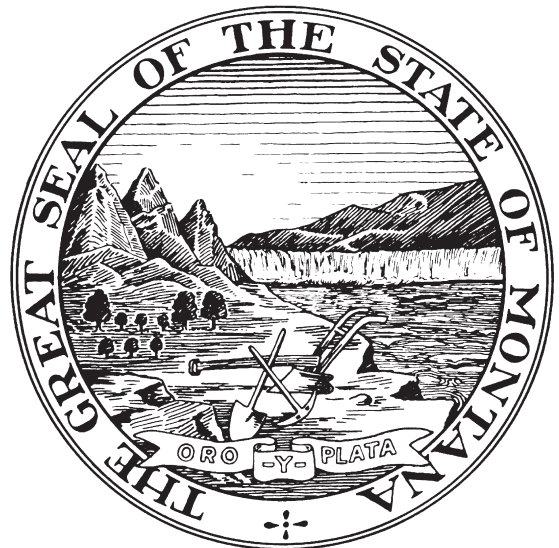


MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after 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) 438-6122.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.111.602 pertaining to the) PROPOSED AMENDMENT
Housing Credit program)

TO: All Concerned Persons

1. On Thursday, January 9, 2025, at 1:00 p.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed amendment of the above-stated rule.

Video:

https://mt-gov.zoom.us/webinar/register/WN_N87swZYTRxmKDOAhmSJ8kw

2. The department 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, please contact the department no later than 5:00 p.m. on January 7, 2025, to advise us of the nature of the accommodation that you need. Please contact the department's Board of Housing at: 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

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

8.111.602 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) and (2) remain the same.

(3) "QAP" means the board's "Housing Credit Program ~~2025~~ 2026 Qualified Allocation Plan," which sets forth the application process and selection criteria used by the board for evaluation and selection of projects to receive awards for allocation of housing credits for calendar year ~~2025~~ 2026. The board adopts and incorporates by reference the Housing Credit Program ~~2025~~ 2026 Qualified Allocation Plan, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.

(4) and (5) remain the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.602 are necessary to adopt and incorporate by reference the board's Housing Credit Program 2026 Qualified Allocation Plan (QAP).

Federal low income housing tax credits are allocated by the federal government to the states, according to their population, for allocation to particular buildings. Each state's share of federal low income housing tax credits is allocated to particular projects and buildings under programs administered by the respective states' housing credit agencies. The Montana Board of Housing is Montana's housing credit agency for purposes of administering the tax credit program and allocating tax credits in the state of Montana. In Montana, the program is known as the Montana Housing Credit Program. Federal law requires that tax credits allocated to the state by the federal government must be allocated by the state pursuant to a "qualified allocation plan" or "QAP."

Prior to publication of this notice, the board conducted several public meetings to consider suggestions and comments regarding the provisions of the 2026 QAP. After public notice of the proposed 2026 QAP and of the opportunity for public comment was published and distributed on September 26, 2024, a public hearing on the proposed 2026 QAP was held on October 21, 2024, and written comments were also received. At its November 4, 2024, meeting, after hearing and considering written and oral comments on the proposed 2026 QAP, staff recommendations, additional public comment and various proposed revisions, the board approved the 2026 QAP for submission to and approval by the Montana Governor, as required by the federal tax credit statute, 26 U.S.C. § 42. The Governor approved the 2026 QAP on November 25, 2024.

A copy of the 2026 QAP is available at <http://housing.mt.gov/MFQAP> or by requesting a copy from: Board of Housing, Multifamily Program Manager, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; or e-mail to Jason.Hanson@mt.gov.

4. 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: Board of Housing, Multifamily Program Manager, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2048; or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

5. The department's Office of Legal Affairs has been designated to preside over and conduct this hearing.

6. 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. Written requests 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

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 department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

BOARD OF HOUSING
Bruce Posey, Chair

/s/ Amy Barnes
AMY BARNES
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State December 10, 2024.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULE I, the amendment of ARM	)	PROPOSED ADOPTION,
10.10.504, 10.15.101, 10.16.3813,	)	AMENDMENT, AND REPEAL
10.20.102, 10.20.103, 10.21.201,)	
10.22.204, 10.22.205, 10.23.102,)	
10.23.102A, and 10.23.108, and the)	
repeal of ARM 10.11.101, 10.11.102,)	
10.20.104, and 10.20.105 pertaining)	
to school finance)	

TO: All Concerned Persons

1. On January 13, 2025, at 1:00 p.m., the Office of Public Instruction (OPI) will hold an in-person public hearing at the OPI building at 1300 11th Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. Remote participation via the Microsoft Teams meeting platform will be available during the hearing. Join the Teams meeting at:

Join the meeting

Meeting ID: 289 342 048 683

Passcode: Qn6f4tv3

Dial in by phone

+1 406-318-5487,989629429# United States, Billings

Find a local number

Phone conference ID: 989 629 429#

Join on a video conferencing device

Tenant key: 291818717@t.plcm.vc

Video ID: 118 699 919 3

2. OPI 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 OPI no later than 5:00 p.m. on January 6, 2025, to advise us of the nature of the accommodation that you need. Please contact the OPI ADA Coordinator, 1300 11th Avenue, Helena, Montana, 59601; telephone (406) 444-3161; fax (406) 444-2893; or e-mail opipersonnel@mt.gov.

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

NEW RULE I SIGNIFICANT ENROLLMENT INCREASE (1) A district that qualifies for an enrollment increase will have the Significant Enrollment Increase (SEI) payment amount calculated as per 20-9-166, MCA.

(2) OPI will calculate the SEI payment for qualifying districts by December 1 and notify the qualifying districts by December 15.

(3) Trustees of the district must approve the budget amendment to accept the SEI payment, in part or in full, by March 1.

AUTH: 20-3-106, 20-9-102, 20-9-166, MCA
IMP: 20-9-166, MCA

REASON: The proposed new rule would add the Significant Enrollment Increase process from HB 36 (2023) along with the due dates for the process. OPI intends to number this new rule as ARM 10.20.103A.

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

10.10.504 FUNDING ADJUSTMENTS FOR PRIOR/CURRENT YEAR REPORTING ERRORS (1) through (4) remain the same.

(5) Revisions to the annual trustees' financial summary report made by the district or cooperative after December 1 ~~40~~ of the ensuing fiscal year will not be considered in calculating amounts used for special education reversion or for federal maintenance of effort requirements.

(6) Material revisions to the annual trustees' financial summary submitted by December 1 ~~40~~ shall be accepted, limited to the following types of adjustments:

(a) through (7) remain the same.

~~(8) Revisions to the annual trustees' financial summary submitted by December 10 will be filed for information purposes by the Office of Public Instruction.~~

AUTH: 20-9-102, 20-9-201, MCA
IMP: 20-9-344, MCA

REASON: The proposed rule changes would implement the 2023 legislature's changes to the process by which school districts receive funding for enrollment increases. The proposed changes also would change the report due date from December 10 to December 1 to align with the other due date changes. Due dates are most effective when consistent across the year for the school districts as well as for OPI. Currently there are numerous dates which could be confusing and could result in delinquency of reporting. These proposed rule changes would be a positive step in knowing when reporting is due.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) through (50) remain the same.

~~(51) "School block grant" means the block grants paid by the state to a school district's budgeted funds as provided in 20-9-630, MCA.~~

(52) remains the same but is renumbered (51).

~~(53)~~(52) "State technology aid" means the amount distributed to schools in accordance with 20-9-534 ~~20-9-343~~, MCA.

(54) through (63) remain the same but are renumbered (53) through (62).

AUTH: 20-9-102, MCA

IMP: Title 20, ch. 9, MCA

REASON: The proposed rule changes would remove the definition of the expired block grant and correct the statutory references.

10.16.3813 LOCAL MATCHING FUNDS (1) remains the same.

(2) The Superintendent of Public Instruction will determine from district prior fiscal year trustees' financial summary reports if local match has been met.

(a) Demonstration that local match contributions have been made is determined by totaling the prior fiscal year special education allowable cost expenditures, defined in ARM 10.16.3806 and 10.16.3807, as reported on the annual trustees' financial summary for the general fund, the impact aid fund, the metal mines tax reserve fund, tuition fund, and state mining impact fund. Those prior fiscal year expenditures must equal or exceed the district's minimum special education expenditures to avoid reversion for the prior fiscal year.

(3) remains the same.

AUTH: 20-9-321, MCA

IMP: 20-9-321, MCA

REASON: The proposed rule changes align rule language with the implementing statute.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) through (3) remain the same.

(4) The official count of enrolled students, as defined in ARM 10.15.101, is taken on the first Monday in October and the first Monday in February, or the next school day if those dates do not fall on a school day. Changes to the October enrollment count will not be accepted after December ~~1~~ 34 except in cases of significant reporting error, as determined by the Superintendent of Public Instruction.

(a) through (15) remain the same.

(16) School districts will be funded based on the current ANB or three-year ANB, whichever generates the greatest maximum general fund budget. For the purpose of determining the BASE funding program of a district, current ANB and three-year average ANB will be calculated using the following methods:

(a) To calculate current ANB:

(i) the enrollment reported by the school district on the October and February enrollment report forms to the Superintendent of Public Instruction, pursuant to 20-9-311, MCA, will be adjusted and averaged by budget unit as follows: By budget unit: [(enrollment for first Monday in October + enrollment for first Monday in February) - (kindergarten enrollment for students receiving less than 180 hours of pupil

instruction time per school year) - (one-half kindergarten enrollment for students enrolled in a half-time kindergarten program receiving 180 hours or more of pupil instruction time per school year) - (part-time enrollment for students in classroom bases early literacy programs and grades FTK through 12 receiving less than 180 hours of pupil instruction time per school year) - (0.75 times the part-time enrollment for students in classroom bases early literacy programs and grades FTK through 12 receiving 180 through 359 hours of pupil instruction time per school year) - (0.50 times the parttime enrollment for students in classroom bases early literacy programs and grades FTK through 12 receiving 360 through 539 hours of pupil instruction time per school year) - (0.25 times part-time enrollment for students in grades classroom bases early literacy programs and FTK through 12 receiving 540 through 719 hours of pupil instruction time per school year) - (enrolled students reaching 19 years of age by September 10 of the school year) - (0.50 times students enrolled in MT youth challenge) + (early graduates) + (extracurricular participant pursuant to 20-9-311, MCA) + (jumpstart early literacy program pursuant to 20-9-311, MCA) divided by 2 to get the average of the two enrollment counts by budget unit;

(ii) through (17) remain the same.

AUTH: 20-9-102, 20-9-166, 20-9-346, 20-9-369, MCA

IMP: 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, ~~20-9-314~~, 20-9-805, MCA

REASON: The proposed rule changes would align the rule language with the process that is now in place and would change the report due date to align with the other due date changes.

10.20.103 CIRCUMSTANCES UNDER WHICH THE REGULAR ANB MAY BE INCREASED FOR THE ENSUING SCHOOL FISCAL YEAR (1) The board of trustees or the county superintendent will provide information requested by the Superintendent of Public Instruction to establish the basis for an increase in ANB and the estimates or data required to determine the number of additional ANB to be approved for the situations as listed in 20-9-313, MCA, ~~or special unanticipated circumstances resulting from the implementation of 20-9-311, MCA.~~

~~(2) A district that experiences an unanticipated enrollment increase after the beginning of the school fiscal year may apply to the Superintendent of Public Instruction for an increase in the district direct state aid amount provided the unanticipated enrollment increase meets the requirements of ARM 10.20.105, and the district has adopted a budget amendment for the unanticipated enrollment increase in accordance with the provisions of 20-9-161 through 20-9-165, MCA, and ARM 10.22.201 through 10.22.206.~~

~~(a) Receipt of the adopted budget amendment resolution signed by the presiding officer of the trustees and the district clerk will be considered the request for additional state assistance.~~

~~(b) In order to be eligible to receive additional state assistance, the district must submit a petition for permission to adopt a budget amendment resolution due to an unanticipated enrollment increase to the Superintendent of Public Instruction~~

no later than May 31 of the school fiscal year to which the enrollment increase applies.

(3)(2) Application for increased ANB shall be made to the Superintendent of Public Instruction by June 1 for reasons provided in 20-9-313, MCA. The Superintendent shall approve, disapprove, or adjust the application by the fourth Monday in June.

AUTH: 20-3-106, 20-9-102, 20-9-166, MCA
IMP: 20-9-311, 20-9-313, ~~20-9-314~~, MCA

REASON: The proposed rule changes would reflect the HB 36 (2023) repeal of the prior process for unanticipated ANB increases.

10.21.201 QUALITY EDUCATOR PAYMENTS - GENERAL FUND

(1) through (4) remain the same.

(5) The Superintendent of Public Instruction will provide an opportunity for district officials to review the FTE information submitted on the annual data collection. Changes to FTE reporting used for the quality educator payment calculation will not be accepted after December 1 ~~31~~ except in cases of significant reporting error, as determined by the Superintendent of Public Instruction.

