortgage licensees.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed

or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

10. The department has determined that under 2-4-111, MCA, the proposed new rule will not significantly and directly affect small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 26, 2017.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.8.1501 and 18.8.1502	)	AMENDMENT
pertaining to Motor Carrier Services)	
Safety Requirements	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 7, 2017, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on July 28, 2017, to advise us of the nature of the accommodation that you need. Please contact Dennis Hult, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9237; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dhult@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

18.8.1501 MOTOR CARRIER SAFETY DEFINITIONS (1) remains the same.

(2) For purposes of intrastate commerce safety operations and subchapter 15 of these rules, the department adopts by reference the definitions found at 49 CFR 390.5 with the following clarifications:

(a) remains the same.

(b) "Farm vehicle" ~~means~~ or "covered farm vehicle" is defined in 61-1-101, MCA, and has the additional meaning of a commercial motor vehicle that is used within 150 miles of the farm and is:

(i) ~~controlled by a farmer~~ and operated by the farmer ~~or a person employed by the farmer as a private motor carrier of property~~ including operation by employees or family members of the farmer;

(ii) being used ~~to transport either in:~~

(A) ~~agricultural products~~ the transportation of the farmer's own ranch, farm, orchard, or dairy products from point of harvest to market; or

(B) ~~farm machinery, farm supplies, or both, to or from a farm~~ the transportation of farm supplies, commodities, or equipment to be used on the farmer's own ranch, farm, orchard, or dairy.

(iii) and (iv) remain the same.

(c) "Farmer" means any person ~~who operates a farm or is directly involved in the cultivation of land, crops, or livestock which are:~~

~~(i) owned by that person; or~~

~~(ii) under the direct control of that person as defined in 49 CFR 390.5.~~

(d) through (3) remain the same.

AUTH: 61-10-155, MCA

IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendment is necessary to clarify the definitions of "farm vehicle," "covered farm vehicle," and "farmer" for Motor Carrier Services safety operations. The proposed new definitional language will assist both MCS officers and the public in meeting federal and state requirements for safe operation of commercial motor vehicles.

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) through (2)(g) remain the same.

(h) For the purpose of 49 CFR 383.3 the commercial motor vehicle exception for operators of farm vehicles applies only to farm vehicles as defined in ARM 18.8.1501.

(i) For the purposes of 49 CFR 390.39, a covered farm vehicle is defined in ARM 18.8.1501.

AUTH: 61-10-155, MCA

IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendments are necessary to make the cited federal CFR sections and Montana Administrative Rules consistent in use of the terms "farm vehicles" and "covered farm vehicle," to avoid inconsistency or confusion in carrying out safety operations for commercial motor vehicles.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Dennis Hult, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9237; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dhult@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dennis Hult at the above address no later than 5:00 p.m., August 4, 2017.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate 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 directly affected has been determined to be 745 persons based upon the 7,454 currently registered farm vehicles in Montana.

7. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State June 26, 2017.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I and amendment of ARM) PROPOSED ADOPTION AND
18.6.202 pertaining to Outdoor) AMENDMENT
Advertising Control)

TO: All Concerned Persons

1. On August 4, 2017, at 10:00 a.m., the Department of Transportation will hold a public hearing in the Transportation Commission meeting room, room number 200 of the Montana Department of Transportation building, 2701 Prospect Ave., Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on July 28, 2017, to advise us of the nature of the accommodation that you need. Please contact Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail phurley@mt.gov.

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

NEW RULE I ADVERTISING ON TRANSIT SHELTERS AND BENCHES

(1) A transit outdoor advertising permit (transit advertising permit) must be obtained for commercial advertising on shelters or benches erected or placed along controlled routes. Transit advertising permits are prohibited on interstate routes.

(2) Shelters or benches eligible for transit advertising permits must be located within government-owned right-of-way, and must meet the following requirements:

(a) the applicant must be a local transit agency or governmental entity. Private applicants are not eligible for transit advertising permits;

(b) an application must include a department-issued encroachment permit or the equivalent local government permission allowing the shelter or bench to be located within the right-of-way. A copy must accompany the transit advertising permit application;

(c) an application must include local government approval on a form provided by the department. Applicants must comply with all applicable local regulations; and

(d) the applicant may submit multiple shelter or bench transit advertising permit applications simultaneously, and only one inspection fee is required for the applications within the same applicant's jurisdictional area.

(3) A shelter or bench located outside government-owned right-of-way is not

eligible for a transit advertising permit and must meet all applicable outdoor advertising statutes and rules for a general off-premise outdoor advertising permit. A shelter or bench granted a general outdoor advertising permit for a location outside right-of-way, must not be moved onto right-of-way, or is subject to immediate permit revocation by the department, and immediate removal of the shelter or bench under department right-of-way encroachment processes.

(4) A transit advertising permit may only be issued for a shelter or bench on controlled routes which are active fixed transit routes as established by the transit agency or local government, excluding routes or portions of routes used solely for inter-city transit. Upon the transit agency's or local government's discontinuance of any portion of an active route, transit advertising permits on the discontinued portion of the route must be relinquished by the permit holder, or revoked by the department.

(5) A transit advertising permit holder may enter an agreement to allow a third party to place advertising which complies with this rule on a shelter or bench, at the permit holder's discretion, and under the permit holder's permit number and authority.

(6) Shelter advertising signs may only be placed on the interior or exterior of the side shelter panel farthest from oncoming traffic, perpendicular to the road. The designated shelter panel may only display one sign on the interior, and one sign on the exterior, for a limit of two signs per shelter. Each sign must not exceed 24 square feet in size, and must not extend beyond the exterior limit of the shelter. One transit advertising permit is required per shelter.

(7) Bus bench advertising signs may only be placed on the front or rear of the bench back, excluding supports. The bench back may only display one sign on the front and one sign on the rear, for a limit of two signs per bench. Each sign must not exceed two feet in height and eight feet in length, for a maximum of sixteen square feet. One transit advertising permit is required per bus bench.

(8) Spacing requirements for a transit advertising permit include:

(a) permits must be located at least 500 feet from another transit advertising permit, on the same side of the controlled route; and

(b) a transit advertising permit will not be considered in determining the spacing required between other non-transit permitted off-premise advertising signs.

(9) A transit advertising permit is exempt from any rule requirements for sign distances from intersections.

(10) A transit advertising permit must comply with appropriate sign characteristic limitations found in ARM 18.6.231(3). Shelter and bench advertising may not include changeable electronic lighting.

(11) A shelter or bench must display a permanently attached transit advertising permit, visible to the traveling public.

(12) Existing shelter or bench advertising must comply with this rule within one year, or before [effective date of New Rule I], or the advertising will be deemed illegal.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-112, 75-15-113, MCA

REASON: Current state and federal regulations generally prohibit advertising within the state highway right-of-way, where most transit/passenger shelters and bus benches are located. Federal guidance states activities are permissible within the right-of-way on any highway system other than the interstate system if the State provides satisfactory assurances to Federal Highway Administration (FHWA) that such use is in the public interest and will not adversely affect the highway or interfere with the free and safe flow of traffic thereon.

Proposed New Rule I is necessary to address the public interest by allowing transit/passenger shelters and bus benches in the right-of-way to display commercial advertising. The shelters and benches provide a necessary service for the transit system patrons, but New Rule I will require the transit agency or local government to apply for and hold the transit advertising permit to show the shelter's or bench's use for the public good. The allowed advertising on those necessary shelters or benches will be able to provide revenue to the transit agency, local government, or third party with whom they contract, for maintenance of the structures. The transit agency or local government will also control the further grant or contract of the advertising program to any qualified supplier, as deemed necessary. New Rule I's limitation on advertising size and numbers will also control aesthetics along the highways.

The department has addressed the impact of transit/passenger shelter advertising on free flow of traffic and highway safety by reviewing crash reports in locations with existing advertising of this type within the State. No increase in crashes, or correlation with advertising distraction as a cause of a crash was identified. New Rule I's requirement for placement of a limited amount of advertising on a specific location within the shelter, or in limited sign size on benches, with prohibition of electronic or LED signs, will ensure the placement of this type of advertisement within the right-of-way does not interfere with the free flow of traffic or highway safety.

Proposed New Rule I will allow outdoor advertising on transit/passenger shelters or bus benches outside the government right-of-way to remain the same, and continue to require the grant of a general off-premise commercial outdoor advertising permit under all existing outdoor advertising statutes and rules.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

18.6.202 DEFINITIONS (1) through (5) remain the same.

(6) "Bus bench" or "bench" means a structure built for the dedicated purpose of providing seating for transit riders while waiting for a public transit vehicle. The term does not include benches erected as trail or street furniture unrelated to transit operations.

(6) through (38) remain the same, but are renumbered (7) through (39).

(40) "Shelter" means a structure built for the dedicated purpose of protecting transit riders from the elements while waiting for a public transit vehicle. The term

includes structures known as transit shelters or passenger shelters, intended for human occupancy, but does not include a structure erected for housing of buses or other vehicles.

(39) through (43) remain the same, but are renumbered (41) through (45).

(46) "Transit outdoor advertising permit" or "transit advertising permit" means a special use permit issued by the department for commercial advertising on a transit/passenger shelter or bus bench located within government-owned right-of-way, which qualifies under [New Rule I]. A transit outdoor advertising permit is exempt from certain administrative rule requirements in this chapter on qualification, application process, inspection fee, location, size, spacing, intersection distances, and certain sign characteristics, but must meet all requirements on those elements found in [New Rule I].

(44) through (47) remain the same, but are renumbered (47) through (50).

AUTH: 75-15-121, MCA

IMP: 75-15-103, 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

REASON: The proposed amendment is necessary to establish a definition for the terms "bus bench," "shelter" and "transit outdoor advertising permit" which are used in proposed New Rule I. The "bus bench" definition is necessary to distinguish between bus benches for use by transit riders, and other types of street furniture benches, which are not included as potential advertising locations in New Rule I. The "shelter" definition is necessary to distinguish between shelters erected for human occupancy, on which permitted advertising may be placed, and shelters erected to house buses or other vehicles, which are not included as potential advertising locations in New Rule I. The "transit outdoor advertising permit" definition is necessary to define a special use permit granted under New Rule I, with different requirements and certain administrative rule exemptions, which distinguish this permit from other general outdoor advertising permits issued by the department.

5. Concerned 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: Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

6. Carol Grell Morris, Department of Transportation, has been designated to preside over and conduct this hearing.

7. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request

form at any rules hearing held by the department. An Administrative Rules Notice Interested Person's List Request Form is located at the Department of Transportation's web site at the following address:
http://www.mdt.mt.gov/publications/docs/forms/mdt-leg-003_interested-persons-list.pdf.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

/s/ Barb Skelton
Barb Skelton
Chair
Transportation Commission

Certified to the Secretary of State, June 26, 2017.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.114.101 board organization,)	PROPOSED AMENDMENT AND
24.114.202 public participation,)	REPEAL
24.114.301 definitions, 24.114.401 fee)	
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TO: All Concerned Persons

1. On August 1, 2017, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) 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 Board of Architects and Landscape Architects (board) no later than 5:00 p.m., on July 25, 2017, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena,

Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdark@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: In compliance with 2-4-314, MCA, the Board of Architects and Landscape Architects (board) conducted a biennial review of their administrative rules to determine if any new rules should be adopted, or any existing rules should be amended or repealed. The board is proposing these rule amendments as a result of that biennial review and an accumulation of the board's review efforts. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.114.101 BOARD ORGANIZATION ~~(1) The Board of Architects and Landscape Architects consists of six members, including three licensed architects, two licensed landscape architects, and one public member.~~

(2) remains the same but is renumbered (1).

AUTH: 2-4-201, ~~37-65-204~~, MCA

IMP: 2-4-201, MCA

REASON: The board is amending this rule to eliminate language that is duplicated in 2-15-1761, MCA, which establishes the board and board composition. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.114.202 PUBLIC PARTICIPATION (1) The Board of Architects and Landscape Architects hereby adopts and incorporates by this reference the public participation rules of the Department of Commerce as listed in ARM Title 8, chapter 2, of this title except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in the licensing decisions and other contested cases as allowed by law.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASON: The board is amending this rule to correct the board name following the 2007 combination of the two boards. The board is also clarifying that while referencing the Department of Commerce public participation rules, the public is not entitled to participate in granting or denying licenses when the opportunity for a contested case hearing is required. Due process procedures involving board licensure decisions are addressed in Title 2, chapter 4, and Title 37, chapters 1, 65, and 66, MCA.

24.114.301 DEFINITIONS (1) "AIA" means the American Institute of Architects.

(2) "ARE" means the Architect Registration Examination, a proprietary exam developed and administered by NCARB.

(3) "AXP" means the Architectural Experience Program comprehensive experience requirement program formerly referenced as the IDP administered by NCARB.

(4) "CACB/CCCA" means the Canadian Architectural Certification Board/Conseil canadien de certification en architecture.

(1) remains the same but is renumbered (5).

(6) "CLARB record" means the CLARB verification of education, experience, examination, licensure history, and professional references.

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

(8) "HSW" means health, safety, and welfare continuing education as designated by the American Institute of Architects, American Society of Landscape Architects, Interior Design Continuing Education Council registries, or NCARB.

(3) remains the same but is renumbered (9).

(10) "LARE" means Landscape Architect Registration Exam, a proprietary exam developed and administered by CLARB.

(11) "NAAB" means National Architectural Accrediting Board.

(4) remains the same but is renumbered (12).

(13) "NCARB certificate" means evidence of meeting the NCARB requirements for character, education, training, examination, and registration by an NCARB member board.

(14) "NCARB record" means the NCARB verification and maintenance of a compilation of an applicant's education, experience, examination, and registrations.

~~(5)~~ (15) "Responsible control" means the amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects and landscape architects applying the required professional "standard of care-" including but not limited to an architect's integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation. Any licensed architect signing or sealing technical submissions not prepared by that architect but prepared under that architect's responsible control by someone not regularly employed in the office of the architect shall maintain and make available to the board upon request for at least five years following such signing and sealing adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation.

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

AUTH: 37-1-131, 37-1-319, 37-65-204, MCA

IMP: 37-1-131, 37-1-319, 37-65-103, 37-65-303, 37-66-304, MCA

REASON: The board is amending this rule to add clarifying definitions and acronyms of terms used throughout the administrative rules. The board is relocating and consolidating terminology from other rules, and initially defining others that are used throughout the chapter.

The board is amending (15) after concluding that the definition of responsible control required clarification and updating to address the types of activity that may result in a board determination of unprofessional conduct. The amended definition reiterates the standard of practice of maintaining documentation to support accepting technical submissions from someone other than an employee.

24.114.401 FEE SCHEDULE (1) through (1)(b) remain the same.

(c) Annual License renewal

55

(d) through (3) remain the same.

~~(4) Fee abatement for renewal fees is specified by ARM 24.101.301.~~

(5) remains the same but is renumbered (4).

AUTH: 37-1-131, 37-1-134, 37-65-204, MCA

IMP: 37-1-134, 37-1-141, 37-65-307, 37-66-309, MCA

REASON: The board is amending (1)(c) for consistency among terms used in the fee schedule. Additionally, the board is striking (4) as unnecessary, since ARM 24.114.408 adequately addresses fee abatement.

24.114.402 ARCHITECT SEAL ~~(1) Every licensed architect shall have a seal that contains the name of the architect, the city and state of the architect's place of business, the architect's Montana license number and the words "LICENSED ARCHITECT, STATE OF MONTANA".~~

~~(2) (1)~~ All technical submissions prepared by an architect must be stamped and signed with the architect's seal ~~or the seal of the firm~~. The permit set must bear the architect's original signature. Electronically generated seals and signatures are acceptable under this rule.

~~(3) When there is a partnership or other business entity of architects, the individual names and license numbers of members may appear on one seal.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-65-308, MCA

REASON: The board determined it is reasonably necessary to strike (1) since the composition of architects' seals is found in statute at 37-65-308, MCA. The board is deleting (3) as the board has no jurisdiction over partnerships or other business entities of architects. An architect seal is a requirement for the individual licensee.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.114.408 FEE ABATEMENT (1) The Board of Architects and Landscape Architects adopts and incorporates by reference the ~~September 24, 2004~~, fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

(2) A copy of ARM 24.101.301 is available by contacting the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board is amending this rule to correct the board name and remove the unnecessary, past adoption date of the referenced rule.