(6) Payments will be distributed to school districts by the Superintendent of Public Instruction on the schedule for BASE aid distributions provided in 20-9-344, MCA.

AUTH: 20-3-106, MCA
IMP: 20-9-327, MCA

REASON: The proposed rule changes would change the report due date to align with the other due date changes.

10.22.204 BUDGET AMENDMENT LIMITATION ~~(1) When the budget amendment is for increased enrollment, the maximum amount of the budget amendment for each fund affected must be determined as follows:~~

~~(a) Determine the final budget for the current school fiscal year of each fund affected by the enrollment increase (less any amounts appropriated for capital outlay and any amounts appropriated for addition to the operating reserve).~~

~~(b) Divide the amount determined in (1)(a) by the prior fiscal year enrollment used to calculate budgeted ANB in accordance with 20-9-311, MCA, and ARM 10.20.102. The resulting per-pupil cost is the maximum permissible per-pupil expenditure for the budget amendment.~~

~~(c) Determine the total enrollment increase for the current year in accordance with ARM 10.20.105(1)(a) through (c). The enrollment count for the current year that will be used to calculate an increase in enrollment will be the October enrollment count as reported to OPI on the fall report or, for petitions received after February 1, the February count reported to OPI on the spring enrollment report.~~

~~(d) Multiply the cost per pupil determined in (1)(b) by the enrollment increase determined in (1)(c). The result is the maximum limitation on a budget amendment for amendments resulting from enrollment increases.~~

~~(e) In no case may the district adopt a budget amendment for an enrollment increase that causes the district to exceed the maximum general fund budget as adjusted by the Superintendent of Public Instruction in accordance with 20-9-163, MCA. The maximum general fund budget will be adjusted as follows:~~

~~(i) Determine the enrollment increase for each budget unit within the elementary level or the high school level in accordance with ARM 10.20.105(2)(b).~~

~~(ii) Prorate the total enrollment increase for the current year determined in (1)(c) to each budget unit by multiplying the total enrollment increase by the ratio of the enrollment increase by budget unit determined in (1)(e)(i) to the total enrollment increase determined in (1)(c). Round the result of the calculation to the nearest hundredth (.xx).~~

~~(iii) Determine the current year's adjusted ANB used to adjust the maximum general fund budget for each budget unit by:~~

~~(A) summing the prior year enrollment as defined in ARM 10.20.105(1)(b) by budget unit and the enrollment increase by budget unit as calculated in (1)(e)(ii);~~

~~(B) multiplying the sum in (1)(e)(iii)(A) by the total of PI days and PIR days approved for the current year, and dividing the total by 180; and~~

~~(C) rounding the ANB up to the nearest whole number.~~

~~(iv) Calculate the basic entitlement and total per ANB entitlement using the adjusted ANB as calculated in (1)(e)(iii)(C).~~

~~(v) Subtract the basic entitlement and total per ANB entitlement calculated using the ANB based on the prior year average enrollment from the basic entitlement and total per ANB entitlement calculated in (1)(e)(iv).~~

~~(vi) Determine the adjusted maximum general fund budget by adding the amount calculated in (1)(e)(v) to the current year maximum general fund budget reported on the budget form for the current fiscal year.~~

~~(2)(1) For budget amendments other than those due to enrollment increases, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment. The budget amendment must include an expenditure detail.~~

AUTH: 20-9-102, MCA

IMP: 20-9-165, 20-9-166, MCA

REASON: The proposed rule changes would reflect the statutory changes made by HB 36 (2023).

10.22.205 BUDGET AMENDMENT PREPARATION AND ADOPTION

(1) remains the same.

(2) Upon receipt of the budget amendment resolution, the OPI Office of Public Instruction will review and, upon approval, will assign a project reporter code number to the budget amendment to be used for accounting purposes. The expenditures related to the budget amendment must be accounted for separately

using ~~the a~~ project reporter code number assigned by the Office of Public Instruction.

(3) Whenever a budget amendment has been adopted for:

(a) the general fund to accept finance the SEI payment cost of increased enrollment, the trustees must submit a budget amendment ~~may apply~~ to the Superintendent of Public Instruction to receive the payment as described for an increase in direct state aid as provided in 20-9-166, MCA, and ARM 10.20.103A (2); or

(b) and (4) remain the same.

AUTH: 20-9-102, MCA

IMP: 20-9-165, 20-9-166, MCA

REASON: The proposed rule changes would clarify OPI's process for budget amendments and include the process for the new SEI budget amendment and payments under HB 36 (2023).

10.23.102 FUNDING THE BASE BUDGET LEVY (1) remains the same.

(2) To determine the BASE budget levy requirement needed to help fund the BASE budget area, the county superintendent shall first subtract the other revenues available to fund the district's BASE budget. The remaining amount is the BASE budget levy requirement.

(a) For purposes of calculating the general fund BASE budget levy requirement, nonlevy revenues must be estimated at an amount equal to the current year's actual collections, with the following exceptions:

(i) through (iv) remain the same.

~~(v) School block grant funding as provided in 20-9-630, MCA.~~

(3) and (4) remain the same.

AUTH: 20-9-102, MCA

IMP: 20-5-321, 20-5-322, 20-5-323, 20-5-324, 20-9-141, 20-9-308, MCA

REASON: The proposed rule changes would remove the repealed block grant component.

10.23.102A FUNDING FOR OVER-BASE BUDGET (1) The over-BASE budget is funded by:

(a) unreserved fund balance reappropriated and non-levy revenue ~~any amount of reappropriated fund balance and nonlevy revenue~~ remaining after the BASE budget is funded;

~~(b) estimated tuition receipts not used to fund the BASE budget;~~

~~(c)(b) excess general fund reserves established in accordance with ARM 10.22.103 and reported on the final budget for the current year; and~~

(c) Tax Increment Financing (TIF) remittance under 7-15-4286, MCA, distributed to fund the over-BASE;

~~(d) a district property tax levy.~~

(d) oil and natural gas production taxes for school districts; and

- (e) Flexible Non-Voted Levy Authority; and
 - (f) a district property tax levy pursuant to 20-9-308, MCA.
- (2) remains the same.

AUTH: 20-9-102, MCA
IMP: 20-9-308, MCA

REASON: The proposed rule changes would reflect the statutory changes made by HB 203 (2023) regarding the formula for the over-BASE budget.

10.23.108 ANB AND BASIC ENTITLEMENT CALCULATIONS IN ANNEXATIONS AND CONSOLIDATIONS (1) In accordance with 20-9-311(8), MCA, for purposes of calculating the per-ANB and basic entitlement for the first three years that a school district continues after a consolidation or annexation the following will apply:

(a) Enrollment used to calculate the budgeted ANB of the school district that remains after the consolidation or annexation will be the enrollments of the separate school districts operating in the prior year, calculated as separate budget units.

(i) The enrollment of a school in nonoperating status that was operating in the prior year will not be used in calculating ANB, since no students were enrolled.

(ii) remains the same.

(b) The combined district will receive a separate basic entitlement for the district or districts which combined for each of the six years after the consolidation or annexation becomes effective regardless of the distance between the schools or whether schools remain in operation. That is, the number of basic entitlements for the district after consolidation or annexation will be the same as the number before consolidation or annexation during this six-year period, with percentage reductions during the last three years as provided in 20-9-311, MCA.

(i) The basic entitlement of a school in nonoperating status that was operating in the prior year will be zero.

(ii) through (c) remain the same.

(d) When Trustees of a district which is entitled to receive additional entitlement under 20-9-311(8)(a)(iv), MCA, under consolidation or annexation, the trustees may forego the additional entitlement by sending a resolution to OPI by June 30.

AUTH: 20-9-102, MCA
IMP: 20-9-308, 20-9-311, MCA

REASON: The proposed rule changes would clarify the timing for non-operating status and the rights under consolidation and annexation.

5. OPI proposes to repeal the following rules:

10.11.101 DEFINITIONS

AUTH: 20-9-310, MCA

IMP: 20-9-310, 20-9-517, 20-9-518, 20-9-519, MCA

REASON: The proposed repeal of this rule reflects the repeal of 20-9-517, 20-9-518, and 20-9-520, MCA.

10.11.102 DISTRIBUTION OF EXCESS OIL AND NATURAL GAS
PRODUCTION TAXES

AUTH: 20-9-310, MCA

IMP: 20-9-310, 20-9-517, 20-9-518, 20-9-519, MCA

REASON: The proposed repeal of this rule reflects the repeal of 20-9-517, 20-9-518, and 20-9-520, MCA.

10.20.104 ANTICIPATED UNUSUAL ENROLLMENT INCREASE - ANB
CALCULATION

AUTH: 20-3-106, 20-9-102, MCA

IMP: 20-9-166, 20-9-311, 20-9-314, MCA

REASON: The proposed repeal of this rule reflects the repeal of 20-9-314, MCA.

10.20.105 UNANTICIPATED ENROLLMENT INCREASE

AUTH: 20-9-102, MCA

IMP: 20-9-313, 20-9-314, MCA

REASON: The proposed repeal of this rule reflects the repeal of 20-9-314, MCA.

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 Richard E. Wootton, Office of Public Instruction, 1300 11th Avenue, Helena, Montana, 59601; telephone (406) 444-0715; fax (406) 444-2893; or e-mail opipubliccomment@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

7. Richard E. Wootton, staff attorney at the Office of Public Instruction, has been designated to preside over and conduct this hearing.

8. OPI 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 must make a written request that includes the name, email, 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 email unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 6 or may be made by completing a request form at any rules hearing held by OPI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on November 20, 2024.

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

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction
Office of Public Instruction

Certified to the Secretary of State December 10, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 17.8.101, 17.8.308, 17.8.743,	)	AMENDMENT
17.8.1601, 17.8.1701, 17.24.101,)	
17.24.206, 17.24.212, 17.24.218,	)	NO PUBLIC HEARING
17.24.219, 17.24.221, 17.24.222,	)	CONTEMPLATED
17.24.225, 17.24.313, 17.24.321,)	
17.24.324, 17.24.639, 17.24.815, and)	
17.24.1303 pertaining to regulatory)	
reform of cleaning up repealed)	
references in ARM Title 17, Chapters)	
8 and 24)	

TO: All Concerned Persons

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

2. The Department of Environmental Quality 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 no later than 5:00 p.m. on December 20, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-451@mt.gov.

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

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) remains the same.

(2) "Air pollutants" has the meaning provided in 75-2-103~~(3)~~(2), MCA.

(3) through (8) remain the same.

(9) "Boiler or industrial furnace" means any source or emitting unit that is subject to the provisions of 75-10-405(2)~~(f)~~(e) and 75-10-406, MCA, and rules promulgated thereunder defining the class of activities subject to regulation under those sections, found at ARM Title 17, chapter 53, subchapter 10.

(10) through (21) remain the same.

(22) "Hazardous waste" has the meaning provided in 75-2-103~~(10)~~(11), MCA.

(23) remains the same.

(24) "Incinerator" has the meaning provided in 75-2-103~~(14)~~(12), MCA.

(25) "Medical waste" has the meaning provided in 75-2-103~~(12)~~(13), MCA.

(26) through (31) remain the same.

- (32) "Person" has the meaning provided in 75-2-103~~(13)~~(15), MCA.
- (33) through (37) remain the same.
- (38) "Solid waste" has the meaning provided in 75-2-103~~(16)~~(18), MCA.
- (39) through (44) remain the same.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

REASON: These amendments update the rule to account for changes to the applicable references in the Montana Code Annotated. These amendments are simply updating where the definitions are located in MCA.

17.8.308 PARTICULATE MATTER, AIRBORNE (1) through (4) remain the same.

(5) The provisions of this rule shall not apply to emissions of airborne particulate matter originating from:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)~~(a)~~, MCA; or

(b) a business relating to the activities or equipment referred to in (5)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)~~(b)~~, MCA.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

REASON: These amendments update the rule to account for changes to the applicable references in the Montana Code Annotated. These amendments are simply updating where the definitions are located in MCA.

17.8.743 MONTANA AIR QUALITY PERMITS – WHEN REQUIRED

(1) Except as provided in ARM 17.8.744, 17.8.745, and 17.8.1602, a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) and (b) remain the same.

(c) any incinerator, as defined in 75-2-103~~(14)~~(12), MCA, and that is subject to the requirements of 75-2-215, MCA;

(d) through (5) remain the same.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, MCA

REASON: This amendment updates the rule to account for changes to the applicable references in the Montana Code Annotated. This amendment simply updates where the definitions are located in MCA.

17.8.1601 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Oil and gas well facility" has the meaning provided in 75-2-103(13)(14)(a), MCA.

(4) remains the same.

AUTH: 75-2-111, 75-2-211, MCA

IMP: 75-2-211, MCA

REASON: These amendments update the rule to account for changes to the applicable references in the Montana Code Annotated. This amendment simply updates where the definitions are located in MCA.

17.8.1701 DEFINITIONS For the purposes of this subchapter:

(1) through (4) remain the same.