24.114.411 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an architect or landscape architect. ~~At a minimum, satisfactory~~ Satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: It has come to the department's attention that certain military personnel (reservists and National Guardsmen who have never been activated) do not receive a DD 214 upon discharge. Therefore, the board is amending this rule to allow submission of any discharge documentation that would outline military training, service, or education that could be considered equivalent to licensing requirements.

24.114.501 ARCHITECT EXAMINATION (1) Eligibility for admission to the ~~Architectural Registration Examination (ARE)~~ must be verified by the NCARB record and satisfied in accordance with the NCARB requirements. The requirements are available at www.ncarb.org.

(2) Applicants for the ARE must establish an NCARB record and:

~~(a) be enrolled in the Intern Development Program (IDP) by establishing a NCARB record or have completed the IDP and obtained a NCARB record; and~~

~~(b) hold a degree in architecture from a school of architecture, the degree curriculum of which was accredited by the National Architectural Accrediting Board (NAAB) not later than two years after graduation, or meet the alternate education criteria available on the NCARB web site; and~~

~~(c) submit an application for examination on the form prescribed by the department.~~

(a) submit an application for examination through the NCARB direct registration program;

- (b) meet the education standards requirements of NCARB either:
- (i) by holding a degree in architecture from a school of architecture, the degree curriculum of which was accredited by the NAAB or CACB/CCCA not later than two years after graduation or retained its accreditation without revocation for two years or less before graduation; or
 - (ii) by actively participating in a NAAB-accepted integrated path to architectural licensure option within a NAAB-accredited degree program; and
 - (c) either be enrolled in the AXP or have completed the AXP.
- (3) ~~Prior to application for licensure applicants shall:~~
- ~~(a) pass all sections of the ARE and request submittal to the board of all exam scores for every section of the exam passed. Applicants may retake any section of the examination that the applicant failed to pass in accordance with the NCARB requirements; and~~
 - ~~(b) complete all IDP requirements and obtain a complete NCARB record.~~
- (4) Examination records are confidential and not considered public records. The board may report applicants' examination scores to architectural registration boards in other jurisdictions or to NCARB.
- (5) The ARE is a proprietary examination developed and administered by NCARB. ~~Applicants who fail the examination are provided commentary on areas of weakness, along with notice of the failed examination. Neither the~~ The board ~~nor NCARB provides additional~~ does not provide examination review of any type.

AUTH: 37-1-131, 37-65-204, MCA
IMP: 37-1-131, 37-65-303, MCA

REASON: Following the rule review, the board is amending and reorganizing this rule to clearly set forth the current qualifications to apply for the exam and the process for doing so. The board concluded that the amendments will address confusion and questions from both licensing bureau staff and applicants, and provide a more user friendly format.

The board is amending (2) to reflect the name change of the experience program from IDP to AXP, as NCARB changed the name in 2016. Although the changes to (2) seem to add a new requirement to establish an NCARB record, the board notes that just being enrolled in the AXP or meeting NCARB education standards initially establishes that record.

The board is simplifying the exam registration process by transferring to the NCARB direct registration program. Staff informed the board the program is part of the NCARB record and free to exam applicants. Following this change, the board will no longer process exam applications or fees.

Additionally, the board is relocating specific licensure provisions to ARM 24.114.502.

24.114.502 ARCHITECT LICENSURE BY EXAMINATION (1) through (1)(b) remain the same.

- (c) submit the ARE scores from the applicant's designated state; ~~and~~
- (d) ~~meet all the requirements set forth in ARM 24.114.501~~ complete the AXP requirements; and

(e) obtain a complete NCARB record.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-65-301, 37-65-303, MCA

REASON: The board is amending this rule to clearly outline the requirements for architect licensure by examination. The board is removing the reference to ARM 24.114.501 as it relates to qualifying for the exam and will be addressed by the time an applicant reaches the licensing process. The addition of (1)(e) is not a new requirement as an established NCARB record simply outlines that the individual has met the AXP, passed the exam, and meets the education requirements. A complete NCARB record is not an additional burden but a single location where these completed requirement records are maintained.

24.114.503 LICENSURE OF APPLICANTS REGISTERED IN ANOTHER STATE (1) and (1)(a) remain the same.

(b) present proof the applicant is the holder of ~~a blue cover~~ an NCARB certificate issued by NCARB. ~~Applications for the certificate shall be sent to NCARB for processing;~~ and

(c) submit verification of ~~previous~~ licensure from the licensing entities in all states where the applicant is currently or has ever been licensed.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-304, 37-65-301, MCA

REASON: The board is amending (1)(b) to reference the current required NCARB certificate. A blue cover certificate is an antiquated, internal reference that is no longer commonly used.

It is the intent of the board, and is the current requirement, that applicants provide license verification from any jurisdiction where they currently hold, or have ever held a license. The board is amending (1)(c) to specify that and align with standardized department application procedure.

24.114.515 ARCHITECT EMERITUS STATUS (1) and (2) remain the same.

(3) An emeritus licensee who wants to hold an active license must:

(a) file a new license application, indicating they hold a current emeritus license;

(b) hold a complete NCARB record;

(c) provide evidence of 24 hours of CE; and

(d) pay all application fees.

AUTH: ~~37-1-131~~, 37-65-204, MCA

IMP: 37-65-311, MCA

REASON: The board is adding (3) to implement 37-65-311(4), MCA, by establishing the process to shift an emeritus license to active status. The statute allows emeritus licenses to be reissued to active, but does not yet state the necessary process.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.114.1401 LANDSCAPE ARCHITECT APPLICATIONS LICENSURE BY EXAMINATION (1) ~~An application for original licensure, license reinstatement, or licensure by endorsement must be made on a form provided by the department.~~

~~The application may be submitted online or by mail accompanied by the nonrefundable fee(s), and contain sufficient evidence that the applicant possesses the qualifications as set forth in Title 37, chapter 66, MCA, and these rules.~~

~~(2) (1) Applicants must submit a complete application form, the application fee, and the following information:~~

~~(a) remains the same.~~

~~(b) proof of education and professional experience established in ARM 24.114.1402, which must include:~~

~~(i) verification of completion of a post-secondary degree program education submitted directly from the source;~~

~~(ii) verification of previous licensure submitted directly from the licensing entities in all states where the applicant has been licensed;~~

~~(iii) (ii) experience detail sheets verified by the licensed design professionals as defined in ARM 24.114.1402, supervisor under whose direct supervision the applicant has worked; and~~

~~(iv) (iii) verification of successful completion of the landscape architect registration examination LARE.~~

~~(3) The board or its designee reviews complete applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications are returned to the applicant with a statement regarding incomplete portions.~~

~~(4) The applicant must correct any deficiencies and resubmit the application within 60 days or the application will be treated as voluntarily withdrawn. After a voluntary withdrawal, an applicant must submit an entirely new application and nonrefundable fee(s) to begin the process again.~~

~~(5) The department shall notify an applicant in writing of the results of the evaluation of the application within ten days of receipt of a complete application.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-301, 37-66-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule to simplify, reorganize, eliminate redundant language, and clearly set forth the requirements for landscape architect licensure by examination.

The board is amending (1)(a)(i) as the board does not require postsecondary education if appropriate experience is obtained, per ARM 24.114.1402. The board is further amending the rule to eliminate unnecessary provisions that are adequately addressed through department rule and standardized application procedures.

24.114.1402 EDUCATION AND EXPERIENCE REQUIRED FOR LANDSCAPE ARCHITECT LICENSURE (1) through (1)(b) remain the same.

(c) an applicant with a bachelor's degree other than in landscape architecture must have four years of practical experience in landscape architecture;

(d) and (e) remain the same.

(2) ~~Practical~~ At least two-thirds of the applicable practical experience must be gained under the direct supervision of a licensed ~~design professional as defined in (2)(d), and is subject to review and approval by the board~~ landscape architect. The remaining one-third of the applicable practical experience can be gained under the direct supervision of a licensed civil engineer, licensed architect, or a city planner certified by a nationally recognized certifying body (e.g., American Institute of Certified Planners).

(a) remains the same.

(b) "Direct supervision" means working conditions where a licensed landscape design professional, ~~regularly employed in the same physical location as supervises the applicant through personal contact and/or remote communication (e-mail, online markups, Internet), and~~ is directly responsible for all tactical and technical decisions on the applicant's work.

(c) "Year" means a total of 2,000 hours ~~comprised of:~~

~~(i) at least 35 hours per week for at least two continuous months; or~~

~~(ii) at least 20 hours per week for at least four continuous months.~~

~~(d) "Licensed design professional" means a licensed landscape architect for at least two-thirds of the applicable experience requirement. The remaining experience may be obtained under the direct supervision of a licensed civil engineer, licensed architect, or a city planner certified by a nationally recognized certifying body (e.g. American Institute of Certified Planners).~~

~~(3) All applicants for licensure must successfully pass the landscape architect registration exam.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-304, MCA

REASON: The board is simplifying and streamlining this rule for better organization and ease of use. The provisions of (2)(d) regarding acceptable practical experience are being incorporated into (2) for clarity.

The board is amending (1)(c) to provide the same level of detail regarding a bachelor's degree as in the other combinations of education and experience in this rule. This clarification will assist licensing staff in processing applications.

The board determined it is reasonably necessary to amend the definition of direct supervision to adapt to current landscape architecture practice. Noting that the changes are drawn from CLARB model language, the board concluded that it is no longer necessary to restrict the physical location of a supervisor because remote supervision will adequately protect the public.

The board is striking (2)(c)(i) and (ii) to remove archaic and unnecessary language that limits how LAR applicants obtain the necessary experience. The board notes that it has been difficult for applicants to meet such restrictive

requirements and to document such specific time periods. The board determined that allowing for more flexibility in gaining experience sufficiently protects the public.

The board is striking (3) as licensure by examination is adequately addressed in ARM 24.114.1401.

24.114.1403 LANDSCAPE ARCHITECT EXAMINATIONS (1) The LARE is the recognized and acceptable qualifying examination.

~~(1) (2) All candidates must schedule and sit for the landscape architect registration examination to be held at such time and place as the testing entity may designate. The location of the exam testing site and scheduled testing date will be established by the testing entity and may be found at www.clarb.org LARE through CLARB. The board has established no education or experiential prerequisites to examination, but applicants for licensure must meet the requirements of ARM 24.114.1402 prior to licensure.~~

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

~~(3) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, at 42 U.S.C. 12101, et seq., must be submitted to the testing entity prior to testing.~~

~~(4) Candidates must provide a picture form of identification before being admitted to the examination.~~

~~(5) The testing entity shall notify candidates in writing of the results of the examination.~~

~~(6) Candidates who fail the examination and wish to review their examination must contact the testing entity directly.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-304, MCA

REASON: The board is amending this rule to clearly identify the examination recognized and required for landscape architect licensure. Because the LARE is a nationally recognized exam, the board has no control over its administration and exam candidates must register directly with the exam provider. Further, it is the testing entity rather than the board who provides reasonable accommodations to exam candidates and notifies candidates of the outcome. The board is amending this rule accordingly.

24.114.1404 LANDSCAPE ARCHITECT LICENSURE BY ENDORSEMENT

(1) Applicants for a landscape architect license by endorsement must submit an application to the board and provide written verification of ~~prior licensure in~~ another state or jurisdiction from the licensing entities in all jurisdictions where the applicant currently holds or has ever been licensed. The verification must include:

~~(a) Verification of prior licensure must disclose the date of licensure and the specific current educational and experiential experience requirements for licensure in the jurisdiction.; and~~ The applicant must submit copies of pertinent statutes and rules of licensure from the jurisdiction of original licensure to the board.

~~(b) Verification of prior licensure must disclose whether the licensee has pending or completed discipline in any jurisdiction of licensure.~~

(2) remains the same.

(3) The board ~~shall~~ will evaluate the current licensing requirements of the jurisdiction where the applicant currently holds a license and determine whether the education and experience qualifications for original licensure are substantially equivalent to the Montana qualifications.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-1-304, 37-66-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with and clarify the provisions of 37-1-304(1), MCA, regarding licensure of individuals who hold current licenses elsewhere. The amendments correctly provide that applicants must provide license verification from every state where they currently hold or have ever held a license. The amendments to (3) clarify that the board will evaluate the current licensing requirements of the jurisdiction where an applicant is licensed to determine substantial equivalency with Montana's present standards.

24.114.1410 LANDSCAPE ARCHITECT SEAL (1) Every licensed landscape architect must have a seal that contains the name of the landscape architect, the landscape architect's Montana license number, the signature of the licensed landscape architect ~~who applied the seal,~~ and the words "LICENSED LANDSCAPE ARCHITECT, STATE OF MONTANA."

(2) through (4) remain the same.

AUTH: 37-65-204, MCA

IMP: 37-66-308, MCA

REASON: The board is amending this rule to eliminate unnecessary language relating to the landscape architect seal design as it adds nothing to the rule.

24.114.2105 ARCHITECT CONTINUING EDUCATION REQUIREMENTS

(1) ~~Beginning January 1, 2015, in addition to all other requirements for renewal, each Active licensed architect architects shall obtain at least 12 hours of HSW continuing education (CE) annually to renew the license every calendar year by December 31.~~

(a) Licensees who have been granted emeritus ~~or other similar honorific~~ status are exempt from the CE requirements.

(b) remains the same.

(2) ~~Continuing education hours shall be reported as follows:~~

(a) ~~Licensees shall complete and submit renewal forms certifying that licensees completed will be required to affirm their understanding of the basic requirement of 12 hours of continuing education completed during the calendar year immediately preceding the calendar year in which licensees are renewing annual renewal. The CE requirement is based on a calendar year, beginning on January 1 and ending December 31 of each year.~~

~~(b) Failure to comply with continuing education requirements may result in disciplinary action.~~

(3) Qualified CE courses must be formal group or self-study courses designed to increase or update the knowledge and professional competence of architects in technical and professional subjects related to the practice of architecture that safeguard the public's health, safety, and welfare, as follows:

(a) remains the same.

~~(b) at least 75 percent of any given course's content and instructional time must be devoted to health, safety, and welfare subjects related to the practice of architecture;~~

~~(c) (b) provided by qualified individuals or organizations approved by the American Institute of Architects Continuing Education System, Landscape Architect Continuing Education System, or Interior Design Continuing Education Council; and~~

~~(d) (c) included health, safety, and welfare at least 75 percent of the course content and instruction time must be devoted to HSW subjects such as technical and professional subjects necessary for proper evaluation, design, construction, and utilization of buildings and the built environment that are within the following enumerated areas:~~

~~(i) through (x) remain the same.~~

~~(4) Continuing education may be acquired at any location, whether direct contact or distance learning through qualified course sponsors. The department will not pre-approve CE courses.~~

(5) All licensees shall retain course completion certificates or AIA CE transcripts for a minimum of six two years, for auditing purposes. Course completion certificates must contain all of the following:

(a) through (d) remain the same.

~~(e) state-assigned approval organization's course approval number, if applicable; and~~

~~(f) remains the same.~~

~~(6) Continuing education hours may not be carried over to a future calendar year.~~

~~(7) For quality assurance and evaluation purposes, department or board representatives may audit CE courses for content without cost. Such representatives are not eligible for and may not receive certificates of completion.~~

~~(8) Beginning in 2016, the department may conduct an annual random audit of all licensees for CE compliance following the licensee renewal process indicated in (2).~~

~~(a) (6) Audited licensees must furnish to the department certificates of completion or other documentation AIA CE transcripts to verify completion of the 12-hour CE requirement.~~

~~(b) Failure to provide certificates of completion when audited constitutes unprofessional conduct and may result in disciplinary proceedings against the licensee.~~

~~(c) Licensees shall retain course completion certificates for a minimum of six years for auditing purposes.~~

~~(9) All licensees reactivating expired licenses must submit documentary proof of meeting CE requirements required to become active.~~

~~(10) If a licensee does not file a timely renewal application and thereafter files a late renewal application, the late renewal application must contain documentary proof the licensee met the CE requirements incorporating the year prior to the renewal application year.~~

AUTH: 37-1-131, 37-1-319, ~~37-65-204~~, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: The board is amending this rule throughout to eliminate a past enactment date, simplify and streamline for clarity and ease of use, delete duplicate provisions, and eliminate unnecessary or confusing language.

Because the board does not recognize other honorific statuses, the board is amending (1)(a) to address confusion and clearly identify emeritus as the only CE-exempt architect license status.

Following a recommendation by department legal staff, the board is amending (2) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The amendments align with a standardized department procedure by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (3) to clearly delineate the qualified individuals or organizations approved to provide CE. These amendments address questions and confusion from providers, licensees, and the department audit unit.

The board is amending (5) to reduce the retention time for CE certificates from six to two years. Because CE audits only encompass CE one year back, it is unnecessary to require retention longer than two years.

The board is striking (6) as unnecessary since the rules require 12 hours each year of qualified CE. It is reasonably necessary to strike the CE audit provisions from this rule as auditing is a department function and not individual to this board. The board notes that audit processes and reactivation of expired licenses are adequately addressed in statute and standardized department procedure.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.114.2301 UNPROFESSIONAL CONDUCT (1) through (1)(o) remain the same.

(p) failure to comply with the deadline and documentation reporting requirement of a CE audit;

(p) and (q) remain the same but are renumbered (q) and (r).

AUTH: 37-1-131, 37-1-319, ~~37-65-204~~, MCA

IMP: 37-1-131, 37-1-316, MCA

REASON: The board is amending this rule by adding failure to comply with CE audit requirements as unprofessional conduct and grounds for license discipline. This has long been the intent of the board; the board is proposing this amendment to provide

clear notice to all licensees. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.114.2402 SCREENING AND ADJUDICATION PANELS (1) remains the same.

~~(2) The screening panel reviews all complaints related to unprofessional conduct to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information.~~

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

~~(4) The adjudication panel issues all final orders in disciplinary proceedings involving licensees.~~

AUTH: 37-1-131, ~~37-65-204~~, MCA

IMP: 37-1-131, 37-1-307, MCA

REASON: The board is amending this rule to eliminate unnecessary language that is already in statute. The duties and responsibilities of the screening panel and adjudication panel are specified under 37-1-307, MCA. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

5. The board proposes to repeal the following rules:

24.114.406 SOLICITATION OF BUSINESS BY NONRESIDENT ARCHITECTS

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-301, MCA

REASON: The board is repealing this rule after determining that it is a violation of board statute to allow an unlicensed person to solicit business without a license. It is confusing to the public and can jeopardize the health, safety, and welfare of Montana consumers to have unlicensed individuals soliciting business prior to obtaining a license. Without a license, the board can't determine if the individual holds the proper education and experience to protect the public's health, safety, and welfare. Additionally, the board is not aware of anyone who has attempted to offer services under this section.

24.114.510 ARCHITECTS-IN-TRAINING

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-301, MCA

REASON: The board determined it is a violation of board statute to allow an unlicensed person to use the term "architect" or any similar term, when not holding a license, and is repealing this rule. It is confusing to the public and may jeopardize

the health, safety, and welfare of Montana consumers when unlicensed individuals use a restricted title prior to licensure.

24.114.2101 RENEWALS

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-1-141, MCA

REASON: The board is repealing this rule as it does not add any additional clarity to the renewal requirement. All of the information and requirements for renewal are found elsewhere in rule and standardized department procedure.

24.114.2103 REPLACEMENT LICENSES

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, MCA

REASON: The board is repealing this rule as outdated as license replacements are issued within a standardized department process for all licensing boards.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdark@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

7. An electronic copy of this notice of public hearing is available at architect.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Architects and Landscape Architects, 301 South Park

Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdark@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.114.101, 24.114.202, 24.114.301, 24.114.401, 24.114.402, 24.114.408, 24.114.411, 24.114.501, 24.114.502, 24.114.503, 24.114.515, 24.114.1401, 24.114.1402, 24.114.1403, 24.114.1404, 24.114.1410, 24.114.2105, 24.114.2301, and 24.114.2402 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.114.406, 24.114.510, 24.114.2101, and 24.114.2103 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; facsimile (406) 841-2305; or to dlibsdark@mt.gov.

11. Grace Berger, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, PRESIDENT

/s/ DARCEE L. MOE

Darcee L. Moe

Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 26, 2017.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.189.601 application procedures,) PROPOSED AMENDMENT
24.189.602 exemptions, 24.189.604)
minimum standards, 24.189.625)
licensure of foreign-trained)
psychologists, 24.189.810 competency,)
24.189.813 limits of confidentiality,)
24.189.2104 continuing education)
program options, 24.189.2107)
continuing education implementation,)
and 24.189.2305 practice of psychology)

TO: All Concerned Persons

1. On August 1, 2017, at 11:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) 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 Board of Psychologists (board) no later than 5:00 p.m., on July 25, 2017, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibspsy@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.189.601 APPLICATION PROCEDURES (1) remains the same.

(a) Persons seeking licensure must ~~apply on the board's official forms which may be obtained through~~ submit a completed application on forms prescribed by the department.

(b) Completed applications shall be delivered to the department, accompanied by the application fee, at least 90 days in advance of the examination dates. The examination dates can be found on the board's web site.

(c) Applicants will be notified in writing of any deficiencies in their applications. ~~If the requested information is not received by the board to remedy such deficiencies within six months of the date of the written notice, the application shall be deemed to have been withdrawn.~~

(d) An application must be completed for final board review no more than 18 months after the board receives it or it will expire and a new application and fee will be required. If a temporary practice permit is issued, the application will not expire under this provision until the latter of:

- (i) the temporary practice permit's expiration date;
- (ii) the third failed attempt at the oral examination; or
- (iii) 18 months after the application is submitted.

(e) An applicant applying under 37-17-302(3)(c), MCA, shall submit an application to the board office. The board office will notify the applicant when the application is complete for purposes of review by ~~the Association of State and Provincial Psychology Boards, and the applicant must then submit the curriculum review fee, which is set by the Association of State and Provincial Psychology Boards, directly to the Association of State and Provincial Psychology Boards a~~ board-approved evaluator. The applicant must then submit the curriculum review fee directly to the evaluator. When the ~~Association of State and Provincial Psychology Boards~~ evaluator's recommendation is received in the board office, the application will be scheduled for board review.

(2) A completed application file consists of the following:

- (a) a completed application form with the appropriate fee(s);
- (b) through (f) remain the same.

(g) if applicable, the ~~Association of State and Provincial Psychology Boards~~ evaluator's recommendation as to whether the applicant's course of studies meets minimum standards specified in ARM 24.189.604.

(3) through (6) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-101, 37-1-131, 37-17-302, MCA

REASON: The board determined it is reasonably necessary to generally amend this rule to address application procedure questions from applicants and licensing bureau staff. Clearly delineating the requirements will reduce staff time needed to answer questions and will further streamline the licensure process.

The board is striking an outdated timeline from (1)(c) as the application processes are controlled by standardized department procedures.

The board is amending (1)(e) and (2)(g) because the current board-approved evaluator is no longer able to continue in that function and there are other evaluators able to provide the service. Rather than amending the rules every time the board identifies a qualified evaluator, the board is amending these sections to allow flexibility in approving evaluators as needed. The board will maintain a list of approved evaluators, and the list will be available to all applicants.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.189.602 EXEMPTIONS (1) through (3) remain the same.

(4) "Qualified" members of other professions under 37-17-104(1)(a) and (2), MCA, for purposes of administering tests and making evaluations or assessments means only those individuals who are licensed by:

(a) remains the same.

(b) the Board of ~~Social Work Examiners and Professional Counselors as Licensed Clinical Social Workers and Licensed Clinical Professional Counselors Behavioral Health~~ and who meet the qualifications set by that board in compliance with 37-17-104, MCA.

AUTH: ~~37-1-131~~, 37-17-202, MCA

IMP: 37-17-104, MCA

REASON: The board is amending this rule to update the board's name as changed by Senate Bill 22 in 2015. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.189.604 MINIMUM STANDARDS (1) and (2) remain the same.

(3) If the applicant is applying based on 37-17-302(3)(c), MCA, the applicant's course of studies must meet the minimum standards specified in this rule. The course of studies must be ~~evaluated by the Association of State and Provincial Psychology Boards~~ assessed by a board-approved evaluator. The board shall consider, but is not bound by, the recommendation of the Association of State and Provincial Psychology Boards when determining whether the course of studies meets minimum standards. A fee may be required by the evaluator and shall be paid by the applicant to the evaluator.

(4) remains the same.

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: The board is amending this rule to align with amendments proposed to ARM 24.189.601 in this notice. The current board-approved evaluator is no longer able to continue in that function and there are other evaluators able to provide the service. Rather than amending the rules every time the board identifies a qualified evaluator, the board is amending this rule to allow flexibility in approving evaluators as needed. The board will maintain a list of approved evaluators, and the list will be available to all applicants.

The board further concluded it is important to advise applicants with non-APA accredited courses of studies that the expense of the additional evaluation is borne by the applicant. Current applicants are already paying for such an evaluation and this change merely places the requirement in rule.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.189.625 LICENSURE OF FOREIGN-TRAINED PSYCHOLOGISTS

(1) remains the same.

(2) In addition, foreign-trained applicants shall provide documentation of receipt of a doctoral degree in clinical psychology with educational standards substantially equivalent to those established by a graduate program approved by the American Psychological Association, as evidenced by the ~~evaluation of educational~~

credentials by the National Register of Health Service Providers in Psychology, Inc., 1120 G Street NW, Suite 330, Washington, DC, 20005, www.nationalregister.org assessment of a board-approved evaluator. ~~A fee is required by this service and~~ If a separate fee is required for this service, the fee shall be paid by the applicant. Final approval of the substantial equivalence of the educational standards lies with the board.

(3) remains the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, 37-17-309, MCA

REASON: See REASON for ARM 24.189.604.

24.189.810 COMPETENCY (1) remains the same.

~~(2) Psychologists performing parenting plan evaluations must comply with the board's rules regarding unprofessional conduct.~~

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

~~(4) Psychologists may only operate within their areas of competence and shall seek appropriate supervision when necessary.~~

~~(5) A psychologist must understand the construction/administration/interpretation of the test procedures the psychologist employs.~~

~~(6) Psychologists must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.~~

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

~~(8) The psychologist shall be aware of personal and societal biases and engage in nondiscriminatory practice. The psychologist shall be aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.~~

(9) and (10) remain the same but are renumbered (4) and (5).

~~(11) Psychologists shall recognize and state any limitations of their assessments and reports.~~

(12) remains the same but is renumbered (6).

AUTH: 37-1-131, 37-1-136, 37-17-202, MCA

IMP: 37-1-136, 37-17-202, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the board's conclusion that these provisions should apply to all psychologists and not just parenting plan evaluators. As a result, the board is relocating the provisions to ARM 24.189.2305 regarding the general practice of psychology. The reorganization will better protect the public health and safety by applying clear standards to all psychologists. Additionally, (2) is stricken as unnecessary because all licensees are subject to the unprofessional conduct rules.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.189.813 LIMITS OF CONFIDENTIALITY (1) through (4) remain the same.

~~(5) Psychologists shall provide judges, attorneys and other appropriate parties with access to the results of the evaluation, but make reasonable efforts to avoid the release of notes, test booklets, structured interview protocols and raw test data to persons untrained in their interpretation. If legally required to release such information to untrained persons, psychologists shall first offer alternative steps such as providing the information in the form of a report, or releasing the information to another psychologist who is qualified in the interpretation of the data and who will discuss or provide written interpretations of the data with the person(s) who are seeking the information.~~

(6) and (7) remain the same but are renumbered (5) and (6).

AUTH: 37-1-131, 37-1-136, 37-17-202, MCA

IMP: 37-1-136, 37-17-202, MCA

REASON: See REASON for ARM 24.189.810.

24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

(1) Acceptable continuing education may be chosen from (a) through (e). ~~No more than 30 of the total continuing education units required can be met by (b) and up to 15 continuing education units can be met by (c).~~

(a) Acceptable continuing education includes:

(i) ~~Any American Psychological Association-approved, any Montana Psychological Association-approved, or a PESI-approved~~ continuing education activity or program for psychologists that meets ARM 24.189.2101(3)(a) through (c) will qualify for continuing education credit.

(ii) through (1)(e) remain the same.

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-306, 37-17-202, MCA

REASON: The board is amending this rule to clarify the board-approved continuing education (CE) courses for licensees and for department audit staff. The board reviewed its approved CE courses and agreed that it is reasonably necessary to add these approved providers as qualified to provide CE courses. This change will provide additional preapproved courses for licensees to choose from when selecting CE and will help streamline the CE audit process. Additionally, the board is striking the second sentence in (1) as unnecessarily duplicative as the provisions are stated adequately in (1)(b) and (c).

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION (1) remains the same.

(2) A licensed psychologist must earn at least 40 continuing education credits during two consecutive calendar years. ~~Continuing education activities and courses taken after January 1, 1991, will be accepted by the Board of Psychologists.~~

Continuing education credit shall be reported as follows:

(a) Licensees with even-numbered licenses shall ~~submit~~ obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each even-numbered calendar year. Licensees in this category will not report continuing education on the odd-numbered years but must renew their licenses each year.

(b) Licensees with odd-numbered licenses shall ~~submit~~ obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each odd-numbered calendar year. Licensees in this category will not report continuing education on the even-numbered years but must renew their licenses each year.

(c) remains the same.

(d) All licensed psychologists must ~~submit attestation~~ affirmation of understanding to the board on the appropriate year's license renewal that they ~~have obtained the required continuing education~~ understand their duty to comply with the continuing education requirements established by this subchapter for maintaining their license. The board may randomly audit up to 50 percent of the licensees attesting to continuing education. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. Notices of continuing education audit will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure can be used to meet the continuing education requirements for the next continuing education reporting period. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.

(e) remains the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-17-202, MCA

REASON: It is reasonably necessary to strike the provision from (2) as outdated and no longer necessary. The board is further amending this rule to align with current Montana law regarding continuing education (CE) requirements at 37-1-306(2), MCA. The change from an affidavit of completion to an affirmation of understanding is consistent with the statutory requirement that prohibits auditing or requiring proof of CE or certification as a precondition for license renewal. This clarification will also assist the standardized department CE audit process in enforcing the board's CE requirements.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.189.2305 PRACTICE OF PSYCHOLOGY (1) through (3) remain the same.

(4) Psychologists may only operate within their areas of competence and shall seek appropriate supervision when necessary.

(5) A psychologist must understand the construction/administration/interpretation of the test procedures the psychologist employs.

(6) Psychologists must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.

(7) The psychologist shall be aware of personal and societal biases and engage in nondiscriminatory practice. The psychologist shall be aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.

(8) Psychologists shall recognize and state any limitations of their assessments and reports.

(9) Psychologists shall provide judges, attorneys, and other appropriate parties with access to the results of the evaluation, but make reasonable efforts to avoid the release of notes, test booklets, structured interview protocols, and raw test data to persons untrained in their interpretation. If legally required to release such information to untrained persons, psychologists shall first offer alternative steps such as providing the information in the form of a report, or releasing the information to another psychologist who is qualified in the interpretation of the data and who will discuss or provide written interpretations of the data with the person(s) who are seeking the information.

(10) Psychologists shall avoid dual relationships and other situations which might produce a conflict of interest.

(11) Psychologists shall inform all participants, including clients, as to the limits of confidentiality which can be expected with regard to any information they may provide to the psychologist over the course of the evaluation. This includes the limits of confidentiality applicable to the general practice of psychology, such as a duty to warn in instances of possible imminent danger to a participant or to others, or legal obligations to report suspected child or elder abuse.

(12) Psychologists shall not commit an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of psychology.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-17-101, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions considered by the board as unprofessional conduct for all Montana licensed psychologists. The board proposes relocating (4) through (9) from ARM 24.189.810 and 24.189.813, which currently apply only to parenting plan evaluators. The board concluded that these provisions are basic ethical obligations and should apply generally to all psychologists, not just those acting in cases of

parenting plans. These amendments will further the board's protection of the public health, safety, and welfare.