(5) "Registration eligible facility" means an oil or gas well facility as defined in 75-2-103(13)(14), MCA, and that is subject to the requirements of ARM 17.8.743.

(6) remains the same.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

REASON: These amendments update the rule to account for changes to the applicable references in the Montana Code Annotated. This amendment simply updates where the definitions are located in MCA.

17.24.101 GENERAL PROVISIONS (1) through (9) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-305, 82-4-309, ~~82-4-320~~, 82-4-331, 82-4-332, 82-4-335, 82-4-361, 82-4-362, MCA

REASON: The department is removing the implementing statute 82-4-320, MCA, because it is reserved for future use. This reserved statute does not currently contain any requirements.

17.24.206 LANDOWNER CONSULTATION (1) through (3) remain the same.

AUTH: 82-4-422, MCA

IMP: 82-4-422, ~~82-4-423~~, 82-4-432, 82-4-434, MCA

REASON: Section 82-4-423, MCA was repealed in 2007.

17.24.212 REVIEW OF AN APPLICATION (1) through (6) remain the same.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, ~~82-4-423~~, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: Section 82-4-423, MCA was repealed in 2007.

17.24.218 PLAN OF OPERATION (SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS) AND PERFORMANCE STANDARDS (1) through (4) remain the same.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, ~~82-4-423~~, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: Section 82-4-423, MCA was repealed in 2007.

17.24.219 PLAN OF OPERATION, RECLAMATION PLAN, AND PERFORMANCE STANDARDS (1) and (2) remain the same.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, ~~82-4-423~~, 82-4-431, 82-4-432, 82-4-434

REASON: Section 82-4-423, MCA was repealed in 2007.

17.24.221 PLAN OF OPERATION—MAPS (1) through (8) remain the same.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, ~~82-4-423~~, 82-4-431, 82-4-434, MCA

REASON: Section 82-4-423, MCA was repealed in 2007.

17.24.222 ADDITIONAL INFORMATION AND CERTIFICATION (1) through (3) remain the same.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, ~~82-4-423~~, 82-4-431, 82-4-432, 82-4-434, 82-4-436, MCA

REASON: Section 82-4-423, MCA was repealed in 2007.

17.24.225 PERMIT COMPLIANCE (1) and (2) remain the same.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, ~~82-4-423~~, 82-4-431, 82-4-432, MCA

REASON: Section 82-4-423, MCA was repealed in 2007.

17.24.313 RECLAMATION PLAN (1) Each reclamation plan must contain a description of the reclamation operations proposed, including the following information:

(a) through (f) remain the same.

(g) plans for removal, storage, and redistribution of soil, overburden, spoils, and other material in accordance with ARM 17.24.501, 17.24.502, 17.24.503, 17.24.504, 17.24.505, 17.24.507, 17.24.510, ~~17.24.514~~, 17.24.515, 17.24.516, 17.24.517, 17.24.518, 17.24.519, 17.24.520, 17.24.521, and 17.24.522, and 17.24.701 through 17.24.703;

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

AUTH: 82-4-205, MCA

IMP: 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, MCA

REASON: ARM 17.24.514 was repealed in 1999 in MAR Notice No. 17-087.

17.24.321 TRANSPORTATION FACILITIES PLAN (1) Each application must contain a description of each road, conveyor, and railroad loop to be constructed, used, or maintained within the proposed permit area. The description must include the following as appropriate for the type of construction:

(a) through (d) remain the same.

(e) demonstration of compliance with ARM 17.24.601 through 17.24.603 and ~~17.24.606~~ 17.24.605;

(f) through (4) remain the same.

AUTH: 82-4-205, MCA

IMP: 82-4-222, MCA

REASON: ARM 17.24.606 was repealed in 1999 in MAR Notice No. 17-087.

17.24.324 PRIME FARMLANDS: SPECIAL APPLICATION REQUIREMENTS (1) and (2) remain the same

(3) A permit for the mining and reclamation of prime farmland may be granted by the department, if it first finds, in writing, upon the basis of a complete application, that:

(a) through (c) remain the same.

(d) the proposed operations will be conducted in compliance with the applicable requirements of ARM 17.24.811 and 17.24.815 through ~~17.24.825~~ 17.24.823.

AUTH: 82-4-205, MCA

IMP: 82-4-222, MCA

REASON: ARM 17.24.824 and 17.24.825 were repealed in 2004 in MAR Notice No. 17-210.

17.24.639 SEDIMENTATION PONDS AND OTHER TREATMENT

FACILITIES (1) Sedimentation ponds, either temporary or permanent, may be used individually or in series and must:

(a) and (b) remain the same.

(c) provide an adequate sediment storage volume equal to:

(i)(A) through (ii) remain the same, but are renumbered (i) through (iii).

(d) through (14) remain the same

(15)(a) through (c) remain the same, but are renumbered (15) through (15)(b).

(16) through (18) remain the same.

(19) The entire embankment, including the surrounding areas disturbed by construction, must be stabilized with a vegetative cover or other means immediately after the embankment is completed in order to protect against erosion and sudden drawdown. The active upstream face of the embankment where water will be impounded may be ripped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop must be repaired and revegetated in accordance with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, and 17.24.731, 17.24.728 and 17.24.730 through 17.24.733.

(20) and (21) remain the same.

(22)(a) and (b) remain the same, but are renumbered (22) and (22)(a).

(23) remains the same.

(24)(a) remains the same, but is renumbered (24).

(i) through (iii) remain the same, but are renumbered (a) through (c).

(25) remains the same.

(26)(a) and (b) remain the same, but are renumbered (26) and (26)(a).

(27) remain the same.

(28)(a) and (b) remain the same, but are renumbered (28) and (28)(a).

AUTH: 82-4-205, MCA

IMP: 82-4-231, MCA

REASON: ARM 17.24.726, 17.24.730, 17.24.732, and 17.24.733 were repealed in 2004 in MAR Notice No. 17-210.

17.24.815 PRIME FARMLAND: REVEGETATION (1) remains the same.

(2) All prime farmlands reclaimed either temporarily or permanently as cropland must meet the following revegetation requirements:

(a) remains the same.

(b) Within a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading, areas to be reclaimed either temporarily or permanently to cropland must be planted to the crops that have been approved under ARM 17.24.324 and that are commonly grown on surrounding prime farmland. As appropriate, the crops may be grown in rotation with hay or pasture crops ~~as defined for cropland in ARM 17.24.825(1).~~ The department may approve a crop use of perennial plants for hay where this is a common long term use of prime farmland soils in the surrounding area;

(c) and (d) remain the same.

(e)(i) revegetation success on prime farmlands must be determined upon the basis of a comparison of actual crop production on the disturbed area, ~~and the~~
(i) The crop production on reference areas must meet ~~meeting~~ the following requirements:

(A) through (h) remain the same.

AUTH: 82-4-205, MCA

IMP: 82-4-227, 82-4-232, MCA

REASON: ARM 17.24.825 was repealed in 2004 in MAR Notice No. 17-210.

17.24.1303 RULES APPLICABLE TO COAL OPERATIONS ONLY (1) The following rules are applicable only to the strip and underground mining of coal: ARM ~~17.24.763 (Coal Conservation)~~, 17.24.801, 17.24.802, 17.24.804 through 17.24.806 (Alluvial Valley Floors), 17.24.811 and 17.24.815 (Prime Farmlands), 17.24.1131 through 17.24.1138 (Areas Upon Which Mining Is Prohibited), 17.24.1141 through 17.24.1148 (Designation of Lands Unsuitable), and 17.24.1221 through 17.24.1228 (Small Operator Assistance Program), and those portions of subchapter 3 that apply to these rules. In addition, certain portions of other rules may be applicable only to coal mining if the text of the rule clearly so indicates.

AUTH: 82-4-205, MCA

IMP: 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-233, 82-4-235, MCA

REASON: ARM 17.24.763 was repealed in 2012 in MAR Notice No. 17-324.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-451@mt.gov, and must be received no later than 5:00 p.m., January 20, 2025.

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 the department at the above address no later than 5:00 p.m., January 9, 2025.

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 170 persons based on the 1,696 persons on the interested parties lists for Air Quality and Mining.

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. Written requests 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 rules.mt.gov.

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.

/s/ JONATHAN MORGAN
Jonathan Morgan
Rule Reviewer

/s/ SONJA NOWAKOWSKI
Sonja Nowakowski
Director
Department of Environmental Quality

Certified to the Secretary of State December 10, 2024.

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through III and the) PROPOSED ADOPTION AND
amendment of ARM 37.112.102,) AMENDMENT
37.112.103, 37.112.108, 37.112.116,)
37.112.117, 37.112.121, 37.112.125,)
37.112.129, 37.112.131, 37.112.132,)
37.112.133, 37.112.137, 37.112.141,)
37.112.142, 37.112.144, 37.112.147,)
37.112.151, 37.112.152, 37.112.156,)
37.112.157, 37.112.158, 37.112.163,)
37.112.165, and 37.112.167)
pertaining to body piercing and)
tattooing)

TO: All Concerned Persons

1. On January 9, 2025, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84904626492?pwd=x5viOoj88XiegMbJpRvTNjsmlzgW34.1>, meeting ID: 849 0462 6492, and password: 190652; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 849 0462 6492, and password: 190652. Find your local number: <https://mt-gov.zoom.us/j/84904626492?pwd=x5viOoj88XiegMbJpRvTNjsmlzgW34.1>

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 December 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhus, 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 hhsadminrules@mt.gov.

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

NEW RULE I JEWELRY STANDARDS FOR INITIAL BODY PIERCINGS

(1) All materials used for an initial body piercing must meet ASTM and/or ISO standards for implantation. Examples of allowable materials include:

(a) steel that is ASTM F138 compliant or ISO 5832-1 compliant;

(b) steel that is ISO 10993-6, 10993-10, and/or 10993-11 compliant;

- (c) unalloyed titanium that is ASTM F67 or ISO 5832-2 compliant;
 - (d) alloyed titanium (Ti6Al4V ELI) that is ASTM F136 compliant or ISO 5832-3 compliant;
 - (e) alloyed titanium (Ti6Al7Nb ELI) that is ASTM F1295 compliant or ISO 5832-11 compliant; and
 - (f) any polymer or plastic material that is ISO 10993-6, 10993-10, and/or 10993-11 compliant and/or meets the U.S. Pharmacopeia (USP) Class VI classification, including polytetrafluoroethylene (PTFE) that is ASTM F754 compliant.
- (2) Gold jewelry must be comprised of solid 14 karat or higher yellow, white, or rose gold that is nickel free and cadmium free. Gold jewelry may not be:
- (a) plated, unless using materials approved by the department or local health authority that is solid 14 karat or higher yellow, white, or rose gold that is nickel free and cadmium free;
 - (b) gold filled; or
 - (c) gold overlay/vermeil.
- (3) Platinum jewelry must be comprised of solid unalloyed or alloyed platinum that is nickel free and cadmium free.
- (4) Niobium jewelry must be comprised of unalloyed niobium (Nb) that is ASTM B392 compliant. This includes commercial grade 2 niobium and commercial grade 4 niobium that contains 1% zirconium.
- (5) Glass jewelry must be lead free. Examples of permissible glass jewelry materials include:
- (a) fused quartz;
 - (b) borosilicate; and
 - (c) soda-lime.
- (6) All threaded or press-fit jewelry must have internal tapping. Threads on exterior of posts and barbells are not permitted.
- (7) Jewelry surfaces and ends must be smooth and free of nicks, scratches, burrs, stamps, hallmarks, and polishing compounds.
- (8) Jewelry metals must have a consistent mirror finish on surfaces that frequently come in contact with tissue.
- (9) All jewelry used for initial piercing on persons older than 12 years of age must be ASTM F2999 compliant.
- (10) All jewelry used for initial piercing on persons 12 years of age or younger must be ASTM F2923 compliant.
- (11) Receipts for jewelry purchased for initial piercings must include the specifications for items sold in accordance with the standards set forth in (1). Receipts must be retained by the establishment for at least three years, kept on the premises for at least one year, and made available to the department or the local health authority upon request.
- (12) Material certificates from jewelry suppliers for jewelry used for initial piercings must include the name of the purchaser of material, the name of the seller of the material, the date of material sales, the type of material purchased, the composition of material purchased, the quantity of material purchased, and the country of origin. Records must:
- (a) be updated from the supplier for each new lot of material; and

(b) be retained by the establishment for a minimum of three years, kept on the premises for a minimum of one year, and made available to the department or the local health authority upon request.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

NEW RULE II BRANDING SAFETY AND SANITATION REQUIREMENTS

(1) The work room must have walls that extend to the ceiling and a closeable door.

(2) A branding work room must be equipped with an ultraviolet air purifier appropriately sized to the room based on the square footage and the manufacturer's recommendations.

(3) Any person present during the branding procedure, including all personnel and the client, must wear a mask rated as N-95 or higher.

(4) Body artists must use the process of "strike branding" or use a thermal cautery unit (TCU).

(5) Only nongalvanized metal may be used for "strike branding."

(6) Body artists must use only propylene gas to heat the metal for "strike branding."

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

NEW RULE III SCARIFICATION SAFETY AND SANITATION

REQUIREMENTS (1) The body artist must wear personal protective equipment (PPE) consisting of disposable sleeves.

(2) The scarification work room must have walls that extend to the ceiling and a closeable door.

(3) The scarification work room must be equipped with an ultraviolet air purifier appropriately sized to the room based on the square footage and the manufacturer's recommendations.

(4) The body artist must wear sterile gloves when coming into contact with sterile equipment during the procedure.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

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

37.112.102 PURPOSE (1) The rules in this chapter pertain to ~~tattooing and body piercing~~ body art establishments under Title 50, chapter 48, MCA, that are licensed by the ~~Montana~~ Department of Public Health and Human Services. Unless otherwise specified by the rules of the local health authority, the rules in this chapter do not apply to ~~tattooing and body piercing~~ body art establishments that are licensed solely by local boards of health pursuant to 50-48-203, MCA.

AUTH: 50-48-103, MCA
IMP: 50-48-103, 50-48-203, MCA

37.112.103 DEFINITIONS In addition to the definitions contained in 50-48-102, MCA, the following definitions apply to this subchapter:

(1) "Aftercare instructions" means verbal and written instructions that the client should follow to prevent infection and promote healing of the skin after receiving a ~~tattoo or body piercing~~ body art procedure.

(2) "Antiseptic" means a ~~substance applied to the skin that kills or inhibits the growth of disease-causing microorganisms.~~ product that is labeled as useful in preventing diseases caused by microorganisms present on the skin and/or on mucosal surfaces of humans. This includes products meant to kill germs and/or labeled as "antiseptic," "antimicrobial," "antibacterial," "microbicide," "germicide," or other similar terms.

(3) "Artist" means a ~~tattooist or body piercer.~~

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

(4) "Autoclave" means a device that is intended for use by a user to sterilize products by means of pressurized steam. This device must comply with one of three types of steam programs defined as B, N, and S by standard EN13060, ISO 17665.

(5) "Automated instrument washer" means a mechanical washer designed specifically for the decontamination of instruments prior to sterilization. These devices must comply with ISO 15883/2.

(6) "Blood-borne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

(7) "Body art" means body piercing and tattooing. The term includes ear lobe piercing, branding and scarification.

(8) "Body artist" means any person aged 18 or older performing body art services.

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

(6) "Body piercer" means ~~a person who engages in the practice of piercing as defined in 50-48-102, MCA.~~

(7) "Body piercing establishment" means ~~any room, space, shop, or salon, including a temporary or mobile facility, where body piercing is practiced.~~

(10) "Branding" means the process in which a mark or marks are burned into human skin tissue with the intention of leaving a permanent mark.

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

(9)(12) "Client" means the person whose skin will be tattooed or pierced an individual on whom a body artist performs a body art procedure.

(40)(13) "Contaminated" means the probable presence of disease-causing microorganisms blood or other potentially infectious materials on an item or surface.

(11) "Department" means ~~the Department of Public Health and Human Services.~~

(12) through (18) remain the same but are renumbered (14) through (20).

~~(19)~~(21) "Instrument" means hand piece, needle, and any other tool that may come in contact with a client's body or be exposed to blood or body fluids during a tattooing or body piercing body art procedure.

~~(20)~~(22) "Jewelry" means any ~~ornament designed for insertion into a pierced area of a client~~ biocompatible object that is worn through a body piercing.

(23) "Material certificate" means all documents intended to state the specifics of a material used for body jewelry. Names for these documents include but are not limited to mill certificates, material certificates, metal composition sheets, MSD, and material certification sheets.

~~(21)~~(24) "Microdermal anchor" means a piece of jewelry ~~defined in ARM 37.112.103(16)~~ used for single-point piercings that has a foot no larger than 8mm in length.

~~(22)~~(25) "Mobile establishment" means a licensed facility where tattooing or body piercing or both body art is conducted, utilizing a wheeled vehicle for movement from place to place.

~~(23)~~(26) "Operator" means any owner of an establishment or any person who is responsible for the establishment as well as the other body artists working at the establishment, for the purpose of meeting the requirements of this chapter.

~~(24)~~(27) "Permanent cosmetics", ~~also known as permanent makeup or micropigmentation,~~ means tattooing any part of the face for cosmetic purposes a tattoo, whether permanent or semipermanent, which is applied to a body part, including eyebrows, eyelids, lips, and other parts of the body for beauty marks, hair imitation, lash enhancement, or areola repigmentation. This term also includes procedures commonly referred to as permanent makeup, micropigmentation, micropigment implantation, microblading, dermagraphics, cosmetic tattooing, and other similar types of procedures.

(25) remains the same but is renumbered (28).

(29) "Piercing gun" means a device approved by the department that pierces an individual's ear lobe using a single-use stud and clasp ear piercing system.

(26) remains the same but is renumbered (30).

(31) "Scarification" means the process in which a mark or marks are cut into human skin tissue with the intention of leaving a permanent mark.

(27) and (28) remain the same but are renumbered (32) and (33).

~~(29)~~(34) "Single-use" means ~~items that are intended to be used once then discarded~~ products or items that are intended for one-time, one-person use and that are disposed of after use on a client, including cotton swabs or cotton balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, needles, scalpel blades, stencils, ink cups, and protective gloves.

(30) remains the same but is renumbered (35).

(36) "Strike branding" means the process by which a mark is burned with heated metal into the tissue of a person.

(31) remains the same but is renumbered (37).

~~(32)~~ "Tattoo establishment" means ~~any room, space, shop, or salon, including a temporary or mobile facility, where tattooing is practiced.~~

~~(33)~~(38) "Tattooist" means a person who engages in the practice of tattooing as defined in ~~50-48-102, MCA.~~

~~(34)~~(39) "Temporary establishment" means a facility where ~~either tattooing or body piercing or both are~~ body art is conducted for not more than 14 days at one location in a calendar year.

~~(35)~~(40) "Transdermal anchor" means a piece of jewelry ~~defined under ARM 37.112.103(16)~~ used for single-point piercings that has a foot larger than 8mm in length.

(36) and (37) remain the same but are renumbered (41) and (42).

(43) "Ultrasonic unit" means a device that removes debris by a process called cavitation, in which waves of acoustic energy are propagated in aqueous solutions to disrupt the bonds that hold particulate matter to surfaces.

(38) remains the same but is renumbered (44).

~~(39)~~(45) "Work room" means a designated room or area in which ~~either tattooing or body piercing~~ body art takes place. The work room includes the client chair or table, counter, mayo stand, instrument tray, storage drawer, and body artist's chair.

AUTH: 50-48-103, MCA

IMP: 50-48-102, 50-48-103, MCA

37.112.108 GENERAL FACILITY REQUIREMENTS (1) through (3) remain the same.

(4) An establishment may not be operated in any room or area used as living or sleeping quarters, including bathroom or handwashing sink areas. An establishment must be separated from any living or sleeping quarters by solid self-closing doors. Access to the establishment must be separate from access to living areas.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.116 TOILETS AND HANDWASHING SINKS FACILITIES (1) Each establishment must have a toilet and handwashing ~~facility~~ sink conveniently available to clients and body artists during all hours of operation.

(2) through (4) remain the same.

(5) Equipment and supplies used for ~~either tattooing or body piercing or both~~ body art procedures must not be stored or used within the toilet room.

(6) The handwashing ~~facility~~ sink must be located either within the toilet room or within ten feet of the toilet room door.

(7) through (10) remain the same.

(11) Each handwashing sink must be provided with ~~individual, disposable~~ single-use towels that are kept clean for drying hands and a waste receptacle. Non-disposable single-use towels may be used, subject to the following requirements:

(a) the towels must be mechanically washed and hot air dried;

(b) the wash cycle must run with sufficient detergent and for a time demonstrated to thoroughly remove all visible soil;

(c) the towels must be thoroughly hot air tumble dried to at least 130°F (54°C) for ten minutes; and

(d) laundered towels must be kept protected from contamination from soiled laundry and other sources by using separate labeled carts or containers for transportation, by providing sufficient space for sorting, folding, and storage, and by washing hands between touching soiled and clean laundry.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.117 WORK ROOM REQUIREMENTS (1) All ~~tattooing and body piercing~~ body art procedures must take place in the work room only.

(2) and (3) remain the same.

(4) Animals are not allowed in the work room, except for patrol dogs accompanying security or police officers and service animals such as guide dogs. Fish aquariums are allowed in waiting rooms and areas outside of the work room. Fish aquariums may contain only aquatic species that can survive underwater for a minimum of 48 hours.

(5) through (7) remain the same.

(8) ~~The work~~ Work rooms must have at least one handwashing ~~facility~~ sink unless there is a handwashing ~~facility~~ sink outside the work room within ten feet of the work room door.

(a) If any client chair is more than fifteen feet from a handwashing sink, additional sinks may be required within the work room.

~~(a)(b)~~ If the handwashing facility sink is outside the work room, the work room door must be a two-way self-closing door. The two-way self-closing door may be a solid door, swinging café door, or curtain.

~~(b)(c)~~ The handwashing facility sink cannot be in the same room as the toilet.

(c) remains the same but is renumbered (d).

~~(d)(e)~~ The handwashing sink must be sanitized with an EPA-certified disinfectant at least once at the beginning of each day while the establishment is in operation.

(e) through (i) remain the same but are renumbered (f) through (j).

(9) remains the same.

~~(a) Waste receptacles must be covered except while in use to prevent contamination of hands and gloves.~~ lined and covered. The receptacles must be cleanable, kept clean, and have self-closing lids with hands-free controls.

(b) Waste receptacles in the work room must be emptied daily or more often, as needed.

(c) through (11) remain the same.

(12) Tobacco use, vaping, eating, or drinking is prohibited in the work room, except eating and drinking is allowed when needed for first aid purposes.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.121 TEMPORARY OR MOBILE ESTABLISHMENT (1) through (3) remain the same.

(4) Mobile establishments, such as a trailer, mobile home, or mobile vehicle, must have four solid walls. Outdoor tents are prohibited.

(5) The venue for a temporary event must be approved by the department or local health authority prior to the event. The venue must be indoors and meet all requirements of ARM 37.112.117.

(6) Temporary or mobile establishments must be used solely for the purpose of body art procedures. Food prep and habitation are prohibited.

(7) The use of an autoclave is prohibited in temporary or mobile establishments. All equipment must be individually wrapped and sterile or sterilized at the time of use with a cassette sterilization unit.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.125 EQUIPMENT AND SUPPLIES (1) through (7) remain the same.

~~(8) Disinfectants, cleaning compounds, pesticides, and other chemicals must be stored in such a manner that prevents contamination of equipment, supplies, and work surfaces. Chemical containers must be clearly labeled with the common name of the material. Chemicals must be used in a manner consistent with the manufacturer's labeling.~~

(9) Chemical containers must be clearly labeled with the common name of the material. Chemicals must be used in a manner consistent with the manufacturer's labeling.

(9) remains the same but is renumbered (10).

~~(10)(11) Tables, trays, machinery, tools, containers, and all other equipment used by each individual body artist and equipment may not be shared among body artists serving different clients at the same time.~~

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.129 BLOOD-BORNE PATHOGEN EXPOSURE CONTROL (1) An establishment operator employing at least one body artist shall meet the applicable requirements of 29 CFR 1910.1030, which provides standards for blood-borne pathogen exposure control as promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration. The department hereby adopts and incorporates by reference 29 CFR 1910.1030, as amended May 14, 2019. Copies of ~~29 CFR 1910.1030~~ this federal regulation may be obtained by contacting the ~~Montana~~ Department of Public Health and Human Services, Public Health and Safety Division, ~~Food and Consumer~~ Environmental Health and Food Safety Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 or by visiting <https://www.ecfr.gov/>.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.131 STERILIZATION OF EQUIPMENT AND JEWELRY (1) All nondisposable instruments used for ~~tattooing or body piercing~~ body art that can come into contact with blood or body fluids must be individually wrapped and sterilized by an autoclave. All disposable instruments that come into contact with blood or body fluids must come from the supplier individually wrapped and sterile or be sterilized at the time of use.

(2) through (3)(b) remain the same.

(c) After autoclaving, the package must be dated and initialed by the body artist. If the autoclaved instrument or jewelry is not used within six months of the sterilization date, or if the packaging is no longer intact, the article must be rewrapped and resterilized before use.

(d) remains the same.

(e) The department or its designee may require that an operator submit the results of a monthly spore test directly to its office if the establishment fails to perform a monthly spore ~~test~~ test or has one or more failed spore tests.

(f) remains the same.

(g) Following sterilization, equipment, and jewelry must remain in the autoclave packaging.

(4) remains the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.132 CLEANING AND ULTRASONIC USE (1) All ~~nondisposable reusable~~ instruments used for ~~tattooing and body piercing~~ body art procedures must be cleaned thoroughly with an appropriate soap or detergent and rinsed completely with potable water.