The board is adding (10) and (11) as drawn from ARM 24.189.807(1) and 24.189.813(1), respectively. The board determined these also are basic ethical standards applicable to all psychologists and that application of these provisions to all licensees will allow the board to better protect public health, safety, and welfare. The amendments will help clarify expectations of licensees so licensees do not place clients at risk or confuse them.

The board is adding (12) following the screening panel's recent review of a complaint involving sexual misconduct. While the acts did constitute unprofessional conduct under the board's statutes and rules, the board concluded that adding this section creates a clear rule for licensees to abide by and protects public health, safety, and welfare.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibspsy@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

5. An electronic copy of this notice of public hearing is available at www.psy.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibspsy@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.601, 24.189.602, 24.189.604, 24.189.625, 24.189.810, 24.189.813, 24.189.2104, 24.189.2107, and 24.189.2305 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibspsy@mt.gov.

9. L'Joy Griebenow, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
JAMES MURPHEY, PH.D, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 26, 2017.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED AMENDMENT
of ARM 32.3.212 additional)	
requirements for cattle,	)	NO PUBLIC HEARING
32.3.212B importation of cattle	)	CONTEMPLATED
from Mexico, 32.4.201)	
identification of alternative)	
livestock with the exclusion of)	
omnivores and carnivores, and)	
32.4.1302 requirements for)	
mandatory surveillance of)	
Montana alternative livestock)	
farm cervidae for chronic wasting)	
disease)	

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on August 1, 2017, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) through (3) remain the same.

(4) Test-eligible cattle originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test within 60 days prior to importation if they:

~~(a) are M-branded; or~~

~~(b) are Mx-branded; or~~

~~(c)~~ (a) have been in contact or exposed to M-branded, Mx-branded, or other cattle originally from Mexico; or

~~(d)~~ (b) are sexually intact dairy cattle, except:

(i) dairy cattle who originate directly from an accredited tuberculosis free herd; or

(ii) dairy cattle less than six months of age accompanied by a tuberculosis test-negative dam.

(5) through (7) remain the same.

(8) Test eligible M-branded or Mx-branded cattle imported into Montana require the following:

(a) a negative tuberculosis test within 60 days prior to importation; and

(b) proof of a whole herd negative tuberculosis test on the birth herd of origin.

(8) through (14) remain the same, but are renumbered (9) through (15).

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, 81-2-704, MCA

32.3.212B IMPORTATION OF CATTLE FROM MEXICO (1) All M-branded, Mx-branded, and other cattle or bison two months of age and older originating directly from Mexico (imported into the U.S. within 60 days) require ~~two negative TB tests 60-120 days apart. The first negative test can be the U.S. entry test. The second negative TB test must be performed by a USDA-APHIS VS accredited veterinarian and must be within 60 days prior to importation into Montana;~~

(a) a whole herd negative tuberculosis test on the birth herd of origin;

(b) a negative tuberculosis test performed by a USDA – APHIS VS accredited veterinarian within 60 days prior to importation; and

(c) a negative tuberculosis test within 60-120 days prior to importation, unless the negative test on the birth herd of origin falls within this timeframe.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, 81-2-703, MCA

Reason: The department proposes to add a whole herd negative tuberculosis test on the birth herd of origin on importation of cattle from Mexico because the Chairmen of the Agriculture Committees of the 65th Montana Legislature requested the department increase the testing requirements for M-branded cattle imported into Montana over concerns of potential risk of the introduction of tuberculosis into Montana.

Sections of ARM 32.3.212 and 32.3.212B have been reorganized for clarity. Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority and implementation.

32.4.201 IDENTIFICATION OF ALTERNATIVE LIVESTOCK WITH THE EXCLUSION OF OMNIVORES AND CARNIVORES (1) and (2) remain the same.

(3) Under the authority of 87-4-414, MCA, and 9 CFR 55 and 81, each alternative livestock will be marked with two forms of official identification approved by the department. One approved method of identification will be the Montana official eartag.

(a) Montana official eartags must be applied by a department-designated agent. Official ear tags will be issued to and applied by alternative livestock veterinarians or other department-designated agents. Alternative livestock veterinarians may choose to delegate authority to apply tags to an alternative

livestock licensee within the context of a valid veterinarian-client-patient-relationship. In the circumstance that a licensee applies tags to alternative livestock the following conditions must be met:

(i) The alternative livestock licensee may only apply tags to their own animals in herds that have achieved CWD certified status as defined in ARM 32.4.1303.

(ii) The alternative livestock licensee may apply tags to calves born in the same year as the tagging event. All calf tagging must be completed and reported to the Department of Livestock prior to January 1. Tagging information must be reported to the Department of Livestock on an official department form within five days of the tagging event. If the alternative livestock licensee requests an extension to the January 1 tagging deadline a veterinarian must then apply the tags.

(iii) The alternative livestock licensee may apply replacement tags or tags to adult animals. The animal(s) must have one official tag in place prior to application of the replacement tag.

(b) through (5) remain the same.

AUTH: 87-4-422, MCA

IMP: 87-4-422, MCA

32.4.1302 REQUIREMENTS FOR MANDATORY SURVEILLANCE OF MONTANA ALTERNATIVE LIVESTOCK FARM CERVIDAE FOR CHRONIC WASTING DISEASE (1) and (2) remain the same.

(3) Upon the discovery of dead cervids, the licensee must immediately request an inspection of the alternative livestock as required by ARM 32.4.301. At the time of the inspection of the dead animal, the alternative livestock veterinarian shall remove the currently required tissue samples and/or specimens and submit them to a department-approved laboratory for testing for chronic wasting disease (CWD).

(a) An alternative livestock licensee with a valid veterinarian-client-patient-relationship with an alternative livestock veterinarian may collect CWD samples from a dead cervid if the licensee has been trained in sample collection by the alternative livestock veterinarian. Licensees may only collect samples from animals from CWD certified status herds owned by the licensee.

(i) Training for CWD sample collection will involve the veterinarian supervising the licensee through collection of CWD samples from at least two animals prior to the licensee being allowed to collect samples unsupervised.

(ii) If a licensee collects CWD samples they must submit the currently required tissue samples to an alternative livestock veterinarian along with the animal's ear(s) containing official identification tags and tattoo.

(iii) The alternative livestock veterinarian will be responsible for submitting CWD samples to a department-approved laboratory for testing as well as completing an inspection certificate for submission to the department along with the official identification tags removed from the ear(s).

(iv) If a licensee collects a sample that is unsuitable for CWD testing due to poor sample collection technique, the licensee must be re-trained by an alternative livestock veterinarian before being allowed to collect any further CWD samples. If a licensee continues to collect unsuitable samples after re-training the

licensee will no longer be able to collect CWD samples and the CWD certified status of their herd may be reduced.

- (a) through (d) remain the same, but are renumbered (b) through (e).
- (4) and (5) remain the same.

AUTH: 81-2-103, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: The Animal Health Division received a request from an alternative livestock producer to consider allowing producers to apply tags to alternative livestock and collect samples for CWD submission. Currently only an alternative livestock accredited veterinarian or other department designated agent may perform those tasks. After consulting with other states that have alternative livestock programs it is clear that the majority of those states allow producers to perform these tasks. The department proposes the rule changes necessary to allow Montana alternative livestock producers to apply tags and collect CWD samples from their own animals.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., August 4, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or 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 the same address as above. The written request for hearing must be received no later than 5:00 p.m., August 4, 2017.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 30 people based on 30-35 potentially certified producers of alternative livestock and approximately 262 people who use sporting cattle in the state of Montana.

7. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Board of Livestock
Department of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State June 26, 2017.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.40.830, 37.85.104,	)	PROPOSED AMENDMENT
37.85.105, 37.86.610, 37.86.705,)	
37.86.805, 37.86.1101, 37.86.1105,)	
37.86.1406, 37.86.1807, 37.86.2005,)	
37.86.2605, 37.86.2803, 37.86.2806,)	
37.86.2905, 37.86.2912, 37.86.3007,)	
37.86.3109, 37.86.3205, and)	
37.87.1226 pertaining to updating the)	
effective dates of non-Medicaid and)	
Medicaid fee schedules to October 1,)	
2017.)	

TO: All Concerned Persons

1. On July 27, 2017, at 8:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 19, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.40.830 HOSPICE, REIMBURSEMENT (1) through (11) remain the same.
(12) The hospice fee schedules are effective ~~October 1, 2016~~ October 1, 2017. Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

AUTH: 53-6-113, MCA
IMP: 53-6-101, MCA

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Addictive and Mental Disorders Division and Developmental Services Division on the dates stated:

(a) Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective ~~July 1, 2016~~ October 1, 2017.

(b) 72-hour presumptive eligibility for adult-crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective ~~July 1, 2016~~ October 1, 2017.

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~January 1, 2017~~ October 1, 2017.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.908, is effective ~~July 1, 2016~~ October 1, 2017.

(2) Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951. A description of the method for setting the reimbursement rate and the administrative rules applicable to the covered service are published in the chapter or subchapter of this title regarding that service.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~80 Federal Register 220, page 70886 (November 16, 2015) effective January 1, 2016~~ 81 Federal Register 220, page 80170 (November 15, 2016) effective January 1, 2017 which is adopted and incorporated by reference. Procedure codes created after January 1, 2017 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~January 1, 2017~~ October 1, 2017. The conversion factor for physician services is ~~\$37.89~~ \$36.23. The conversion factor for allied services is ~~\$25.38~~ \$24.17. The conversion factor for mental health services is ~~\$24.90~~ \$23.95. The conversion factor for anesthesia services is ~~\$29.76~~ \$28.73.

(c) remains the same.

(d) The payment-to-charge ratio is effective ~~July 1, 2016~~ October 1, 2017 and is ~~47%~~ 45.37% of the provider's usual and customary charges.

(e) through (h) remain the same.

(i) Reimbursement for physician-administered drugs described at in ARM 37.86.105 is determined at in 42 CFR 414.904 (2016). The department adopts 102.32% of the Average Sale Price (ASP), effective October 1, 2017.

(j) Reimbursement for vaccines described at ARM 37.86.105 is effective October 1, 2017.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:

(i) the APR-DRG fee schedule for inpatient hospitals as provided in ARM 37.86.2907, effective ~~October 1, 2016~~ October 1, 2017; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~33~~ 34 are contained in the APR-DRG Table of Weights and Thresholds effective ~~October 1, 2016~~ October 1, 2017. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~October 1, 2016~~ October 1, 2017.

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in ~~80 Federal Register 219, page 70298, November 13, 2015, effective July 1, 2016~~ 81 Federal Register 219, page 79562, effective January 1, 2017, and reviewed annually by CMS as required in 42 CFR 419.5 (2016) as updated by the department;

(ii) the conversion factor for outpatient services on or after ~~July 1, 2015~~ October 1, 2017 is ~~\$56.64~~ \$54.67;

(iii) the Medicaid statewide average outpatient cost-to-charge ratio is ~~45.2%~~ 39.91%; and

(iv) the bundled composite rate of ~~\$252.00~~ \$243.26 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~July 1, 2014~~ October 1, 2017.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2017~~ October 1, 2017.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2016~~ 2017 resulting in a dental conversion factor of ~~\$33.78~~ \$32.61 and fee schedule is effective ~~July 1, 2016~~ October 1, 2017.

(e) remains the same.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective ~~July 1, 2016~~ October 1, 2017:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~\$2.00~~ \$3.41 and the maximum is ~~\$15.00~~ \$14.48;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~\$2.00~~ \$3.41 and the maximum is ~~\$13.00~~ \$12.55; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is ~~\$2.00~~ \$3.41 and the maximum is ~~\$11.00~~ \$10.62.

(g) remains the same.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), will be ~~\$21.32~~ \$20.58 for the first vaccine and ~~\$13.00~~ \$12.55 for each additional administered vaccine, effective ~~July 1, 2016~~ October 1, 2017.

~~(i) The out-of-state providers will be assigned a \$3.50 dispensing fee.~~

(j) remains the same, but is renumbered (i).

~~(k) (j)~~ The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2016~~ October 1, 2017.

~~(l) (k)~~ Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~January 1, 2017~~ October 1, 2017, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~January 1, 2017~~ October 1, 2017. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2015~~ October 1, 2017.

~~(m) (l)~~ Fee schedules for private duty nursing, nutrition, children's special health services, and orientation and mobility specialists as provided in ARM 37.86.2207(2), are effective ~~July 1, 2016~~ October 1, 2017.

(n) and (o) remain the same, but are renumbered (m) and (n).

~~(p) (o)~~ The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~July 1, 2016~~ October 1, 2017.

~~(q) (p)~~ The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2016~~ October 1, 2017.

~~(r) (q)~~ The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM ~~37.85.610~~ 37.86.610, are effective ~~January 1, 2017~~ October 1, 2017.

~~(s) (r)~~ The optometric fee schedule provided in ARM 37.86.2005, is effective ~~January 1, 2017~~ October 1, 2017.

~~(t) (s)~~ The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2016~~ October 1, 2017.

~~(u) (t)~~ The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2017~~ October 1, 2017.

~~(v) (u)~~ The Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) fee schedule for ~~education health add-on~~ services, as provided in ARM 37.86.4412, is effective ~~January 1, 2017~~ October 1, 2017.

~~(w) (v)~~ The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~July 1, 2016~~ October 1, 2017.

~~(x) (w)~~ The Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~July 1, 2016~~ October 1, 2017.

~~(y) (x)~~ The mobile imaging fee schedule, as provided in ARM 37.85.212, is effective October 1, 2017.

~~(z) (y)~~ The licensed direct entry midwife fee schedule, as provided in ARM 37.85.212, is effective October 1, 2017.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) Home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~January 1, 2017~~ October 1, 2017.

(b) Home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2016~~ October 1, 2017.

(c) Personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2016~~ October 1, 2017.

(d) Self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2016~~ October 1, 2017.

(e) Community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~July 1, 2016~~ October 1, 2017.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

~~(a) Case management services for adults with severe disabling mental illness reimbursement, as provided in ARM 37.86.3515, is effective July 1, 2016.~~

~~(b) (a) Mental health center services for adults reimbursement, as provided in ARM 37.88.907, is effective July 1, 2016~~ October 1, 2017.

~~(c) (b) Home and community-based services for adults with severe disabling mental illness, reimbursement, as provided in ARM 37.90.408, is effective July 1, 2016~~ October 1, 2017.

~~(d) Targeted case management services for substance use disorders, reimbursement, as provided in ARM 37.86.4010, is effective July 1, 2016.~~

~~(c) Substance use disorder services reimbursement, as provided in ARM 37.27.908, is effective October 1, 2017.~~

(6) The department adopts and incorporates by reference, the fee schedule for the following programs within the Developmental Services Division, on the date stated:

~~(a) Mental health services for youth, as provided in ARM 37.87.901 in the Medicaid Youth Mental Health Services Fee Schedule, is effective January 1, 2017~~ October 1, 2017.

~~(b) Mental health services for youth, as provided in ARM 37.87.1313 in the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Fee Schedule, is effective July 1, 2016.~~

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

37.86.610 THERAPIES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for therapy services:

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

(i) and (ii) remain the same.

(iii) for items or services where no RBRVS or Medicare fee is available, the fee schedule amount will be calculated using the following methodology:

(A) Establishing a fee for a service that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department

will set each fee at ~~44% of the average charge billed by all providers in the aggregate at the payment-to-charge ratio in accordance with ARM 37.85.105(2)(d).~~
(B) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

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

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

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for audiology services:

(a) For patients who are eligible for Medicaid, the lowest of:

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

(ii) the reimbursement provided in accordance with the methodologies described in ARM 37.85.212;

(iii) ~~100%~~ 96.53% of the Medicare Region D allowable fee; or

(iv) for items or services where no RBRVS fee is available, the fee schedule amount will be calculated using the following methodology:

(A) Establishing a fee for a service or item that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at ~~44% of the average charge billed by all providers in the aggregate at the payment-to-charge ratio under ARM 37.85.105(2)(d).~~

(B) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

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

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for covered hearing aid services and items:

(a) and (b) remain the same.