(2) ~~Each establishment~~ Establishments that reuse instruments must have at least a one-compartment sink with hot and cold running water for the cleaning of instruments or an automated instrument washer. The sink must be used only for cleaning contaminated instruments and shall not be used for hand washing. The sink must be of an adequate size to submerge the instruments being cleaned, except as provided in (3) ~~of this rule.~~

(3) remains the same.

(4) An ultrasonic ~~cleaning~~ unit must be used in accordance with the manufacturer's instructions. An ultrasonic ~~cleaning~~ unit does not satisfy the sterilization requirements in ARM 37.112.131, with or without the addition of chemical sanitizers.

(5) remains the same.

(6) The covered ultrasonic unit and the sink used for rinsing and scrubbing contaminated tools must be separated from the autoclave to prevent contamination. If space is an issue, the establishment may install a Plexiglas, stainless steel, or other nonporous barrier to prevent cross contamination.

(7) All reusable instruments must be cleaned in a separate cleaning room.

(a) The cleaning room must be enclosed and not open to the public.

(b) The cleaning room must only be used for cleaning, disinfecting, sterilizing, storage, and related tasks. No other services, including tattooing, piercing, or retail sales, may occur within this sterilization room/area.

(c) If any items are stored in the cleaning room, cabinets or drawers must be made of smooth, nonporous wipeable materials.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.133 SKIN PREPARATION, ASEPTIC TECHNIQUE, AND

AFTERCARE (1) Aftercare instructions appropriate for the ~~tattooing or body piercing~~ body art procedure that describe effective means of infection prevention must be provided to the client both verbally and in writing before every procedure.

(2) At all times during the ~~tattooing or body piercing~~ body art procedure, body artists must use sterile instruments as specified in ARM 37.112.131 and aseptic techniques.

(3) ~~Before and after performing the tattooing or body piercing~~ body art procedure, body artists must remove all rings, ~~watches, and bracelets,~~ and ~~before and after performing the body art procedure,~~ a body artist must ~~then~~ thoroughly wash their hands, wrists, and lower arms in warm running water with soap for at least 20 seconds, scrubbing around and under their fingernails, rinsing completely, ~~and~~ drying with clean, individual, disposable towels, and use a new clean disposable towel to turn off the faucet.

(4) ~~Artists~~ Body artists must wear a clean outer garment. A hair restraint must be worn if necessary to prevent the body artist's hair from contact with the client. All necklaces, bracelets, or other personal items of the body artist ~~either~~ must be removed ~~or covered by the outer garment or sterile gloves~~ to prevent the item coming in contact with the client.

(5) If it is necessary to shave the client's skin ~~area to be tattooed or pierced,~~ the body artist must use single-use razors. Straight razors, electric razors, and replaceable blade units may not be used. After shaving the client's skin, the body artist must:

- (a) wash and scrub ~~the artist's~~ their hands as described in (3) ~~of this rule;~~ and
- (b) remains the same.

(6) If the body artist wore gloves to wash or shave the client's skin, the body artist must discard those gloves after completing those tasks. The body artist must then remove gloves, wash hands, and put on a new pair of gloves before continuing the procedure.

(7) Before performing the ~~tattooing or piercing~~ body art procedure, the skin and surrounding area where the procedure is to be done must be thoroughly dampened with an antiseptic using a clean single-use cotton ball, gauze, or tissue.

(8) If it is necessary to use a marking device, the marking device will be used only once and disposed of ~~or it must be autoclaved between uses.~~

(9) New gloves must be put on before each ~~tattooing and piercing~~ body art procedure.

(10) If the body artist's gloved hands become contaminated during the ~~tattooing or body piercing~~ body art procedure, then the body artist must remove the gloves, wash hands, and put on a new pair of gloves before resuming the procedure.

(a) remains the same.

(b) If the body artist sustains a needle stick, the body artist must resume the ~~tattooing or body piercing~~ body art procedure with clean and sterile equipment after rewashing hands and regloving. If a needle stick occurs, the department recommends consulting a health care provider.

(11) remains the same.

(12) Upon completion of the ~~tattooing or piercing~~ body art procedure, body artists must apply an antiseptic solution to the procedure area in accordance with the manufacturer's instructions with a clean single-use cotton ball, gauze, or tissue. ~~In the case of a tattoo, the artist must then apply a sterile absorbent bandage to the tattooed site.~~ In the event of bleeding, all products used to stop the flow of blood or to absorb blood must be sterile, single-use items that are disposed of immediately after use in appropriate covered containers. All products used to cover the procedure site must be used in accordance with the manufacturer's instructions.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.137 HANDLING AND DISPOSAL OF INFECTIOUS MATERIAL

(1) through (3) remain the same.

(4) ~~An~~ A body artist must use adequate protections, such as a brush, dust pan, or tongs to pick up any broken glassware in the work room. After engaging in such cleaning, the body artist must wash hands and reglove as described in ARM 37.112.133 before working with a client.

(5) and (6) remain the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.141 RECORD KEEPING AND REVIEW (1) and (1)(a) remain the same.

(b) typed ~~or~~, printed in ink, or electronic.

~~(2) Each establishment must keep on the premises current copies of the Montana Code Annotated and Administrative Rules governing tattooing and body piercing establishment, and upon request make these available for review to any artist, client, client's parent, or client's legal guardian.~~

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.142 CLIENT RECORD (1) and (1)(a) remain the same.

(b) the name of the body artist who performed the ~~tattooing or body piercing~~ body art procedure;

(c) remains the same.

(d) special instructions or information regarding the client's medical or skin conditions which are relevant to the ~~tattooing or body piercing~~ body art procedure; and

(e) remains the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.144 CONSENT FORM (1) The client must sign a consent form before each ~~tattooing or body piercing~~ body art procedure. If the client is under the age of 18, then the client's parent or legal guardian must sign the consent form, in person, before the procedure.

(2) remains the same.

(a) the client's name and address, the date of the procedure, the design of the tattoo, if applicable, the location of the procedure on the client's body, and any other information that the body artist may consider appropriate;

(b) through (d) remain the same.

(e) the permanent nature of ~~either tattoos or specific piercings or both~~ the body art procedures; and

(f) remains the same.

(i) has been provided with the aftercare instructions, both in writing and verbally by the body artist; and

(ii) consents to the ~~tattooing or body piercing~~ body art procedure.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.147 TRAINING (1) Operators and body artists must complete formal training in at least general sanitation, first aid, and universal precautions for preventing the transmission of blood-borne pathogens before licensure. Training may be provided by the department, its designee, or an organization approved by the department or its designee as having adequate content in each subject.

(2) Operators and body artists must maintain current training certification with approved providers for first aid, and universal precautions for preventing the transmission of blood-borne pathogens and follow certifying organizations guidelines for expiration and renewal.

(3) Guest body artists and new body artists must complete formal training and provide the inspecting authority with documentation of this training prior to working in a licensed facility.

(4) and (5) remain the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.151 LICENSE APPLICATION (1) remains the same.

(2) The applicant for licensure of license and all body artists working in the proposed establishment shall be at least 18 years of age at the time of application.

(3) and (4) remain the same.

(5) Obtaining a license from the department does not relieve the applicant from satisfying applicable requirements from other federal, state, or local agencies. These requirements may include, ~~but are not limited to:~~

(a) through (c) remain the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, 50-48-201, MCA

37.112.152 LICENSE FEE AND EXPIRATION (1) Except as provided in (2), the license fee is ~~\$135~~ \$185 each for a tattoo license and body piercing license.

(2) The license fee for establishments that only pierce ear lobes is ~~\$75~~ \$125.

(3) remains the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, 50-48-201, MCA

37.112.156 REVIEW OF PLANS (1) remains the same.

(2) For initial plan reviews submitted to the department, the initial plan review fee is \$200 and must be submitted by the applicant before the plan review will begin.

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

~~(4)(5)~~ If the facility was previously licensed or certified by the department as a ~~tattooing or body piercing~~ body art establishment and no structural modification is involved, the department may waive the requirement for the submission of plans.

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

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.157 INSPECTION (1) and (2) remain the same.

(3) Whenever an inspection of an establishment is made, the department or its designee will document its findings on an inspection form. ~~A copy of the completed inspection report form will be given to the person in charge of the establishment within ten days of the inspection.~~ At the conclusion of the inspection, the department or its designee shall provide a copy of the completed inspection report and the notice to correct violations to the person in charge of the establishment and request a signed acknowledgment of receipt.

(a) through (c) remain the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, 50-48-206, MCA

37.112.158 RESTRICTIONS AND PROHIBITIONS (1) A ~~tattooing or body piercing~~ body art procedure may not occur if:

(a) either the body artist or the client is under the apparent influence of alcohol or other mind-altering drugs;

(b) through (2) remain the same.

(3) A written physician referral is required before ~~tattooing or body piercing a body art procedure~~ if the client:

(a) through (e) remain the same.

(4) The body artist may delay or require a medical referral before conducting any ~~tattooing or piercing~~ body art procedure for any person whose physical health, understanding, or judgment may be in question.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.163 TATTOOING: COLORS, DYES, AND PIGMENTS (1) remains the same.

(2) Pigments mixed or prepared in the tattoo establishment must be prepared and stored in accordance with the manufacturer's instructions. When using water to mix colors, dyes, and pigments, distilled or sterilized water must be used.

(3) A tattooist who becomes aware of a client who has experienced an apparent reaction, allergy, or sensitivity to a pigment used in tattooing must report the condition and pigment information to the Department of Public Health and Human Services, Public Health and Safety Division, ~~Food and Consumer~~ Environmental Health and Food Safety Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 or the local health officer.

(4) Adulterated pigments or those containing deleterious substances may be subject to voluntary hold, manufacturer recall, or other action under the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA; the Federal Food, Drug and Cosmetic Act; or other federal, state, or local law.

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

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.165 BODY PIERCING: ADDITIONAL REQUIREMENTS AND RESTRICTIONS (1) remains the same.

(2) Piercing guns may be used on the ear lobe only and shall not be used on body parts such as cartilage, nostrils, navels, eyebrows, and tongues.

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

(b) the practice of a physician or licensed medical professional as long as the person does not hold himself or herself out as a ~~body piercer~~ artist;

(c) the practice of acupuncture; ~~and~~

(d) other types of body modifications, including ~~but not limited to~~ cutting muscle to make a permanent split such as tongue-splitting, cutting into bone, trepanation (drilling into the skull), dental modification, amputation, implants, saline injection, vacuum pumping, circumcision, castration, penectomy, and subincision or superincision of genitals.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.167 BODY PIERCING: EAR LOBE PIERCING EXEMPTIONS

(1) Establishments that perform ear lobe piercing only by using a mechanized presterilized ear-piercing system gun approved by the department or its designee may be exempted from ARM 37.112.116(2), and 37.112.117(2), (5), and (8) as long as if:

~~(a) the work area in which ear lobe piercing takes place is separated enough from the other areas so that no physical contact can be reasonably expected to occur between the general public and the client or artist;~~

~~(b) a minimum of 30 foot-candles of light is provided at the level where the ear piercing is being performed. Spot lighting may be used to achieve this degree of illumination; and~~

~~(c) the body artist and client must have convenient access to handwashing facilities sinks. If the handwashing facility sink is not within the work room or within ten feet of the work room door, then a 70% alcohol-based hand sanitizer must be used in accordance with the U.S. Centers for Disease Control "Guideline for Hand Hygiene in Health-Care Settings" (Morbidity and Mortality Weekly Reports, 2002, Vol. 51, No. RR-16) immediately before putting on gloves and immediately after removal of the gloves. The department adopts and incorporates, by reference, the U.S. Centers for Disease Control "Guideline for Hand Hygiene in Health-Care Settings" (Morbidity and Mortality Weekly Reports, 2002, Vol. 51, No. RR-16). Copies of this guideline may be obtained by contacting the ~~Montana~~ Department of Public Health and Human Services, Public Health and Safety Division, ~~Food and Consumer~~ Environmental Health and Food Safety Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes this rulemaking to update, consolidate, simplify, and make more user-friendly the administrative rules governing body art. These rules have not been updated since 2013.

The proposed rule changes are necessary to ensure continued public health and safety and to address new trends in body art such as the practice of scarification and branding. The proposed rule changes implement nationally recognized health and safety standards for body art and are based in part on the Body Art Model Code published by the National Environmental Health Association.

Technical, stylistic, and nonsubstantive updates are also proposed to make the rules clearer and more user-friendly.

NEW RULE I

The department is proposing NEW RULE I to establish clear standards for jewelry used for initial body piercings and to create record keeping requirements to ensure

compliance with the standards. Jewelry inserted by a body artist following an initial piercing is worn inside an open wound. As it is in contact with an individual's internal tissues, jewelry must be biocompatible to avoid adverse reactions such as contact dermatitis, scar tissue, infection, and other issues that might arise with the use of substandard jewelry. The proposed rule is intended to ensure biocompatible jewelry is used to help ensure there are no adverse health effects to the client.

NEW RULE II

The department is proposing NEW RULE II to establish health and safety standards for branding. The rule requires the body artist and client to wear protective face masks rated as N95 or higher, as the fumes produced from branding when flesh burns can be toxic and potentially spread disease and infection. To protect against any harmful airborne byproducts and reduce the spread of airborne pathogens, the rule also requires the work room where branding occurs to be enclosed and have an appropriately sized ultraviolet air purifier. The rule also sets forth nationally recognized best practices to ensure branding is safely conducted.

NEW RULE III

The department is proposing NEW RULE III to establish health and safety standards for scarification. Scarification generally involves cutting into the skin and mucus membranes, which can increase the risk of exposure to and infection with bloodborne pathogens, such as hepatitis B, hepatitis C, and HIV. The rule requires the use of personal protective equipment to decrease the risk of exposure to infectious diseases. To protect against any harmful airborne byproducts and reduce the spread of airborne pathogens, the rule requires the work room where the scarification procedure is performed to be enclosed and have an appropriately sized ultraviolet air purifier.

ARM 37.112.102

The department proposes to revise this rule to update terminology and increase clarity of the rule.

ARM 37.112.103

The department proposes to amend this rule to clarify the meaning of terms used throughout the body art rules and to provide for a better understanding of these rules. Definitions of terms defined in statute have been removed from this rule. The department has also updated the rule to use terminology that is consistent with current law and nationally recognized health and safety standards.

ARM 37.112.108

The rule currently prohibits body art procedures from being performed in any living or sleeping area. The department is proposing to amend this rule to clarify that this prohibition extends to such areas with bathrooms or handwashing sinks and that client access to a body art establishment must be separate from access to a living or sleeping area.

ARM 37.112.116

The department proposes to amend this rule to allow for the use of non-disposable single-use towels in toilet and handwashing rooms provided they are properly laundered after each use. Technical and stylistic changes are also proposed to improve the clarity of the rule.

ARM 37.112.117

The department proposes to amend this rule to clarify and update health and safety requirements for work rooms where body art procedures are performed in accordance with nationally recognized best practices.

ARM 37.112.121

The department proposes to amend this rule to clarify and update health and safety requirements for temporary and mobile establishments where body art procedures are performed in accordance with nationally recognized best practices.

ARM 37.112.125

The department proposes to amend this rule to clarify and update health and safety requirements pertaining to equipment and supplies used for body art procedures in accordance with nationally recognized best practices.

ARM 37.112.129

The department proposes to amend this rule to clarify the version of the federal regulation that is adopted and incorporated by reference in the rule.

ARM 37.112.131

The department proposes to amend this rule to allow body art establishments to sterilize equipment at the time of use, which will save time and supplies for the establishment while still ensuring public health and safety.

ARM 37.112.132

The department proposes to amend this rule to allow automated washers and require a sink only if instruments are reused. The department is also proposing amendments to update health and safety requirements pertaining to the cleaning and storage of reusable instruments that are used in body art procedures.

ARM 37.112.133

In response to stakeholder feedback, the department is proposing to amend this rule to remove language requiring tattoos to be covered by absorbent bandages. The proposed rule change allows for the use of non-absorbent bandages such as Saniderm. Technical and stylistic changes are also proposed to improve the clarity of the rule.

ARM 37.112.137, 37.112.141, 37.112.142, 37.112.144, 37.112.147, and 37.112.151

Technical, stylistic changes and updates to terminology are proposed to improve the clarity of these rules.

ARM 37.112.152

The department proposes to amend this rule to increase license fees to help offset the cost to taxpayers associated with licensure and oversight of body art establishments by the department. The fees in this rule have not been changed since 2013 and do not cover the actual cost associated with licensure and oversight performed by the department.

ARM 37.112.156

The department proposes to amend this rule to establish plan review fee of \$200 to cover the cost of the average amount of time spent by department staff for each plan review. The amount of the fee is consistent with fees local health departments charge for plan reviews.

ARM 37.112.157

The department proposes to amend this rule to clarify the process of providing an inspection report to a body art establishment following completion of an inspection by the department or local health authority.

ARM 37.112.158

Technical and stylistic changes and updates to terminology are proposed to improve the clarity of these rules.

ARM 37.112.163

The department proposes to amend this rule to clarify that water must be distilled or sterilized when used to mix colors, dyes, or pigments for tattooing.

ARM 37.112.165

The department proposes to amend this rule to clarify ear piercing guns may be used on the ear lobe only. Ear piercing guns cannot be sanitized in a medically recognized way. Plastic ear-piercing guns cannot be autoclave sterilized and may not be sufficiently cleaned between use on multiple clients. Even if antiseptic wipes used were able to kill all pathogens on contact, simply wiping the external surfaces of the gun with an antiseptic does not kill pathogens within the working parts of the gun, which cannot be taken apart. Ear piercing studs used in the guns are too short for most cartilage. Pressure of such tight jewelry can result in additional swelling and infection because it does not allow for thorough cleaning.

ARM 37.112.167

This rule currently exempts body art establishments that perform only ear lobe piercing procedures from having to meet work room barrier requirements under ARM 37.112.117(2) and lighting requirements under ARM 37.112.117(5). The department proposes to amend this rule to remove these exemptions from compliance with the barrier and lighting requirements. This is to ensure public health and safety by requiring adequate lighting in the work room and separation from the public as well as any contaminated surfaces. This proposed rule change applies only to newly licensed establishments and current establishments who remodel or change location.

Fiscal Impact

Two rule changes associated with this rulemaking have a fiscal impact: (1) the proposed fee increases for licensure under ARM 37.112.152; and (2) establishment of a plan review fee under ARM 37.112.156.

Fee increases for licensure under ARM 37.112.152

This proposed rule amendment will result in the department collecting an estimated \$14,000 per year in license fees, of which \$12,600 will be available for county health departments to collect for conducting inspections. The proposed fee is estimated to affect 270 body art establishment owners.

Establishment of a plan review fee under ARM 37.112.156

This proposed rule amendment will result in the department collecting an estimated \$6,000 per year in plan review fees. The proposed amendment will affect new establishments applying for a license and existing establishments who change location or complete a significant remodel. The proposed amendment is estimated to affect 30 body art establishments per year.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

6. The Office of Legal Affairs, Department of Public Health and Human Services, 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. Written requests may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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 37.8.104 and 37.8.108) PROPOSED AMENDMENT
pertaining to Authorized format for)
Submission of a Vital Record and)
Amendment Process and Document)
Requirements)

TO: All Concerned Persons

1. On January 10, 2025, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82497559748?pwd=EXLuLpmPcK3HfwgonhO1xchEa4OB4Y.1>, meeting ID: 824 9755 9748, and password: 423542; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 824 9755 9748, and password: 423542. Find your local number: <https://mt-gov.zoom.us/u/kKRhXH0ju>.

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 December 27, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhás, 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 hhsadminrules@mt.gov.

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

37.8.104 AUTHORIZED FORMAT FOR SUBMISSION OF A VITAL RECORD (1) All vital records, such as marriage license applications, and birth certificates, death certificates, fetal death certificates, and marriage certificates, ~~must be~~ shall be submitted electronically using the department's electronic registration system, and in rare instances where access to the department's electronic registration system is unavailable, submitted on forms provided or authorized by the department.

(2) When vital records are submitted outside of the department's electronic registration system due to unavailability of the system, each vital record application and certificate must be typed or plainly written in unfading black ink that is legible on all copies or must be completed using computer printers that produce dense and

legible characters in black. The characters entered onto these forms must be adequate for high quality reproduction by microfilming or photocopying and may not contain any alterations or obliteration of the original data.

(3) remains the same.

AUTH: 50-15-102, 50-15-103, MCA

IMP: 40-1-107, 50-15-102, 50-15-103, 50-15-121, 50-15-124, MCA

37.8.108 AMENDMENT PROCESS AND DOCUMENT REQUIREMENTS

(1) Except as noted in ARM 37.8.311, a filed original vital record must be amended by either electronic means by maintaining an audit trail of the amended record in the department's electronic registration system or, for non-electronic records, by placing a line through the information to be deleted and typing the new information above the line. ~~Electronic records must be amended by overlaying the new information on all electronic images of the record used for certified copies.~~ Printed copies of amended electronic records shall display the most recent changes made to the record in a manner determined by the department. If the change to the record is to add missing or blank information, the added information must be entered in the appropriate location.

(2) through (7) remain the same.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing this rulemaking to implement the use of a new electronic registration system for vital records. The new electronic registration system will allow data providers to submit information pertaining to vital records data electronically and will replace the need to send hard copy documents to the department.

37.8.104

The department is proposing to amend this rule to require that vital records, such as marriage license application information, birth certificates, death certificates, and fetal death certificates, be submitted using the new electronic registration system. Under this proposed amendment, persons and entities responsible for furnishing information necessary for the creation of vital records such as county clerks, funeral homes, hospitals, clinics, and coroners will be required to submit such information electronically using the new registration system. The registration system will be made available by the department to users at no cost. The department is proposing to make use of the electronic system mandatory to ensure accurate and timely reporting of information necessary for the creation and maintenance of vital records. The proposed amendment allows for hard copy records to be submitted only in rare cases in which the electronic system is unavailable due to maintenance or a technical failure of the system.

37.8.108

The department is proposing to amend this rule to update the procedure for amending vital records to align with use of the new electronic system. The proposed amendment eliminates the antiquated practice of using a typewriter to overlay the amended information on electronic images of vital records to create certified copies of amended vital records. In place of this practice, the department is proposing to implement amendments to vital records by electronic means through maintaining an audit trail of the amended record in the department's electronic database system. Older non-electronic records will still be amended by striking through old information and overlaying the new information.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

6. The Office of Legal Affairs, Department of Public Health and Human Services, 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.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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 37.40.1485 pertaining to Home) PROPOSED AMENDMENT
and Community-Based Services for)
Elderly and Physically Disabled)
Persons: Environmental Accessibility)

TO: All Concerned Persons

1. On January 9, 2025, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/89255126913?pwd=U518O7EYC0kva3ztLI0zIWK3caqIkB.1>, meeting ID: 892 5512 6913, and password: 590706; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 892 5512 6913, and password: 590706. Find your local number: <https://mt-gov.zoom.us/u/kcvZi1CsjH>.

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 December 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

37.40.1485 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: ENVIRONMENTAL ACCESSIBILITY ADAPTATION, REQUIREMENTS

(1) Environmental accessibility adaptations are modifications to a ~~recipient's~~ member's home, designed to maintain or improve the ~~recipient's~~ member's ability to remain at home.

(2) remains the same.

(a) modifications to a personal vehicle that allow the ~~recipient~~ member to be more independent;

(b) and (c) remain the same.

(d) facilitation of the ability of a caregiver or service provider to maintain a ~~recipient~~ member at home.

(3) remains the same.

(a) be functionally necessary and relate specifically to the recipient's member's disability;

(b) provide for the recipient's member's access to the home environment and increased independence and safety in the home;

(c) be reasonably expected to promote the recipient's member's functional ability or the ability of the caregiver to maintain the recipient member at home; and

(d) be the most cost effective adaptation among the adaptations that are available to meet the recipient's member's needs; and

(e) ~~meet the 1980 specifications set by the American national standards institute.~~ meet applicable requirements of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq. and the 2010 ADA Standards for Accessible Design. The department adopts and incorporates by reference the 2010 ADA Standards for Accessible Design, which set forth minimum standards for newly designed and constructed or altered state and local government facilities and public accommodations used by individuals with disabilities. The standards may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 1100 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210 or by visiting <https://www.ada.gov/law-and-regs/design-standards/2010-stds/>.

(4) All requests for environmental accessibility adaptations must include an estimate or bid from a licensed contractor. Environmental accessibility adaptations anticipated to exceed \$5,000 in cost must include at least two estimates or bids from licensed contractors, unless prior authorization is received from the department.

(5) Environmental accessibility adaptations must be installed by a licensed contractor.

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

~~(6)(8)~~ A recipient member may ~~only~~ receive any ~~one~~ environmental accessibility adaptation only once unless the department specifically authorizes the repurchase of an adaptation.

AUTH: 53-2-201, 53-6-101, 53-6-402, 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) proposes to amend ARM 37.40.1485 pertaining to environmental accessibility adaptations to update terminology, reference current Americans with Disabilities Act standards, and incorporate requirements contained within the 1915(c) Big Sky Waiver application approved by the Centers for Medicare & Medicaid Services.

The department is proposing to update the rule to reference current standards under the Americans with Disabilities Act (ADA). The proposed rule change is necessary to remove references within the rule to outdated standards and ensure environmental accessibility adaptations meet current ADA standards. Additionally, the department is proposing to require that environmental accessibility adaptations

meet the 2010 ADA Standards for Accessible Design. These standards represent the most current and comprehensive guidelines for accessibility adaptations. Adoption of these standards will ensure that accessibility adaptations funded through Big Sky Waiver provide for the highest level of accessibility, promote independence, and enhance the quality of life for individuals who rely on the adaptations. Adoption of these standards will also provide clear guidelines for providers and contractors involved in the modification process, which will help ensure that initial installs are correctly performed and avoid the need for costly retrofits.