(c) ~~100%~~ 96.53% of the Medicare Region D allowable fee.

(2) For items or services where no Medicare allowable fee is available, the fee schedule amount in (1)(b) will be calculated using the following methodology:

(a) Establishing a fee for a service that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at ~~44% of the average charge billed by all providers in the aggregate at the payment-to-charge ratio under ARM 37.85.105(2)(d).~~

(b) For supplies or equipment, reimbursement will be set at ~~75%~~ 72.4% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(c) and (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) and (2) remain the same.

(3) "Allowed ingredient cost" means the "Average Acquisition Cost (AAC)" or "submitted ingredient cost," whichever is lower. If AAC is not available, drug reimbursement is determined at the lesser of "Wholesale Acquisition Cost (WAC) minus 3.47%," "Federal Maximum Allowable Cost (FMAC)," or the "submitted ingredient cost."

(4) through (15) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (12) remain the same.

(13) Specialty pharmacies, hemophilia treatment centers, or centers of excellence that dispense clotting factors:

(a) not purchased through the 340B program will be reimbursed at the lesser of the usual and customary charge, submitted ingredient cost, or wholesale acquisition cost minus 3.47%, plus the professional dispensing fee; or

(b) when purchased through the 340B program, will be reimbursed the lesser of the usual and customary charge or wholesale acquisition cost minus 3.47%, plus the professional dispensing fee.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-113, MCA

37.86.1406 CLINIC SERVICES, REIMBURSEMENT (1) Ambulatory surgical center (ASC) services as defined in ARM 37.86.1401(2) provided by an ASC will be reimbursed on a fee basis as follows:

(a) ~~400%~~ 96.53% of the Medicare allowable amount. For purposes of determining the Medicare allowable amount for ASC services to Medicaid members under this rule, the department adopts and incorporates by reference the methodology at 42 CFR part 416, subpart ~~E (2005)~~ F, and the schedule listing the allowable amounts for ASC services in the Medicare ~~Carriers Manual, section 5243~~ Claims Processing Manual. The cited authorities are federal regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the Medicare program. ~~Copies of the cited authorities may be obtained from the Department of Public Health and Human Services, Health Resources Division, P.O. Box 202951, Helena, MT 59620-2951. The Medicare Claims Processing Manual can be found on the Centers for Medicare and Medicaid website at www.cms.gov. The Code of Federal Regulations can be found at www.gpo.gov.~~

(i) For purposes of applying the provisions of 42 CFR part 416, subpart ~~E (2005)~~ F, and the Medicare ~~Carriers Manual, section 5243~~ Claims Processing Manual, any reference in such authorities to Medicare, Medicare beneficiary,

beneficiary, intermediary or secretary shall be deemed to refer also to Medicaid, Medicaid member, member, or the department.

(b) through (2) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-141, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) and (2) remain the same.

(3) The department's DMEPOS Fee Schedule for items other than those billed under generic or miscellaneous codes as described in (1) will include fees set and maintained according to the following methodology:

(a) ~~400%~~ 96.53% of the Medicare region D allowable fee;

(b) Except as provided in (4), for all items for which no Medicare allowable fee is available, the department's fee schedule amount will be ~~75%~~ 72.4% of the provider's usual and customary charge.

(i) remains the same.

(ii) Items having no product retail list price, such as items customized by the provider, will be reimbursed at ~~75%~~ 72.4% of the provider's usual and customary charge as defined in (3)(b)(i).

(4) The department's DMEPOS Fee Schedule, referred to in ARM 37.86.1807(2), for items billed under generic or miscellaneous codes as described in (1) will be ~~75%~~ 72.4% of the provider's usual and customary charge as defined in (3)(b)(i).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2005 OPTOMETRIC SERVICES, REIMBURSEMENT (1) remains the same.

(2) For items or services where no RBRVS or Medicare is available, the fee schedule amount in (1)(c) will be calculated using the following methodology:

(a) Establishing a fee for a service that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at ~~44% of the average charge billed by all providers in the aggregate~~ at the payment-to-charge ratio in accordance with ARM 37.85.105(2)(d).

(b) For supplies or equipment, reimbursement will be set at ~~75%~~ 72.4% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition charge from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(c) and (3) remain the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) through (3) remain the same.

(4) For supplies or equipment, where there is no Medicare or Medicaid set fee, the provider's usual and customary charge in (1)(a) will be considered reasonable if set at ~~75-~~72.4% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(5) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants.

(a) through (c) remain the same.

(d) For cost report periods ending ~~on or after~~ on or after January 1, 2006 through September 30, 2017, for each hospital which is a critical access hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services shall be limited to 101% of allowable costs, as determined in accordance with (1).

(e) For cost report periods ending on or after October 1, 2017, for each hospital which is a critical access hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services will be limited to 97.50% of allowable costs, as determined in accordance with (1).

(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2806 COST-BASED HOSPITAL, GENERAL REIMBURSEMENT

(1) Cost-based reimbursement shall be applied as follows:

(a) Critical access hospital (CAH) interim reimbursement is based on a hospital specific Medicaid inpatient cost-to-charge ratio (CCR), not to exceed 100%. For dates of service on or after October 1, 2017, critical access hospital (CAH) interim reimbursement is based on a hospital-specific Medicaid inpatient cost-to-charge ratio (CCR), less 3.47%, not to exceed 100%.

(b) For cost report periods ending on or prior to September 30, 2017, CAH final reimbursement is for reasonable costs of hospital services limited to 101% of allowable costs, as determined in accordance with ARM 37.86.2803(1). For cost report periods ending on or after October 1, 2017, CAH final reimbursement is for reasonable costs of hospital services limited to 97.50% of allowable costs as determined in accordance with ARM 37.86.2803(1).

(2) through (8) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-113, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL REIMBURSEMENT (1) remains the same.

(2) Interim reimbursement for cost-based facilities is based on a hospital-specific Medicaid inpatient cost-to-charge ratio, not to exceed 100%. For dates of service on or after October 1, 2017, the interim reimbursement is based on a hospital-specific Medicaid inpatient cost-to-charge ratio, less 3.47%, not to exceed 100%. Cost-based facilities will be reimbursed their allowable costs as determined according to ARM 37.86.2803. Final For cost report periods ending on or prior to September 30, 2017 final cost settlements for CAH facilities will be reimbursed at 101% of allowable costs. For cost report periods ending on or after October 1, 2017, final cost settlements for CAH facilities will be reimbursed at 97.50% of allowable costs.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2912 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, CAPITAL-RELATED COSTS (1) remains the same.

(2) The interim payment made to CAHs is based on the hospital-specific cost-to-charge ratio and includes capital costs. For dates of service on or after October 1, 2017, the interim payment made is based on the hospital-specific cost-to-charge ratio, less 3.47%, and includes capital costs.

(3) remains the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.3007 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, CLINICAL DIAGNOSTIC LABORATORY SERVICES

(1) Clinical diagnostic laboratory services, including automated multichannel test panels (commonly referred to as "ATPs") and lab panels, will be reimbursed on a fee basis as follows with the exception of hospitals reimbursed under ARM 37.86.3005 and specific lab codes which are paid under ARM 37.86.3020:

(a) The fee for a clinical diagnostic laboratory service is the applicable percentage of the Medicare fee schedule as follows:

(i) ~~60%~~ 57.918% of the prevailing Medicare fee schedule for a birthing center or where a hospital laboratory acts as an independent laboratory, i.e., performs tests for persons who are nonhospital patients;

(ii) ~~62%~~ 59.8486% of the prevailing Medicare fee schedule for a hospital designated as a sole community hospital as defined in ARM 37.86.2901; or

(iii) ~~60%~~ 57.918% of the prevailing Medicare fee schedule for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.

(b) and (c) remain the same.

(2) For purposes of this rule, clinical diagnostic laboratory services include the laboratory tests listed in codes defined in the HCPCS and listed in the Clinical Diagnostic Fee Schedule (CLAB) published ~~December 14, 2005~~ January 1, 2017.

(3) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

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

37.86.3109 OUTPATIENT CARDIAC AND PULMONARY REHABILITATION REIMBURSEMENT (1) Critical access hospital (CAH) interim reimbursement is based on a hospital-specific Medicaid outpatient cost-to-charge ratio, not to exceed 100%. For dates of service on or after October 1, 2017, the interim reimbursement is based on the hospital specific Medicaid outpatient cost-to-charge ratio (CCR), less 3.47% not to exceed 100%. CAHs will be reimbursed their actual allowable costs determined according to ARM 37.86.2803.

(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-111, MCA

IMP: 53-2-201, 53-6-101, MCA

37.86.3205 NONHOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REIMBURSEMENT (1) through (3) remain the same.

(4) For clinical laboratory services, the department pays the lower of:

(a) remains the same.

(b) ~~60%~~ 57.918% of the Medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or

(c) remains the same.

AUTH: 53-6-113, MCA

IMP: 53-6-113, 53-6-141, MCA

37.87.1226 OUT-OF-STATE PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REIMBURSEMENT (1) ~~Out-of-state psychiatric residential treatment facility (PRTF) services will be reimbursed at 50% of their usual and customary charges.~~ Reimbursement for the out-of-state Psychiatric Residential Treatment Facility (PRTF) is established in the department's Medicaid fee schedule, as adopted in ARM 37.85.105.

(2) through (4) remain the same.

AUTH: 53-6-101, MCA

IMP: 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.40.830, 37.85.104, 37.85.105, 37.86.610, 37.86.705,

37.86.805, 37.86.1101, 37.86.1105, 37.86.1406, 37.86.1807, 37.86.2005, 37.86.2605, 37.86.2803, 37.86.2806, 37.86.2905, 37.86.2912, 37.86.3007, 37.86.3109, 37.86.3205, and 37.87.1226 pertaining to updating the effective dates of non-Medicaid and Medicaid fee schedules to October 1, 2017.

The following introductory explanation represents the reasonable necessity for these proposed changes in this MAR notice to these rules.

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members. Non-Medicaid programs are funded primarily with state funds or grants. The legislature delegates authority to the department to set the reimbursement rates Montana pays Medicaid and non-Medicaid providers for members' covered services.

The purpose of the proposed rule amendment is to update and set provider rates to take into consideration the funding appropriated by the 65th Montana Legislature. The department has determined the new proposed rates are consistent with efficiency, economy, and quality of care. These rates are sufficient to enlist enough providers so that care and services under the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.

Updates to these rules are needed to: 1) reflect the re-basing of the Resource Based Relative Value Scale (RBRVS) reimbursement methodology used by several divisions in the department which is necessary to stay within the legislative appropriation; 2) reflect the re-basing of the All Patient Refined Diagnosis Related Groups (APR-DRG) reimbursement methodology for inpatient hospital services used by several divisions in the department which is necessary to stay within the legislative appropriation; 3) reflect appropriation reductions contained in House Bill 2 (HB2) adopted by the 65th Legislature; 4) reflect the mandated legislative reductions required to comply with Senate Bill 261 (SB261) if revenue projections do not meet certain levels on August 15, 2017; 5) comply with the House Bill 639 (HB639) increase to the conversion factor used in the RBRVS physician fee calculations that is codified at 53-6-125, MCA; 6) update and reflect current pharmacy dispensing fee practice; 7) update descriptive Medicaid terminology; and 8) remove references to Targeted Case Management for adults with severe mental illness, children with serious emotional disturbance, and children and adults with substance use disorder from these rules.

These rules apply to services for all people and eligibility categories for Montana Medicaid, including the Montana Medicaid Health and Economic Livelihood Partnership (HELP) Program that serves the Medicaid Expansion population.

SB261 requires the department to decrease expenditures if certain state revenue levels are not achieved on August 15, 2017. These rules are being proposed with an effective date of October 1, 2017 to comply with the reductions mandated by the legislature in anticipation that these revenue levels will not be met. If one of the necessary levels of revenue is received, the proposed reductions will be modified or eliminated prior to adoption of these rules. The department has chosen to notice these rules at this time rather than wait until after August 15, 2017 revenue is known because delay of notice and implementation would increase the size of the proposed reductions as the same dollar amount of reduction would need to occur over fewer months.

Due to anticipated decreases in revenues, the department is implementing an across the board decrease in payment for certain Medicaid and non-Medicaid services and supplies paid under RBRVS, APR-DRG, Outpatient Prospective Payment System (OPPS) for outpatient hospital services, fee for service, and Medicare payment methodologies. The reduction needed to stay within legislatively approved appropriations in HB2 and SB261 is calculated at 3.47%.

Detailed explanations for the different payment methodologies and what changes are being proposed are listed below rather than in each rule line explanation to avoid redundancy. For services where the calculation varies based on additional factors, as an example payment-to-charge ratio in ARM 37.85.105(2)(d), a specific explanation is made.

Conversion Factor Changes

The October 1, 2017 conversion factor changes for rates subject to the RBRVS rate methodology were calculated in a multi-step process to apply the changes in HB639, HB2, and SB261. For the physician services conversion factor the department achieved budget neutrality with the new CMS Relative Value Units (RVU) and Geographic Practice Cost Indices (GPCI). Budget neutrality was calculated by decreasing the conversion factor to offset any changes to RVUs or GPCIs. With budget neutrality achieved, the department applied the HB639 increase to the current physician conversion factor of \$37.28. This increase is for a 12-month period, but is being applied over nine months, beginning October 1, 2017; therefore, a 0.67% increase was used to increase the physician's conversion factor to \$37.53. In accordance with SB261 and HB2 the department then applied the 3.47% reduction to the physician conversion factor, resulting in the proposal of \$36.23. The 3.47% reduction was calculated based on the reduction needed to stay within allocated appropriations in HB2 and SB261.

For the allied health, mental health, and anesthesia conversion factors, the department utilized the same methodology applied to the physician's conversion factor with the exception of the HB639 increase. Therefore, the conversion factor for allied health, mental health, and anesthesia was modified to account for the RVU and GPCI changes and then the 3.47% reduction was applied.

Hospital Rate Changes

The department is proposing to adopt a new version of the APR-DRG grouper effective October 1, 2017. Version 34 of the APR-DRG grouper contains changes to DRG weights, average length of stays, and adds new DRGs. In addition to adopting a new grouper version, the department is also proposing a decrease to hospital base rates to meet the appropriated budget for inpatient hospitals. This budget incorporates the reductions associated with HB2 and SB261. The Outpatient Prospective Payment System (OPPS) conversion factor will be reduced by 3.47% to institute rate reductions needed to comply with HB2 and SB261.

Fee Schedule Changes

The department is proposing the adoption of October 1, 2017 fee schedules. The rates contained within these proposed fee schedules were modified to incorporate the 3.47% rate reductions that are proposed in accordance with HB2 and SB261 appropriations. In addition to incorporating rate reductions, the department also adds and removes procedure codes to ensure that the newest most appropriate codes are available for providers to bill to Medicaid. Without these revisions, providers may be required to bill Medicaid with different codes than other major payers in the state, such as Medicare, resulting in administrative inefficiencies.

Medicare Rates

Many Montana Medicaid programs utilize Medicare rates for fee schedules, cost settlements, and reimbursements. The reductions required to comply with HB2 and SB261 appropriations result in the rates being reduced by 3.47%. The October 1, 2017 proposed fee schedules reflect the rate reduction, Medicare updates, and procedure code changes.

The Durable Medical Equipment fee schedule will continue to follow 2015 Medicare rates and procedure codes but the 2015 rates will be reduced by 3.47% to comply with SB261.

The 3.47% rate reduction also applies to the cost settlement and interim reimbursement rates for Critical Access Hospitals. Prior to this change, Montana Medicaid followed Medicare reimbursement at a cost settlement and interim rate of 101%.

Providers Not Subject to Rate Reductions

The department is not proposing rate reductions to the following: Federally Qualified Health Centers (FQHC), Rural Health Clinics (RHC), Indian Health Service or Tribal 638 facilities, Average Acquisition Cost for pharmacy ingredient, or member transportation.

In accordance with 42 U.S.C. 1396a(a), state Medicaid agencies are prohibited from adopting reimbursement methodologies that result in FQHC or RHC providers being reimbursed less than their calculated Prospective Payment System rate. Therefore, no reductions to FQHC and RHC providers are made.