The department is also proposing amendments to update requirements relating to installer qualifications and the process for obtaining estimates for environmental accessibility adaptations. The proposal to allow only licensed contractors to install environmental accessibility adaptations is necessary to align with the approved 1915(c) Big Sky Waiver application and help ensure adaptations are properly and safely installed. The proposal for service requests to include an estimate or bid from a licensed contractor aligns with current practice and is necessary to ensure cost-effectiveness of the service.

The proposal for adaptation requests that exceed \$5,000 in cost to include two estimates or bids from licensed contractors is necessary to ensure the environmental accessibility adaptation is the most cost-effective adaptation among those available to meet the member's needs. The proposed requirement also ensures that Big Sky Waiver funds are used in a cost-efficient manner to the maximum benefit of all members of the program. An exemption from receiving two bids or estimates, with prior authorization from the department, is proposed to account for circumstances in which two bids or estimates cannot be obtained due to a lack of available contractors and ensure such lack of availability does not result in a barrier to receiving services.

Fiscal Impact

There is no anticipated fiscal impact to the department associated with this rulemaking.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

6. The Office of Legal Affairs, Department of Public Health and Human Services, 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.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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 rule will not significantly and directly impact small businesses.

11. 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/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
37.47.1001, 37.47.1005, 37.47.1008,)	
37.47.1015, 37.47.1020, and	)	NO PUBLIC HEARING
37.47.1021 pertaining to the battered	)	CONTEMPLATED
spouses and domestic violence)	
program)	

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to repeal 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 January 3, 2025, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhus, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The department proposes to repeal the following rules:

37.47.1001 DEFINITIONS

AUTH: 40-2-402, MCA
IMP: 40-2-401, MCA

37.47.1005 DEPARTMENT ADMINISTRATIVE POLICIES AND RESPONSIBILITIES

AUTH: 40-2-402, MCA
IMP: 40-2-401, MCA

37.47.1008 AWARDING GRANTS, CRITERIA

AUTH: 40-2-402, MCA
IMP: 40-2-401, MCA

37.47.1015 GRANT APPLICATION, ELIGIBILITY REQUIREMENTS

AUTH: 40-2-402, MCA

IMP: 40-2-401, MCA

37.47.1020 GRANT APPLICATION, GENERAL REQUIREMENTS

AUTH: 40-2-402, MCA

IMP: 40-2-401, MCA

37.47.1021 GRANT APPLICATION, CONTENT REQUIREMENTS

AUTH: 40-2-402, MCA

IMP: 40-2-401, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to repeal ARM 37.47.1001, 37.47.1005, 37.47.1008, 37.47.1015, 37.47.1020, and 37.47.1021.

During the 2023 Montana Legislature, HB 83 was introduced, passed, and signed by Governor Gianforte. HB 83 moved oversight of the Family Violence Prevention Services Act (FVPSA) grant from the department to the Montana Board of Crime Control (MBCC) in the Montana Department of Justice.

The transfer of oversight of the grant is effective October 1, 2024. The Child and Family Services Division is proposing to repeal all the existing rules because once MBCC has oversight of FVPSA, the department no longer has the authority to promulgate or enforce rules governing the grant funds or how they are allocated to the local domestic violence shelter programs. The goal is to repeal the existing rules as soon as possible.

MBCC is asking the department to repeal these rules instead of transferring them as they are unable to follow the rules as currently set out, and MBCC does not need the grant program under their department.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bailey Yuhas, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 17, 2025. Comments may also be faxed to (406) 444-9744 or e-mailed to hhsadminrules@mt.gov.

6. 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 Bailey Yuhas at the above address no later than 5:00 p.m., January 17, 2025.

7. If the agency receives requests for a public hearing on the proposed action from either 10% 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 zero persons based on the shelters still function and the federal grant still supports these shelters. The statute change simply changes oversight of the federal grant from DPHHS to the Montana Board of Crime Control.

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 5 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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

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

/s/ Mark Prichard
Mark Prichard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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 37.106.2502, 37.106.2505,) PROPOSED AMENDMENT AND
37.106.2510, 37.106.2512, and) REPEAL
37.106.2514 and the repeal of ARM)
37.106.2513 and 37.106.2522)
pertaining to Retirement Homes)

TO: All Concerned Persons

1. On January 14, 2025, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/89235503658?pwd=zbuuH5HMmW1dW3DxaXDF6zgylnpRF0.1>, meeting ID: 892 3550 3658, and password: 947223; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 892 3550 3658, and password: 947223. Find your local number: <https://mt-gov.zoom.us/u/kcD9tAaa3>.

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 December 31, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhus, 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 hhsadminrules@mt.gov.

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

37.106.2502 RETIREMENT HOMES: APPLICATION OF OTHER RULES

(1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapters ~~3, 4, 6, 10, 11, 14, 15, 22 and 23~~, conflict with the terms of this subchapter, the terms of this subchapter will apply to retirement homes.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-214, MCA

37.106.2505 RETIREMENT HOMES: FIRE AND BUILDING CODES APPROVAL (1) The construction of or alteration, addition, or renovation to a retirement home must meet the requirements set forth in ARM 37.106.302.

- ~~(a) meet all applicable local and state building and fire codes;~~
- ~~(b) be approved in writing by the building authority; and~~
- ~~(c) be approved in writing by the fire authority.~~

(2) A retirement home must be inspected and certified on an annual basis for compliance with the local and state fire codes by the fire authority. A retirement home must maintain a record of such inspection and certification for at least one year following the date of the inspection.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-214, MCA

37.106.2510 RETIREMENT HOMES: PHYSICAL REQUIREMENTS (1) A retirement home must comply with the local and state building code and fire code.

(2) A retirement home must comply with the following physical requirements:

(a) There must be adequate and convenient janitorial facilities including a sink and storage area for equipment and chemicals.

(b) Floors and walls in toilet and bathing rooms, laundries, janitorial closets, and other rooms subject to large amounts of moisture, must be smooth and non-absorbent.

(c) The floor mounted and wall mounted furnishings must be easily moveable to allow for cleaning or mounted in such a manner as to allow for cleaning around and under such furnishings.

(d) Bathing facilities must be equipped with:

(i) anti-slip surfaces; and

(ii) handicapped grab bars, capable of supporting a concentrated load of 250 pounds.

(3) Each bedroom in a retirement home must include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) at least one operable window; and

(d) access to a toilet room without entering through another resident's room.

(4) If a retirement home elects to provide furnishings as part of its services, the retirement home must provide in each bedroom an adequate closet or wardrobe, bureau or dresser or its equivalent, and at least one ~~arm chair~~ armchair, for every two residents.

(5) Traffic to and from any room shall not be through a resident's bedroom.

(6) No occupied room shall have as its means of access a trap door, ladder, or folding stairs.

(7) No required path of travel to the outside shall be through rooms that are subject to locking or otherwise controlled by a person other than the person seeking to escape.

(8) No more than ~~four~~ two residents may reside in a single bedroom.

(9) Exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each single bedroom must contain at least 100 square feet, and each multi-bedroom must contain at least 80 square feet per bed.

(10) With respect to any conditions in existence prior to July 4, 1996, any requirement of ~~ARM 37.106.2510~~ this rule may be waived at the discretion of the department if:

(a) physical limitations of the retirement home would require disproportionate expense or effort to comply with a requirement, with little or no increase in the level of safety to the residents and staff; or

(b) compliance with a requirement would involve unreasonable hardship or unnecessary inconvenience, with little or no increase in the level of safety to the residents and staff.

~~(11) With respect to any conditions in existence prior to July 4, 1996, the specific requirements of ARM 37.106.2510 may be modified by the department to allow alternative arrangements that will provide the same level of safety to the residents and staff, but in no case shall the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in ARM 37.106.2510.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-214, MCA

37.106.2512 RETIREMENT HOMES: WATER SUPPLY AND WASTEWATER SYSTEMS ~~(1) The department hereby adopts and incorporates by reference ARM 17.38.207, stating maximum microbiological contaminant levels for public water supply systems, and the following circulars establishing construction, operation, and maintenance standards for spring, surface water, wells and cisterns:~~

~~(a) Circular WQB-1 entitled "Montana Department of Health and Environmental Sciences Standards for Water Works" (1992 Edition);~~

~~(b) Circular WQB-3 entitled "Montana Department of Health and Environmental Sciences Standards for Small Water Systems" (1992 Edition);~~

~~(c) Circular #17 entitled "Cisterns for Water Supplies." Copies of ARM 17.38.207 and circulars WQB-1, WQB-3 and #17 may be obtained from the Department of Environmental Quality, Water Quality Bureau, Metcalf Building, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.~~

~~(2)(1) A retirement home must provide an adequate and potable supply of water. The retirement home must meet the water supply and wastewater systems requirements in ARM 37.111.110 and 37.111.116.:~~

~~(a) connect to a public water supply system approved by the department of environmental quality; or~~

~~(b) if the retirement home is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents, and an adequate public water supply system is not accessible, utilize a nonpublic system whose construction and operation meet these standards established in one of the following circulars:~~

~~(i) Circular WQB-1 entitled "Montana Department of Health and Environmental Sciences Standards for Water Works" (1992 Edition);~~

~~(ii) Circular WQB-3 entitled "Montana Department of Health and Environmental Sciences Standards for Small Water Systems" (1992 Edition);~~

~~(iii) Circular #17 entitled "Cisterns for Water Supplies."~~

~~(3)(2)~~ If a nonpublic water supply system is used in accordance with ~~(2)(b)~~, a retirement home must:

(a) submit a water sample at least quarterly to a laboratory licensed by the department of environmental quality to perform microbiological analysis of water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels ~~stated in ARM 17.38.207.~~

~~(4)(3)~~ A retirement home must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels ~~contained in ARM 17.38.207;~~ or

(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

~~(5)(4)~~ ~~Hand sinks~~ Hand sinks and bathing facilities must be provided with water at a temperature of at least 100°F and not more than 120°F.

~~(6)(5)~~ Ice must be:

(a) obtained from a licensed supplier if it is not made from the retirement home's water supply;

(b) manufactured, stored, handled, transported, and served in a manner which is approved by the department or local health authority as preventing contamination of the ice.

~~(7)(6)~~ Where open bin ice storage is provided, an ice scoop must be readily available for use by residents or the management and stored either inside the bin or in a closed container protected from contamination.

~~(8)(7)~~ Ice storage bins may not be connected directly to any trap, drain, receptacle sink, or sewer which discharges waste or to any other source of contamination. A minimum of a four inches air gap is required between the ice storage bin drain and any waste discharge.

(8) The department adopts and incorporates by reference ARM 37.111.110, which sets forth requirements for construction and maintenance of water supply systems, and ARM 37.111.116, which sets forth requirements for construction and maintenance of wastewater systems.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-214, MCA

37.106.2514 RETIREMENT HOMES: SOLID WASTE (1) In order to ensure that solid waste is safely stored and disposed of, a retirement home must:

(a) store all solid waste between collections in containers which have lids and are corrosion resistant, ~~flytight~~ fly tight, watertight, and rodent proof;

(b) utilize exterior collection stands for the storage containers, which prevent them from being tipped, protect them from deterioration, and allow easy cleaning below and around them;

(c) clean all solid waste containers frequently; and

(d) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to an approved landfill site in a covered vehicle or in covered containers.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-214, MCA

4. The department proposes to repeal the following rules:

37.106.2513 RETIREMENT HOMES: SEWAGE SYSTEM

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-214, MCA

37.106.2522 RETIREMENT HOMES: FOOD SERVICE REQUIREMENTS

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-214, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.106.2502, 37.106.2505, 37.106.2510, 37.106.2512, and 37.106.2514. The department is proposing to repeal ARM 37.106.2513 and 37.106.2522.

The retirement home administrative rules have not had a full subchapter review and update since 2002. In review of this subchapter, amendment to several rules is required to bring licensure requirements up to current standards and practices. Additionally, the repeal of ARM 37.106.2513 and 37.106.2522 is proposed, as ARM 37.106.2513 has been incorporated into ARM 37.106.2512, and ARM 37.106.2522 references compliance with a subchapter that has been repealed.

ARM 37.106.2502

The department proposes amendment to this rule to remove the references to subchapters 4, 6, 10, 11, 14, 15, 22, and 23. These subchapters reference other types of residential and health care facilities, and these subchapters do not, and would not, coincide with the requirements for retirement homes.

ARM 37.106.2505

The department proposes amendment to this rule to refer the requirements for construction, alteration, addition, or renovation to the construction standards adopted in the minimum standards for all healthcare facilities. Reference to ARM 37.106.302 provides a consistent reference for the construction standards and avoids the potential for conflicting standards in the subchapter specific to retirement homes.

ARM 37.106.2510

The department proposes amendment to limit the number of residents per room from four to two. This aligns with current standards for residential and health care settings. The department proposes to remove (11) which is redundant of (10) in that

the department may waive physical plant requirements for facilities existing prior to 1996.