Montana reimburses services provided by Indian Health Service (IHS) or Tribal 638 facilities funded by Title I or Title V of the Indian Self-Determination and Education Assistance Act at the rates negotiated between the CMS and the IHS, as published in the Federal Register. These funds are 100% Federal; therefore, there are no state fund decreases to implement within this program.

Montana and other states who implemented a state calculated Average Acquisition Cost (AAC) reimbursement for Outpatient Prescription Drugs in accordance with CMS-2345-FC are required to adhere to federal requirements in setting outpatient prescription drug rates. State-set AAC rates are to be based on actual invoice data from outpatient pharmacies. A rate reduction is not allowed within the federal statutes governing this reimbursement methodology.

Reductions to member transportation services were not proposed because the department wants to continue to ensure Medicaid members have adequate resources for travel to access care.

The following describes in detail the proposed amendments that will be made to ARM 37.85.105.

ARM 37.85.105(2)(a)

The department is proposing to revise the reference and effective date for the Federal Register regarding the RBRVS and to update the reference from 80 Federal Register 220, page 70886, November 16, 2015, effective January 1, 2016, to 81 Federal Register 220, page 80170 (November 15, 2016) effective January 1, 2017. This change is necessary to reflect the latest available Federal Register from CMS. This adoption allows providers to submit claims using the most recent codes and fees available; otherwise, the provider may need to bill Medicaid using different codes than other major payers, such as Medicare, resulting in administrative inefficiencies.

ARM 37.85.105(2)(b)

The department is proposing to update the effective date regarding RBRVS fee schedules to October 1, 2017. In addition, updates will occur to the physician services conversion factor. It will be updated from \$37.89 to \$38.12 per HB639 and then the 3.47% reduction per HB2 and SB261 will be applied making the final proposed conversion factor \$36.23. The conversion factors for allied services is reduced from \$25.38 to \$24.17, the mental health services conversion factor from \$24.90 to \$23.95, and anesthesia services conversion factor from \$29.76 to \$28.73 to reflect appropriated amounts in HB2 and SB261.

ARM 37.85.105(2)(d)

The department is proposing to update the payment-to-charge ratio to align with rate decreases being taken in different areas, effective October 1, 2017. The department is proposing a change to 45.37% of the provider's usual and customary charges. The payment method utilizes a percent of charges; therefore to have a fiscal impact of 3.47%, the department needed to multiplicatively reduce 47% by 3.47%. A subtraction of 3.47% from 47% would erroneously result in a larger fiscal impact.

ARM 37.85.105(2)(i)

The department is proposing to update reimbursement for physician-administered drugs described at ARM 37.86.105 as determined at 42 CFR 414.904 (2016). The department is proposing a decrease in the percentage of average sales price (ASP) paid for physician administered drugs to align with the rate decrease in different areas. The department is proposing a change to 102.32% of ASP from 106% of ASP for reimbursement on physician-administered drugs.

ARM 37.85.105(2)(j)

The department is proposing to add the fee schedule for vaccines and provide an effective date of October 1, 2017. Fees will be reduced by 3.47%.

ARM 37.85.105(3)(a)(i)

The department is proposing to update and revise the APR-DRG fee schedule for inpatient hospitals as provided in ARM 37.86.2907 effective October 1, 2017. The base rate will be decreased as previously described.

ARM 37.85.105(3)(a)(ii)

The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective October 1, 2017 and updates the APR-DRG grouper version 33 to version 34. The department proposes these changes to include the revisions to the weights, thresholds, and DRGs proposed in version 34 of the APR-DRG grouper. The new version contains new DRGs that will allow providers to bill and receive reimbursement for new inpatient procedures. This alignment allows providers to submit claims using the most recent codes and fees available from CMS; otherwise they would have to bill Medicaid using different codes than other major payers, such as Medicare, resulting in administrative inefficiencies.

ARM 37.85.105(3)(b)(i)

The department revises and adopts the Outpatient Prospective Payment System (OPPS) fee schedule as published by the CMS in 81 Federal Register 219, page 79562, effective January 1, 2017. This alignment allows providers to submit claims

using the most recent codes and fees available from CMS. Otherwise they would have to bill Medicaid using different codes than other major payers, such as Medicare, resulting in administrative inefficiencies.

ARM 37.85.105(3)(b)(ii)

The department is proposing to revise the conversion factor for outpatient services on or after October 1, 2017 from \$56.64 to \$54.67. The conversion factor for outpatient services is being decreased to align with the rate reductions being proposed in other areas.

ARM 37.85.105(3)(b)(iii)

The department is proposing to revise the outpatient statewide average cost to charge ratio from 45.2% to 39.91%. The statewide average cost to charge ratio was updated to reflect the calculated outpatient cost to charge ratio from the most recent, final and audited, Title XVIII/Title XIX cost reports available. These cost reports vary in dates based on the individual hospitals. The cost to charge ratio decreased by this amount rather than 3.47% because hospital charges increased disproportionately to costs.

ARM 37.85.105(3)(b)(iv)

The department is proposing to revise the composite Rate for Dialysis from \$252.00 to \$243.26 effective October 1, 2017. The composite Rate for Dialysis is being decreased to incorporate the 3.47% rate reductions proposed in association with appropriations in HB2 and SB261.

ARM 37.85.105(3)(c)

The department is proposing to revise the hearing aid services fee schedule effective October 1, 2017. Rates will decrease 3.47%.

ARM 37.85.105(3)(d)

The department is proposing to revise the relative value for dentists publish date to 2017 and revise the effective date to October 1, 2017; the dental conversion factor will decrease from \$33.78 to \$32.61. These changes are required to incorporate the most recently published relative value units for dentists. In addition, the department is proposing a decrease in the dental conversion factor to apply the 3.47% rate reduction being proposed in other areas.

ARM 37.85.105(3)(f)

The department is proposing to revise the effective date regarding the outpatient drugs reimbursement dispensing fee ranges to October 1, 2017. Pharmacies that do not complete the department's annual cost to dispense survey will be reimbursed

at the department's lowest calculated cost to dispense based on the annual dispensing fee survey. The department is revising the minimum and maximum dispensing fees. After finalizing pharmacy state plan negotiations with CMS, the department is proposing to reimburse providers subject to the minimum dispensing fee, the department's lowest calculated cost to dispense. Thus, the department is revising the minimum dispensing fee amount to reflect the lowest calculated cost to dispense based on the annual dispensing fee survey. The maximum dispensing fees for each prescription volume based band are being reduced to apply the rate reductions from HB2 and SB261.

ARM 37.85.105(3)(f)(i)

The department is proposing to revise the minimum and the maximum dispensing fees for pharmacies with prescription volumes between 0 and 39,999 for the minimum from \$2.00 to \$3.41 and for the maximum from \$15.00 to \$14.48.

ARM 37.85.105(3)(f)(ii)

The department is proposing to revise the minimum dispensing fee for pharmacies with prescription volumes between 40,000 and 69,999 from \$2.00 to \$3.41 and for the maximum dispensing fee from \$13.00 to \$12.55.

ARM 37.85.105(3)(f)(iii)

The department is proposing to revise the minimum dispensing fee for pharmacies with prescription volumes greater than 70,000 from \$2.00 to \$3.41 and for the maximum dispensing fee from \$11.00 to \$10.62.

ARM 37.85.105(3)(h)

The department is proposing to revise the outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), from \$21.32 to \$20.58 for the first vaccine and from \$13.00 to \$12.55 for each additional administered vaccine effective October 1, 2017. The vaccine administration fees are being reduced to reflect appropriation amounts in HB2 and SB261.

ARM 37.85.105(3)(i)

The department is proposing to remove the language regarding the out-of-state dispensing fee. The remaining subsections in (3) will be renumbered accordingly to account for the removal of this subsection. This change is being proposed to align the Administrative Rules of Montana with the State Plan for Outpatient Drugs approved by the CMS. Out of state pharmacies are subject to the same dispensing fee requirements as in-state pharmacies. Therefore, if an out-of-state pharmacy does not return the annual dispensing fee survey, they will be assigned the minimum dispensing fee allowed.

ARM 37.85.105(3)(j)

The department is proposing to revise the effective date of the home infusion therapy services fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(k)

The department is proposing to revise the effective date of the reference to the Region D Supplier Manual to October 1, 2017. The department will be making 3.47% reductions to the 2015 Medicare rates, department set fees, and MSRP rates using the July 1, 2015 fee schedule. Effective date of the revised fee schedule is October 1, 2017.

ARM 37.85.105(3)(l)

The department is proposing to revise the effective date regarding the Early Periodic Screening, Diagnostic, and Treatment (EPSDT) fee schedule for private duty nursing, nutrition, and orientation and mobility specialists to October 1, 2017. The department is also proposing to include the children's special health services fee schedule effective October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(o)

The department is proposing to revise the effective date regarding the ambulance services fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(p)

The department is proposing to revise the effective date for the audiology services fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(q)

The department is proposing to update the reference to the therapies reimbursement rule from ARM 37.85.610 to ARM 37.86.610. This change is to correct an administrative error in rule reference. The department is also proposing to revise the effective date of the fee schedule for occupational therapists, physical therapists, and speech therapists to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(r)

The department is proposing to revise the effective date of the optometric fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(s)

The department is proposing to revise the effective date of the chiropractic fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(t)

The department is proposing to revise the effective date of the lab and imaging fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(u)

The department is proposing to correct a typographical error and change "Federal" to "Federally" Qualified Health Center. The department is proposing to update the language for Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) services from education health to add-on services and revise the effective date of the FQHC and RHC fee schedule to October 1, 2017. Add-on services are not subject to the federal regulations regarding the calculated Prospective Payment System rate. A 3.47% rate reduction is proposed for add-on services only.

ARM 37.85.105(3)(v)

The department is proposing to revise the effective date of the Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(w)

The department is proposing to revise the effective date of the Targeted Case Management for High Risk Pregnant Women fee schedule to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(x)

The department is proposing to add a reference to the mobile imaging fee schedule effective October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(3)(y)

The department is proposing to add a reference to the licensed direct entry midwife fee schedule effective October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.86.610, 37.86.705, and 37.86.2005

ARM 37.86.610, 37.86.805, and 37.86.2005 set forth the statewide payment to charge ratio within their stated reimbursement methodologies. In order to maintain consistency with the structure of Medicaid reimbursement rules, the department is proposing to remove the listed percentage and instead reference ARM

37.85.105(2)(d). The payment to charge ratio for the state was reduced multiplicatively to incorporate the 3.47% reduction proposed in other areas.

ARM 37.86.705 and 37.86.805

The department is proposing that the Montana Medicaid program pays the following for audiology and hearing aid services:

- (a) For patients who are eligible for Medicaid, the lowest of:
 - (i) the provider's usual and customary charge for the service;
 - (ii) the reimbursement provided in accordance with the methodologies described in ARM 37.85.212;
 - (iii) 96.53% of the Medicare Region D allowable fee.

This proposal incorporates the 3.47% rate reductions that are being applied to comply with HB2 and SB261 appropriations.

ARM 37.86.1101

The department is proposing to update the definition of "Allowed ingredient cost" to be the "Average Acquisition Cost (AAC)" or "submitted ingredient cost," whichever is lower. If AAC is not available, drug reimbursement is determined at the lesser of "Wholesale Acquisition Cost (WAC) minus 3.47%," "Federal Maximum Allowable Cost (FMAC)," or the "submitted ingredient cost." This proposal applies the rate reductions discussed in association with HB2 and SB261 appropriations.

ARM 37.86.1105

The department is proposing to include a reduction to WAC of 3.47%, within the clotting factor reimbursement calculation when dispensed by specialty pharmacies, hemophilia treatment centers, or centers of excellence. This reduction is to both 340B and non-340B dispensed drugs and is proposed to apply the rate reductions necessary to meet the requirements of HB2 and SB261.

ARM 37.86.1406

The department is proposing to update the language for reference materials because the current language is outdated. The proposed rule will reflect the appropriate federal authority in which Montana Medicaid adopts and incorporates the schedule of Medicare allowable amounts paid to ASCs. The department is also proposing to decrease the Medicare allowable rate by 3.47% to enact appropriation decreases in HB2 and SB261.

ARM 37.86.1807

The department proposes to modify the department's DMEPOS Fee Schedule for items other than those billed under generic or miscellaneous from 100% to 96.53% of the Medicare region D allowable fee. The department proposes to multiplicatively

modify the Medicaid fee for all items for which there is no Medicare allowable fee available. The department is modifying the percentage of the provider's usual and customary charge to 72.4%, effective October 1, 2017. In addition, for items that have no product retail list price, the department is proposing a reimbursement of 72.4% of the provider's usual and customary charge, effective October 1, 2017. These changes are being proposed to apply the rate reductions proposed to satisfy the budget reduction within HB2 and SB261.

ARM 37.86.805, 37.86.2005, and 37.86.2605

The department is proposing to change, from 75% to 72.4%, the percentage of the manufacturer's suggested retail price that is considered reasonable when there is no established Medicare or Medicaid fee. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount effective October 1, 2017. This change was calculated multiplicatively and is being proposed to maintain consistency with the rate reductions proposed in other areas.

CHANGES FOR CRITICAL ACCESS HOSPITALS

ARM 37.86.2803, 37.86.2806, 37.86.2905, 37.86.2912, and 37.86.3109

The department is proposing two changes for critical access hospitals to incorporate the rate reductions proposed. These changes are mentioned in the following rules: ARM 37.86.2803; 37.86.2806; 37.86.2905; 37.86.2912; and 37.86.3109. The first change is to decrease the final cost settlement amount to 97.50% from 101%. This is a multiplicative 3.47% reduction that applies to cost reporting periods ending on or after October 1, 2017.

The second change is to decrease the interim payment for all Critical Access Hospitals (CAHs). For interim payments, CAHs are paid their cost to charge ratios. In order to incorporate the rate reductions being applied to provider reimbursement, the department will be modifying the interim payments for CAHs, to their individual cost to charge ratios, less 3.47%. This change will apply to claims with dates of service on or after October 1, 2017.

ARM 37.86.3007

The department is proposing a nonrounded multiplicative decrease to the percentage of the prevailing Medicare fee schedule for clinical diagnostic laboratory services. The proposed reductions are to incorporate the rate reductions that are being applied to other sections. The revised percentages are as follows: 57.918% for a birthing center or where a hospital laboratory acts as an independent laboratory; 59.8486% for a hospital designated as a sole community hospital; and 57.918% for a hospital that is not designated as a sole community hospital. These proposed reductions are effective October 1, 2017 and are being made to comply with appropriated amounts in HB2 and SB261.

ARM 37.86.3205

The department is applying a nonrounded multiplicative decrease to the percentage of the Medicare fee schedule for nonhospital laboratory and radiology services. The proposal is 57.918%, a change from 60%. This reduction is necessary to apply the rate reduction being proposed to implement the budget reduction enacted under HB2 and SB261.

Fiscal Impact

Health Resources Division will reduce provider reimbursements by \$3,922,143 in state funds plus corresponding federal funds. This amount corresponds to the 3.47% reduction to stay within the legislatively approved appropriations in HB2 and SB261. The total fiscal impact is displayed in the table below.

The following table displays the number of providers affected by the increase identified above, as well as the fiscal impact to state funds for SFY 2018.

Provider Type	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrolled Provider count
HOSPITAL - INPATIENT	(\$966,236)	(\$1,831,204)	(\$2,797,439)	376
HOSPITAL - OUTPATIENT	(\$537,472)	(\$1,018,614)	(\$1,556,087)	315
CRITICAL ACCESS HOSPITAL	(\$532,720)	(\$1,009,608)	(\$1,542,328)	50
PHYSICIAN	(\$636,353)	(\$1,206,012)	(\$1,842,364)	8,830
PHARMACY DISPENSING FEE	(\$128,935)	(\$244,356)	(\$373,291)	425
PHARMACY WAC	(\$228,695)	(\$433,422)	(\$662,118)	425
DENTAL	(\$413,364)	(\$783,405)	(\$1,196,770)	584
AUDIOLOGIST	(\$846)	(\$1,603)	(\$2,448)	59
LICENSED PROFESSIONAL COUNSELOR	(\$16)	(\$30)	(\$45)	657
PHYSICAL THERAPIST	(\$29,384)	(\$55,688)	(\$85,071)	634
PODIATRIST	(\$7,605)	(\$14,412)	(\$22,017)	67

PRIVATE DUTY NURSING AGENCY	(\$26,654)	(\$50,515)	(\$77,169)	4
PSYCHIATRIST	(\$1,469)	(\$2,784)	(\$4,253)	260
PSYCHOLOGIST	(\$8)	(\$15)	(\$22)	192
OCCUPATIONAL THERAPIST	(\$19,945)	(\$37,799)	(\$57,743)	155
SOCIAL WORKER	(\$290)	(\$549)	(\$839)	454
SPEECH PATHOLOGIST	(\$21,238)	(\$40,251)	(\$61,489)	171
AMBULANCE	(\$38,087)	(\$72,182)	(\$110,268)	160
AMBULATORY SURGICAL CENTER	(\$47,225)	(\$89,500)	(\$136,725)	23
CASE MNGMNT - TARGETED HRPW/CYSHCN	(\$4,204)	(\$7,967)	(\$12,171)	15
CHILDRENS SPECIAL HEALTH SVCS	(\$1,958)	(\$3,710)	(\$5,668)	3
CHIROPRACTOR	(\$8,592)	(\$16,284)	(\$24,876)	208
DENTURIST	(\$17,458)	(\$33,086)	(\$50,544)	19
DIALYSIS CLINIC	(\$25,489)	(\$48,307)	(\$73,796)	21
DURABLE MEDICAL EQUIPMENT	(\$149,040)	(\$282,460)	(\$431,500)	443
HEARING AID DISPENSER	(\$1,502)	(\$2,847)	(\$4,350)	35
HOME INFUSION THERAPY	(\$8,876)	(\$16,822)	(\$25,698)	15
INDEP DIAG TESTING FACILITY	(\$3,244)	(\$6,148)	(\$9,393)	19
LABORATORY	(\$28,935)	(\$54,837)	(\$83,772)	161
MID-LEVEL PRACTITIONER	(\$140,360)	(\$266,009)	(\$406,368)	3,127
NUTRITIONIST/ DIETICIAN	(\$256)	(\$485)	(\$741)	62
OPTICIAN	(\$899)	(\$1,704)	(\$2,604)	34
OPTOMETRIST	(\$39,465)	(\$74,794)	(\$114,258)	195
OUTPATIENT CENTER / PRIMARY CARE	(\$145)	(\$275)	(\$420)	2

ORIENTATION AND MOBILITY	(\$234)	(\$444)	(\$678)	3
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The proposed rule is estimated to affect 261,160 Medicaid members. In addition, it will impact the provider populations outlined in the tables above.

SUMMARY OF PROPOSED AMENDMENTS - SENIOR AND LONG TERM CARE DIVISION (SLTC) - PROPOSED AMENDMENTS TO ARM 37.40.830 AND 37.85.105

ARM 37.40.830

This rule will implement the 3.47% provider rate decreases for the hospice program. The department proposes to update the fee schedule date from October 1, 2015 to October 1, 2017. A rate reduction of 3.47% is proposed.

The following describes in detail the proposed amendments that will be made to ARM 37.85.105 in Senior and Long Term Care.

ARM 37.85.105(4)(a)

The department proposes to update the fee schedule date for Home and Community Based Services (HCBS) Waiver program to October 1, 2017. A rate reduction of 3.47% is proposed for services except for member transportation/mileage.

ARM 37.85.105(4)(b)

The department proposes to update the fee schedule date for Home Health Services to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(4)(c) and (d)

The department proposes to update the fee schedule date for Personal Assistance Services to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(4)(e)

The department proposes to update the fee schedule date for Community First Choice program services to October 1, 2017. A rate reduction of 3.47% is proposed.

Fiscal Impact

Medicaid Provider Type	SFY2018 State Funds Impact	SYT 2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrolled Provider Count
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HOME HEALTH AGENCY	(\$5,415)	(\$10,030)	(\$15,445)	26
HOSPICE	(\$31,933)	(\$59,149)	(\$91,082)	30
PERSONAL CARE	(\$22,650)	(\$98,239)	(\$75,589)	Included with CFC
COMMUNITY FIRST CHOICE	(\$392,482)	(\$958,110)	(\$1,350,593)	71
HOME & COMMUNITY BASED SERVICES - BIG SKY WAIVER	(\$389,202)	(\$720,900)	(\$1,110,101)	583

Approximately 561 home health, 3245 CFC, 853 PAS, and 2,729 HCBS waiver members will receive services in state fiscal year 2017 in one or more of these programs. 253 Montana Medicaid members received hospice services in FY 2017.

ADDICTIVE AND MENTAL DISORDERS DIVISION (AMDD) - PROPOSED AMENDMENTS TO ARM 37.85.104 AND 37.85.105

The department proposes to amend ARM 37.85.104 and 37.85.105.

ARM 37.85.104(1)(a), (b), and (d)

The Addictive and Mental Disorders Division (AMDD) is updating the effective date of the mental health services plan, the 72-hour presumptive eligibility for adult crisis stabilization services, and substance use disorder services fee schedules to October 1, 2017. This includes updating codes. The previously described methodology for RBRVS and fee for service methodologies will apply to comply with HB639, HB2, and SB261.

ARM 37.85.105(5)(a) and (d)

The department proposes to remove T1016, HB Targeted Case Management Services (TCM) for Adults with a Severe Disabling Mental Illness (SDMI) reimbursed at \$18.22 for a 15-minute unit from the Medicaid Mental Health Fee Schedule and the Mental Health Services Plan Fee Schedule, effective October 1, 2017 located in ARM 37.87.105(5)(a). The department proposes to remove T1016, HF Targeted Case Management Services (TCM) reimbursed at \$11.47 for a 15-minute unit from the Substance Use Disorder Medicaid Provider Fee Schedule and the Substance Use Disorder Contract Provider Fee Schedule effective October 1, 2017 located in ARM 37.87.105(5)(d).

The department proposes to adopt a new rule through MAR Notice No. 37-801 to implement the Medicaid Behavioral Health Targeted Case Management Fee Schedule to align SED, SUD, and SDMI rates for TCM which is a necessary first step in integrating behavioral health programs.

ARM 37.85.105(5)(a)

ARM 37.85.105(5)(b) is renumbered to 37.85.105(5)(a). The department proposes to update the fee schedule date for mental health center services to October 1, 2017. A rate reduction of 3.47% is proposed for most services. Physician services will be affected as described previously in the RBRVS methodology.

ARM 37.85.105(5)(b)

ARM 37.85.105(5)(c) is renumbered to 37.85.105(5)(b). The department proposes to update the fee schedule date for home and community based services to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(5)(c)

The department proposes to add and incorporate a reference for substance use disorder services reimbursement with an effective date of October 1, 2017. A rate reduction of 3.47% is proposed.

Fiscal Impact

The Addictive and Mental Disorders Division (AMDD) proposes a reduction in provider reimbursements. The fiscal impact is in the table below as well as a count of active or recertifying providers enrolled in Medicaid potentially impacted by rate reductions.

Medicaid Provider Type Medicaid Mental Health Adult (AMDD)	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrollment Provider Count
CASE MANAGEMENT - MENTAL HEALTH (PT60)	See MAR Notice No. 37- 801			19
*CHEMICAL DEPENDENCY CLINIC (SUD) (PT32)	(\$38,523)	(\$73,015)	(\$111,538)	23
CRITICAL ACCESS HOSPITAL (PT74)	(\$5,054)	(\$9,578)	(\$14,632)	50
HOME & COMM BASED SERVICES (PT28)	(\$40,436)	(\$76,634)	(\$117,070)	583
HOSPITAL - INPATIENT (PT01)	(\$26,653)	(\$50,513)	(\$77,167)	141
HOSPITAL - OUTPATIENT (PT02)	(\$7,473)	(\$14,163)	(\$21,636)	315
INDEP DIAG TESTING FACILITY (PT72)	(\$2)	(\$3)	(\$5)	19
LABORATORY (PT40)	(\$4,817)	(\$9,129)	(\$13,945)	161

LICENSED PROFESSIONAL COUNSELOR (PT58)	(\$41,307)	(\$78,285)	(\$119,591)	657
MENTAL HEALTH CENTER (PT59)	(\$166,229)	(\$315,036)	(\$481,264)	19
MID-LEVEL PRACTITIONER (PT44)	(\$15,303)	(\$29,001)	(\$44,304)	3,127
PHYSICIAN (PT27)	(\$12,472)	(\$23,637)	(\$36,109)	8,830
PSYCHIATRIST (PT65)	(\$10,719)	(\$20,314)	(\$31,032)	260
PSYCHOLOGIST (PT17)	(\$1,685)	(\$3,194)	(\$4,879)	192
SOCIAL WORKER (PT42)	(\$20,760)	(\$39,345)	(\$60,105)	454
1115 WAIVER FOR ADDITIONAL SERVICES OR PEOPLE	(\$64,007)	(\$121,305)	(\$185,312)	192
Medicaid Mental Health Adult (AMDD) Total	(\$455,440)	(\$863,152)	(\$1,318,592)	

*Includes all SUD services with the exception of SUD TCM, which can be found at MAR Notice No. 37-801.

DEVELOPMENTAL SERVICES DIVISION - CHILDREN'S MENTAL HEALTH BUREAU - PROPOSED AMENDMENTS TO ARM 37.85.104, 37.85.105, AND 37.87.1226

The department is proposing the amendment of ARM 37.85.104, 37.85.105, and 37.87.1226 pertaining to updating Medicaid and non-Medicaid fee schedules and updating effective dates to October 1, 2017.

ARM 37.85.104(1)(c)

The department proposes to amend the Medicaid Youth Mental Health Fee Schedule to update the effective date to October 1, 2017. A rate reduction of 3.47% is proposed.

ARM 37.85.105(6)

The department is proposing to amend ARM 37.85.105 to incorporate by reference the new fee schedules to implement the rates set by Montana Medicaid's resource based relative value scale (RBRVS) reimbursement for psychologists, social workers, and professional counselors. The department proposes to update the fee schedule date from January 1, 2017 to October 1, 2017. A rate reduction of 3.47% is proposed.

It is necessary for the department to incorporate new assigned relative values to implement rates set by Montana Medicaid's RBRVS reimbursement for

psychologists, social workers, and professional counselors. The RBRVS is located in ARM 37.85.212.

The department is updating rule references to include the ARM chapter and subchapter only. The department is adding existing service unit limits to the fee schedule for easy reference. These changes are necessary to ensure accuracy and to allow easy reference of limits.

The department proposes to remove T1016, HA Targeted Case Management Services (TCM) for Youth with Serious Emotional Disturbance (SED) from the Medicaid Youth Mental Health Services Fee Schedule, effective October 1, 2017 located in ARM 37.85.105(6)(b). The department proposes to adopt a new rule in MAR Notice No. 37-801 to implement the Behavioral Health Targeted Case Management Fee Schedule, effective October 1, 2017 to align TCM rates for children with serious emotional disturbance, people with substance use disorders, and adults with serious and disabling mental illness. This is a necessary first step in integrating behavioral health programs.

The department proposes to repeal the HCBS State Plan Program for Youth with Serious Emotional Disturbance Fee Schedule, which is effective July 1, 2016. Application and approval of the 1915(i) HCBS State Plan amendment to the CMS expires September 30, 2017. Less than 10 children were being served in the program and they have been transitioned to other services.

ARM 37.87.1226

The department is proposing to amend ARM 37.87.1226 to remove the reimbursement rate of 50% of their usual and customary charges from ARM. The reimbursement rate for out-of-state PRTFs is also referenced on the Medicaid Youth Mental Health Services Fee Schedule incorporated by reference by rule. It is necessary to remove the reference to avoid conflicting information. The department is proposing to reduce the rate of reimbursement from 50% to 48.27% of their usual and customary charges. This reduction is necessary as mandated by SB261 and HB2.

Fiscal Impact

The Developmental Services Division-Children’s Mental Health Bureau proposes a reduction in provider reimbursements. The fiscal impact is in the table below as well as a count of active or recertifying providers enrolled in Medicaid potentially impacted by rate reductions. Comprehensive School and Community Treatment (CSCT) is displayed separately as CSCT State Funds is provided by school match.

Medicaid Provider Type Medicaid Mental Health Youth (CMH/DD)	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrollment Provider Count

CASE MANAGEMENT - MENTAL HEALTH	See MAR Notice No. 37-781			19
CRITICAL ACCESS HOSPITAL	(\$4,284)	(\$8,120)	(\$12,404)	50
HOME & COMMUNITY BASED SERVICES 1915i	(\$366)	(\$693)	(\$1,059)	583
HOSPITAL - INPATIENT	(\$59,891)	(\$113,504)	(\$173,395)	141
HOSPITAL - OUTPATIENT	(\$22,103)	(\$41,889)	(\$63,991)	315
INDEP DIAG TESTING FACILITY	(\$7)	(\$14)	(\$21)	19
LABORATORY	(\$8,344)	(\$15,813)	(\$24,157)	161
LICENSED PROFESSIONAL COUNSELOR	(\$76,917)	(\$145,773)	(\$222,690)	657
MENTAL HEALTH CENTER	(\$60,694)	(\$115,027)	(\$175,722)	26
MID-LEVEL PRACTITIONER	(\$13,107)	(\$24,841)	(\$37,948)	3,127
PHYSICIAN	(\$17,465)	(\$33,100)	(\$50,566)	8,830
PSYCHIATRIC RES TREATMENT FACILITY	(\$167,514)	(\$317,472)	(\$484,986)	15
PSYCHIATRIST	(\$18,385)	(\$34,842)	(\$53,227)	260
PSYCHOLOGIST	(\$5,750)	(\$10,898)	(\$16,648)	192
SOCIAL WORKER	(\$43,934)	(\$83,264)	(\$127,199)	454
HOME SUPPORT SERVICES or THERAPEUTIC FOSTER CARE	(\$89,585)	(\$169,782)	(\$259,367)	14
THERAPEUTIC GROUP HOME	(\$185,795)	(\$352,117)	(\$537,912)	16
Medicaid Mental Health Youth (CMH/DD) Total	(\$774,142)	(\$1,467,149)	(\$2,241,291)	

The table below displays Comprehensive School and Community Treatment (CSCT) impacts.

Medicaid Provider Type Medicaid Mental Health Youth (CMH/DD)	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrollment Provider Count
Comprehensive School & Community Treatment (PT45)	(\$448,473)	(\$849,943)	(\$1,298,415)	464

The proposed amendments affect about 19,000 Medicaid eligible youth.

5. The department intends the proposed rule amendments to be applied effective October 1, 2017.

6. Concerned 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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

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

8. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by electronic mail (e-mail) on June 20, 2017.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Mary E. Dalton acting for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 26, 2017.

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

In the matter of the adoption of New)
Rule I pertaining to behavioral health) NOTICE OF PUBLIC HEARING ON
targeted case management fee) PROPOSED ADOPTION
schedule)

TO: All Concerned Persons

1. On July 27, 2017, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 19, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE (1) The Montana Medicaid Program establishes provider reimbursement rates for medically necessary, covered services based on the estimated demand for services and the legislative appropriation and federal matching funds.

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted Case Management Fee Schedule effective October 1, 2017 for the following programs within the Developmental Services Division (DSD) and the Addictive and Mental Disorders Division (AMDD):

(a) Targeted Case Management Services (TCM) for Youth with Serious Emotional Disturbance (SED), as provided in ARM 37.87.901;

(b) Targeted Case Management Services for Substance Use Disorders (SUD), as provided in ARM 37.86.4010; and

(c) Targeted Case Management Services for Adults with Severe Disabling Mental Illness (SDMI), as provided in ARM 37.86.3515.

(3) Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public

Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid program to provide health care to Montana's qualified low income, elderly and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members. The legislature delegates authority to the department to set the reimbursement rates Montana pays Medicaid providers for members' covered services.

The purpose of the proposed rule adoption is to update and set provider rates to take into consideration the funding appropriated by the 65th Montana Legislature. The department has determined the proposed rates are consistent with efficiency, economy, and quality of care. These rates are sufficient to enlist enough providers so that care and services under the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.

The department is proposing to adopt New Rule I pertaining to establishing a Medicaid Behavioral Health Targeted Case Management Fee Schedule effective October 1, 2017. The proposed rule adoption is needed to: 1) reflect appropriations contained in House Bill 2 (HB2) adopted by the 65th Legislature; 2) reflect the mandated legislative reductions required to comply with Senate Bill (SB261) if revenue projections do not meet certain levels on August 15, 2017; and 3) begin the integration of behavioral health systems by standardizing reimbursement for targeted case management for substance use disorders and mental health.

The proposed rule adoption applies to services for all people and eligibility categories for Montana Medicaid, including the Montana Medicaid Health and Economic Livelihood Partnership (HELP) Program that serves the Medicaid Expansion population.

SB261 requires the department to decrease expenditures if certain state revenue levels are not achieved on August 15, 2017. The proposed rule adoption is proposed with an effective date of October 1, 2017, to comply with the reductions mandated by the legislature in anticipation that these revenue levels will not be met. If one of the necessary levels of revenue is received, the proposed reductions will be modified or eliminated prior to adoption of these rules. The department has chosen to notice this proposed rule adoption at this time rather than wait until after August 15, 2017, because delay of notice and implementation would increase the size of the

proposed reductions as the same dollar amount of reduction would need to occur over fewer months.

Due to anticipated decreases in revenues, the department is implementing an across the board decrease in payment for certain Medicaid services and supplies. The reduction needed to stay within legislatively approved appropriations in HB2 and SB261 is calculated at 3.47%. SB261 contains an additional reduction to targeted case management for adult and children's mental health of \$1,930,000 in SFY2018 to be allocated between the addictive and mental disorder and the developmental services divisions.

New Rule I

MAR Notice No. 37-788 proposes to remove Targeted Case Management (TCM) rates effective October 1, 2017 from the following fee schedules:

ARM 37.87.105(6)(b) Medicaid Youth Mental Health Services Fee Schedule, effective January 1, 2017;

ARM 37.87.105(5)(a) Case management services for adults with severe disabling mental illness reimbursement, as provided in ARM 37.86.3515, effective July 1, 2016; and

ARM 37.87.105(5)(b) Targeted case management services for substance use disorders, reimbursement, as provided in ARM 37.86.4010, effective July 1, 2016.

The department proposes to establish a new Medicaid Behavioral Health Targeted Case Management Fee Schedule effective October 1, 2017 as provided in New Rule I. The proposed rule adoption will align serious emotional disorder (SED), substance use disorder (SUD), and severe and disabling mental illness (SDMI) rates for TCM which is a necessary first step in integrating behavioral health programs. Integrated behavioral health means that any behavioral health service member's need can be provided within an agency seamlessly to the member and in most cases, are exactly the same services regardless of substance abuse or mental health need. Reimbursement and service requirements for TCM need to be the same.

In addition, the department proposes to reduce the TCM rates for SED, SUD, and SDMI to stay within legislative appropriations for HB2 and SB261.

Fiscal Impact

The proposed amendments to rates for services are as follows:

Medicaid Provider Type	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrollment Provider Count
CASE MANAGEMENT - ADULT MENTAL HEALTH	(\$892,136)	(\$1,690,771)	(\$2,582,907)	19
CASE MANAGEMENT - CHILD MENTAL HEALTH	(\$1,224,878)	(\$2,321,382)	(\$3,546,260)	19
CASE MANAGEMENT - SUBSTANCE ABUSE	(\$1,060)	(\$2,002)	(\$3,062)	22
CASE MANAGEMENT - TOTAL	(\$2,118,074)	(\$4,014,155)	(\$6,132,229)	

The chart below identifies the number of members affected:

CASE MANAGEMENT - CHILD MENTAL HEALTH	CASE MANAGEMENT - SUBSTANCE ABUSE	CASE MANAGEMENT - ADULT MENTAL HEALTH
Number Affected: 4,588	Number Affected: 621	Number Affected: 3,730

5. The department intends the proposed rule adoption to be applied effective October 1, 2017.

6. Concerned 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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

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

8. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all

concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail (e-mail) on June 20, 2017.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

/s/ Mary E. Dalton acting for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 26, 2017.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.34.3005 and 37.86.3607) PROPOSED AMENDMENT
pertaining to amendments to fee)
schedules)

TO: All Concerned Persons

1. On July 27, 2017, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 19, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs, effective ~~July 1, 2016~~ October 1, 2017. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2016~~ October 1, 2017.

(2) The department adopts and incorporates by this reference the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2016~~ October 1, 2017. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid program to provide health care to Montana's qualified low income, elderly and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members. The legislature delegates authority to the department to set the reimbursement rates Montana pays Medicaid providers for members' covered services.

The purpose of the proposed rule amendments is to update and set provider rates to take into consideration the funding appropriated by the 65th Montana Legislature. The department has determined the new proposed rates are consistent with efficiency, economy, and quality of care. These rates are sufficient to enlist enough providers so that care and services under the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.

Updates to these rules are needed to: 1) reflect appropriations contained in House Bill 2 (HB2) adopted by the 65th Legislature; 2) reflect the mandated legislative reductions required to comply with Senate Bill (SB261) if revenue projections do not meet certain levels on August 15, 2017; and 3) update the Developmental Disabilities Program Manuals to reflect current fees and practice.

SB261 requires the department to decrease expenditures if certain state revenue levels are not achieved on August 15, 2017. These rules are being proposed with

an effective date of October 1, 2017 to comply with the reductions mandated by the legislature in anticipation that these revenue levels will not be met. If one of the necessary levels of revenue is received, the proposed reductions will be modified or eliminated prior to adoption of these rules. The department has chosen to notice these rules at this time rather than wait until after August 15, 2017 revenue is known because delay of notice and implementation would increase the size of the proposed reductions as the same dollar amount of reduction would need to occur over fewer months.

Due to anticipated decreases in revenues, the department is implementing an across the board decrease in payment for certain Medicaid services and supplies. The reduction needed to stay within legislatively approved appropriations in HB2 and SB261 is calculated at 3.47%.

The department is proposing to amend ARM 37.34.3005 and 37.86.3607 pertaining to updated Medicaid Rates Manuals and updating effective dates to October 1, 2017.

These two rules pertain to the reimbursement of services provided to persons who are recipients of developmental disabilities services funded by the State of Montana with Medicaid monies. The proposed rules also are necessary to implement needed changes in the texts of the two manuals that are incorporated by reference in these rules.

Summary of Proposed Amendments – Developmental Disabilities Program

ARM 37.34.3005

The department proposes to amend the rule for the purposes of: changing text in the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs, per notice given to the Centers for Medicare and Medicaid (CMS) of the program's intent to discontinue Program Design and Monitoring, Children's Autism Training, Occupational Therapy, Physical Therapy, Speech Therapy, and Adaptive Equipment services in the 0667 waiver effective July 1, 2017, and CMS's subsequent approval of the discontinuation of those services. The department was advised to discontinue certain services due to implementation of similar services that will be available in Medicaid State Plan.

The department is also proposing to amend this rule to incorporate into the rule this new edition of the manual, to be dated October 1, 2017, which includes reductions in the rates of reimbursement for Medicaid funded home and community services.

ARM 37.86.3607

The purpose of this proposed amendment is to incorporate into the rule a new edition of the Montana Developmental Disabilities Program Manual of Service

Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, to be dated October 1, 2017. The change to the manual includes reductions in the rates of reimbursement.

Amendments to Manuals

"Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs"

1. The department is proposing to update all rates and remove references of the 0667 waiver from certain services that are still available under another operating waiver and to completely remove certain services only approved in the 0667 waiver per notice given to the Centers for Medicare and Medicaid (CMS) of the program's intent to discontinue certain 0667 waiver services effective July 1, 2017, and CMS's subsequent approval of the discontinuation of those services.
2. The proposed effective date of the revised manual is October 1, 2017.
3. The proposed reimbursement fee adjustments are necessary to comply with HB2 appropriations and the reductions in appropriated funding for certain state services mandated by contingent reduction language of SB 261 adopted by the 65th Montana State Legislature.

"Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home"

1. The proposed effective date of the revised manual is October 1, 2017.
2. The link where the fee schedule is posted is changed to be consistent with the link in the rule text.
3. Removed reference to cost allocation payments for state employed Targeted Case Management staff.
4. The proposed reimbursement fee adjustments are necessary to comply with HB2 appropriations and SB 261 adopted by the 65th Montana State Legislature.

Fiscal Impact

The fiscal impact of the proposed changes to ARM 37.86.3005, implementing provider rate adjustments for DD providers will decrease total expenditures to

providers for state fiscal year 2018 by the sum of (\$4,139,972). These rates affect approximately 70 corporate providers of services.

The fiscal impact of proposed amendments to rates for services provided through the DD Waiver as mandated in SB 261 is:

DD Waiver FY 2018	General Fund (\$1,063,985)	Federal Funds (\$3,075,990)	Total Funds (\$4,139,972)
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The fiscal impact of the proposed change to ARM 37.86.3607, implementing provider rate adjustments for providers of developmental disabilities case management services will decrease total expenditures to those providers for state fiscal year 2018 by the sum of (\$163,445) in expenditures. These rates affect approximately 3 contracted agencies.

The fiscal impact of proposed amendments to rates for DD Targeted Case Management is:

DDP TCM SFY2018	General Fund (\$42,006)	Federal Funds (\$121,439)	Total Funds (\$163,445)
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5. The department intends the proposed rule amendments to be applied effective October 1, 2017.

6. Concerned 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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

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

8. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all

concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail (e-mail) on June 20, 2017.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Cary B. Lund
Cary B. Lund, Attorney
Rule Reviewer

/s/ Mary E. Dalton acting for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 26, 2017.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT AND
2.59.1706, 2.59.1708, 2.59.1739, and	)	REPEAL
2.59.1743 pertaining to surety bond,)	
table funding, application of financial)	
standards, and reporting forms for)	
mortgage servicers, and the repeal of)	
ARM 2.59.1728 and 2.59.1750)	
pertaining to standardized forms and)	
procedures of the Nationwide Mortgage)	
Licensing System and clarification of)	
definition)	

TO: All Concerned Persons

1. On May 12, 2017, the Department of Administration published MAR Notice No. 2-59-554 pertaining to the proposed amendment and repeal of the above-stated rules at page 576 of the 2017 Montana Administrative Register, Issue Number 9.

2. No comments were received.

3. The department has amended ARM 2.59.1706, 2.59.1708, 2.59.1739, and 2.59.1743 exactly as proposed.

4. The department has repealed ARM 2.59.1728 and 2.59.1750 exactly as proposed.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 26, 2017.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.1105 pertaining to)
revising Medicaid outpatient drug)
reimbursement amounts)

TO: All Concerned Persons

1. On April 28, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-791 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 471 of the 2017 Montana Administrative Register, Issue Number 8.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to July 1, 2017. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 26, 2017.

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

In the matter of the adoption of) NOTICE OF ADOPTION OF
Emergency Rules I through III) EMERGENCY RULES
pertaining to the Montana Medical)
Marijuana Program)

TO: All Concerned Persons

1. The Department of Public Health and Human Services is adopting the following emergency rules due to the passage of Senate Bill 333 by the 65th Montana Legislature. This action is in conjunction with other relevant authorities including Initiative 182 (I-182) that resulted in understandable confusion especially as it relates to effective dates and implementation. The adoption of comprehensive rules are in progress with the main deadline of April 30, 2018. In the meantime, the department specifies its interpretation of important items to promote compliance until permanent rules are adopted. Emergency rules are necessary to address key items to promote public health and safety and the welfare of cardholders and all participants involved with the Montana medical marijuana program.

The intent of Rule I is to track the allowable amounts language from I-182 and SB333. These allowable amounts are already familiar to stakeholders, cardholders, providers, and law enforcement and will remain consistent and in effect until permanent rules address this topic in terms of canopy allotment.

Rule II is to facilitate a smooth transition of testing procedures, standards, and guidelines in furtherance of public health and safety. The rule will temporarily license testing laboratories. This will allow the testing labs to exist and legally handle medical marijuana samples. Issuance of a temporary license does not guarantee that a facility will meet the requirements that will be established through the normal rulemaking process.

Rule III provides the means to issue a temporary chemical manufacturing endorsement to medical marijuana providers and medical marijuana-infused products providers. Due to the volatile nature of some chemical manufacturing, it is imperative for public safety for the department to know the registered premise location and by what means chemical manufacturing will occur. Issuance of a temporary chemical manufacturing endorsement does not guarantee that a facility will meet the requirements that will be established through the normal rulemaking process.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human

Services no later than 5:00 p.m. on August 2, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. These emergency rules are effective June 30, 2017.

4. The text of the emergency rules provides as follows:

NEW RULE I LEGAL PROTECTIONS -- ALLOWABLE AMOUNTS (1) A registered cardholder who has named a provider may possess up to 1 ounce of useable marijuana.

(2) A registered cardholder who has not named a provider may possess up to 4 mature plants, 12 seedlings, and 1 ounce of useable marijuana.

(3) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-319, 50-46-344, MCA

NEW RULE II TESTING LABORATORIES (1) Until such time as permanent rules for licensure are adopted the department shall determine if a temporary license will be issued to a laboratory after consideration of the application.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-328, 50-46-329, 50-46-344, MCA

NEW RULE III CHEMICAL MANUFACTURING ENDORSEMENTS (1) Until such time as permanent rules for chemical manufacturing endorsements are adopted the department shall determine if a temporary endorsement will be issued to a marijuana provider or marijuana-infused products provider after consideration of the application.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-312, 50-46-319, 50-46-328, 50-46-329, 50-46-344, MCA

5. The rationale for the emergency rules is as set forth in paragraph 1.

6. A standard rulemaking procedure will be undertaken prior to the expiration of these emergency rules.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Kenneth Mordan at the address in 2 above.

8. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail (e-mail) on June 21, 2017.

/s/ Flint Murfitt
Flint Murfitt, Attorney
Rule Reviewer

/s/ Laura Smith acting for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 26, 2017.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 1.2.102 and repeal of ARM) REPEAL
1.2.105 pertaining to official versions)
of the ARM and Register)

TO: All Concerned Persons

1. On May 26, 2017, the Secretary of State published MAR Notice No. 44-2-225 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 658 of the 2017 Montana Administrative Register, Issue Number 10. On June 23, 2017, the Secretary of State published an amended notice at page 867 of the 2017 Montana Administrative Register, Issue Number 12.

2. The Secretary of State has amended and repealed the above-stated rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

1.2.102 OFFICIAL VERSIONS (1) The printed version of the Administrative Rules of Montana (ARM) is the official version.

(2) The electronic version of the ARM is available at <http://www.mtrules.org>.

(3) As of July ~~7~~ 8, 2017, the electronic version of the Register is the official version. Prior to July ~~7~~ 8, 2017, the printed version of the Register was the official version.

(4) An electronic version of issues of the Register is available at <http://sos.mt.gov/arm/register>.

(5) If the rule text in the ARM differs from the rule text in corresponding official Register notices, the rule text in the Register notices is the official rule text.

3. In the proposal notice, the proposed effective date was stated as July 7, 2017. The date of publication of this adoption notice is also July 7, 2017. The Secretary of State's rules are typically effective the day after publication, which would make the proposed amendment and repeal of the above-stated rules effective July 8, 2017. See 2-4-306(4), MCA. The Secretary of State's office is therefore amending and repealing the above-stated rules as proposed effective July 8, 2017, rather than July 7, 2017. Register subscribers will receive 13 printed issues of the Register in 2017. The Secretary of State's office intends to offer refunds to paid subscribers for half the 2017 subscription fee.

4. No comments or testimony were received.

/s/ JEFFREY M. HINDOIEN
Jeffrey M. Hindoien
Rule Reviewer

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 26th day of June, 2017.

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.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government 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 and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration 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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- 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 P.O. 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 or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|---|
| Known
Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 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 that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2017. This table includes those rules adopted during the period December 31, 2016, through March 31, 2017, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2017, this table, and the table of contents of this issue of the Register.

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 either the 2016 or 2017 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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