ARM 37.106.2512

The department proposes amendment to this rule name and to the rule. The amendment combines the requirement to adhere to water supply and sewage systems requirements found in ARM Title 37, chapter 111, subchapter 1. This eliminates having two rules that address meeting requirements found within a same title, chapter, and subchapter. Due to the removal of all of (1), there are renumbering amendments.

ARM 37.106.2513

The department proposes to repeal this rule, as the requirements are addressed by proposing to add compliance with sewage requirements found in ARM Title 37, chapter 111, subchapter 1 to ARM 37.106.2512.

ARM 37.106.2514

The department proposes to amend this rule to correct a typographical error, making "flytight" two separate words: "fly tight."

ARM 37.106.2522

The department proposes to repeal this rule. Many of the regulations in ARM Title 37, chapter 110, subchapter 2 that pertain to sanitation and food handling standards have been repealed, effective January 1, 2015. Since obtaining a food establishment certificate is not required for retirement homes and food establishment requirements are not regulated by the licensure bureau, the requirement to comply with this subchapter is not required.

Fiscal Impact

The proposed rule amendments and repeals have no fiscal impact.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

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. Written requests may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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

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

/s/ Greg Henderson
Greg Henderson
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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

In the matter of the repeal of ARM) NOTICE OF PROPOSED REPEAL
Title 37, chapter 85, subchapter 11)
pertaining to the Electronic Health) NO PUBLIC HEARING
Records Incentive Program) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to repeal 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 January 3, 2025, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhus, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The department proposes to repeal the following rules:

37.85.1101 PURPOSE

AUTH: 53-6-113, MCA

IMP: 53-6-111, MCA

37.85.1103 DEFINITIONS

AUTH: 53-6-113, MCA

IMP: 53-6-111, MCA

37.85.1105 ELIGIBLE PROVIDER REGISTRATION WITH CENTERS FOR
MEDICARE AND MEDICAID (CMS) NATIONAL LEVEL REPOSITORY (NLR)

AUTH: 53-6-113, MCA

IMP: 53-6-111, MCA

37.85.1107 ELIGIBLE PROVIDER AND ELIGIBLE HOSPITAL ELIGIBILITY
VERIFICATION BY DPHHS

AUTH: 53-6-113, MCA

IMP: 53-6-111, MCA

37.85.1109 ELIGIBLE HOSPITAL ELIGIBILITY VERIFICATION BY DPHHS

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1111 REGISTRATION, ATTESTATIONS, AND CERTIFICATION

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1113 REPORTING REQUIREMENTS IN FIRST AND SUBSEQUENT YEARS

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1115 PROOF OF ELECTRONIC HEALTH RECORDS CERTIFICATION

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1117 COMMUNICATION WITH PROVIDERS

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1119 APPLICATION FOR PAYMENTS BY AN ELIGIBLE PROVIDER OR ELIGIBLE HOSPITAL

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1121 ELIGIBLE PROVIDER INCENTIVE PAYMENT SCHEDULE

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1123 ELIGIBLE HOSPITAL INCENTIVE PAYMENT CALCULATION

AUTH: 53-6-113, MCA
IMP: 53-6-111, MCA

37.85.1125 DENIALS AND APPEALS

AUTH: 53-6-113, MCA

IMP: 53-6-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to repeal ARM 37.85.1101 through 37.85.1125, which established the requirements for the Montana Medicaid Provider Incentive Program for Electronic Health Records.

The Montana Medicaid Provider Incentive Program for Electronic Health Records (E.H.R.) was a six-year incentive program beginning in 2011, established pursuant to the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009). This incentive program has since ended. Since the incentive program ended in 2017, the department proposes to repeal ARM 37.85.1101 through 37.85.1125 as unnecessary.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bailey Yuhas, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 17, 2025. Comments may also be faxed to (406) 444-9744 or e-mailed to hhsadminrules@mt.gov.

6. 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 Bailey Yuhas at the above address no later than 5:00 p.m., January 17, 2025.

7. If the agency receives requests for a public hearing on the proposed action from either 10% 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. Since this incentive program ended in 2017, there are no people or members who could be directly affected by the proposed rulemaking action.

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 5 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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

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

/s/ Greg Henderson
Greg Henderson
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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 37.34.1501 pertaining to) PROPOSED AMENDMENT
Developmental Disabilities Program)
Incident Reporting and Handling)

TO: All Concerned Persons

1. On January 13, 2025, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81312969996?pwd=3k1jOWqyjL9Z7wavjTwD2kDOCQIGaf.1>, meeting ID: 813 1296 9996, and password: 973961; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 813 1296 9996, and password: 973961. Find your local number: <https://mt-gov.zoom.us/u/kcmlpBiGaw>.

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 December 30, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

37.34.1501 INCIDENT REPORTING AND HANDLING, PURPOSE

(1) remains the same.

(a) The Developmental Disabilities Program Incident Management Manual, dated ~~July 1, 2023~~ January 1, 2025, sets forth further requirements and criteria that govern the incident management system for the Developmental Disabilities Program of the department.

(b) The department adopts and incorporates by reference the Developmental Disabilities Program Incident Management Manual, dated ~~July 1, 2023~~ January 1, 2025.

(c) and (d) remain the same.

AUTH: 53-20-203, 53-20-204, MCA
IMP: 53-20-205, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.1501.

The following summary explains the reasonable necessity for the proposed rule amendment.

The purpose of this amendment is to adopt and incorporate into rule an updated Incident Management Manual to clarify and remove conflicting information. The changes to the manual include: 1) clarifying that Incident Reports (IR) need to be added into the Data Management System (DMS) within 24 hours; 2) clarifying the timeline for assigning an investigator to critical incidents; 3) clarifying that pro re nata (PRN) documentation is not needed for over-the-counter medication; and 4) removing conflicting information in the Abuse, Neglect, or Exploitation (ANE) procedure. The draft manual may be viewed at <https://dphhs.mt.gov/BHDD/DisabilityServices/developmentaldisabilities/DDPpolproc ed>.

Fiscal Impact

The proposed rule amendment has no anticipated fiscal impact implications.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

6. The Office of Legal Affairs, Department of Public Health and Human Services, 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 6 above.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sos.mt.gov/ARM/register>.

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 rule will not significantly and directly impact small businesses.

11. 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/ Olivia Schuler
Olivia Schuler
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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 37.27.902, 37.85.105, and) PROPOSED AMENDMENT
37.88.101 pertaining to updating)
Medicaid and non-Medicaid provider)
rates, fee schedules, and effective)
dates)

TO: All Concerned Persons

1. On January 13, 2025, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/86055893560?pwd=vQKJb4QaJbN8XyShrZvZOlitfDnmyd.1>, meeting ID: 860 5589 3560, and password: 532576; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 860 5589 3560, and password: 532576. Find your local number: <https://mt-gov.zoom.us/u/ksS33DknA>.

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 no later than 5:00 p.m. on December 30, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

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

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~January 1, 2024~~ January 1, 2025, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, ~~400 N. Park, Ste. 300~~ 301 S. Park, Suite 320, P.O. Box 202905,

Helena, MT 59620-2905 or at:

<https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) In addition to the requirements contained in rule, the department has developed and published the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated January 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, ~~400 N. Park, Ste. 300~~ 301 S. Park, Suite 320, P.O. Box 202905, Helena, MT 59620-2905 or at:

<https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA

IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) and (2) remain the same.

(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 & Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 88 Federal Register 78818 (Nov. 16, 2023), effective January 1, 2024, which is adopted and incorporated by reference. Procedure codes created after ~~January 1, 2024~~ January 1, 2025, 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, 2024~~, January 1, 2025. The fee schedules are applicable to claims for services that are provided on or after the effective date. Prior fee schedules remain applicable to claims for services provided prior to that date, and July 1, 2024. When two dates are specified, the earlier fee schedule ceases to be effective with respect to services provided on and after the effective date of the later fee schedule.

~~(i) Effective July 1, 2023, the conversion factor for physician services is \$44.32. The conversion factor for allied services is \$26.13. The conversion factor for mental health services is \$22.67. The conversion factor for anesthesia services is \$32.04.~~

~~(ii)(i) Effective July 1, 2024, the~~ The conversion factor for physician services is \$43.96. The conversion factor for allied services is \$27.24. The conversion factor for mental health services is \$22.47. The conversion factor for anesthesia services is \$31.78.

(c) through (h) remain the same.

(i) Optometric services receive a 114.45% provider rate of reimbursement adjustment to the reimbursement for allied services, as provided in ARM 37.85.105(2), effective July 1, 2024.

~~(i) Effective July 1, 2023, the optometric services provider rate of reimbursement is 115.50%.~~

~~(ii) Effective July 1, 2024, the optometric services provider rate of reimbursement is 114.45%.~~

(j) through (3)(a) remain the same.

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the CMS in 89 Federal Register ~~9002 93912 (Feb. 9, 2024) (Nov. 27, 2024)~~, effective ~~January 1, 2024~~ January 1, 2025, and reviewed annually by CMS, as required in 42 CFR 419.50 and as updated by the department;

(ii) through (iv) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(d) through (j) remain the same.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, 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, 2024, and July 1, 2024~~ January 1, 2025. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(l) through (p) remain the same.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(u) remains the same.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(w) and (x) remain the same.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2024, and July 1, 2024~~ January 1, 2025.

(aa) through (5) remain the same.

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~July 1, 2023 (fee schedule version 2) and July 1, 2024~~ January 1, 2025.

(b) remains the same.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~July 1, 2024~~ January 1, 2025.

(6) remains the same.

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

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~January 1, 2024~~ January 1, 2025, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 301 S. Park, Suite 320 ~~400 N. Park, Ste. 300~~, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(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, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.27.902, 37.85.105, and 37.88.101, pertaining to updating Medicaid provider rates, fee schedules, and effective dates of Medicaid fee schedules, and to updating the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health. On September 20, 2024, the department published MAR Notice No. 37-1104 pertaining to the public hearing on the proposed updating of Medicaid and non-Medicaid provider rates, fee schedules, and effective dates at page 2173 of the 2024 Montana Administrative Register, Issue 18. That notice also proposed amendments to ARM 37.27.902, 37.85.105, and 37.88.101, updating (1) the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health for services related to Program of Assertive Community Treatment (PACT), Montana Assertive Community Treatment (now called Montana Community Treatment), Community Maintenance Program (CMP), and Behavioral Health Group Homes (BHGHS), and (2) the mental health center services for adults fee schedule with respect to CMP services. This notice (MAR Notice No. 37-1110) proposes amendments to that provider manual and fee schedule for services related to tenancy support and contingency management. It should be noted that the changes proposed in MAR Notice No. 37-1104 are independent of the changes being proposed in this notice. MAR Notice No. 37-1104 remains pending and will be finalized separately from this notice.

The 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.

The proposed rule amendments are necessary so that the Montana Medicaid Program can adopt updated Medicare procedure codes that the federal Centers for Medicare & Medicaid Services (CMS) will adopt in January 2025. Montana Medicaid uses Medicare procedure codes. To ensure providers can accurately and timely bill for services they provide to Medicaid members, the department must adopt CMS's updated Medicare rates. Final Medicaid fee schedules are posted after CMS publishes its final fee schedules. The updated codes include new code additions, code deletions, and changes to existing code descriptions and rates. In addition, the department proposes to amend the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health to ensure that the manual includes new policies and service requirements to address the addition of new services approved under the Social Security Act § 1115 HEART Waiver.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement. In establishing the proposed rates, the department considered as primary factors the availability of funds appropriated by the Montana Legislature during the 2023 regular legislative session, the actual cost of services, and the availability of services.

Proposed changes to provider rates that are the subject of this rule notice, including rates in fee schedules and rates in provider manuals, can be found at <https://medicaidprovider.mt.gov/proposedfs>.

The proposed amendments are explained below.

ARM 37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS

ARM 37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS

The department is proposing to amend the effective date to January 1, 2025, for the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health. This is necessary to ensure that the manual includes new policies and service requirements to address the addition of new services approved under the Social Security Act § 1115 HEART Waiver. This waiver from CMS permits the department to further implement its Healing and Ending Addiction through Recovery and Treatment (HEART) Initiative through the addition of tenancy support and contingency management coverage to the Montana Medicaid Program.

The HEART Initiative will establish a comprehensive continuum of care to address Montana's behavioral health needs, which include services for mental health and

substance use disorder treatment. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans.

Tenancy support services address the problem of homelessness that negatively impacts the mental health and substance use of many Montanans. Covering such services will help advance Montana's objective of providing preventative, whole-person, and community-based care by addressing housing insecurity and homelessness, which contribute to poor health outcomes. It will also advance efforts to expand the continuum of behavioral health and treatment programs by helping provide stable housing to Medicaid beneficiaries with behavioral health needs.

The department proposes that tenancy support services be delivered by designated providers and include both pre-tenancy supports (which support individuals with identifying, preparing for, and maintaining stable housing) and tenancy sustaining services (which assist individuals with finding housing, supporting move-in, working with landlords, and providing additional housing-related outreach and education to tenants). The department proposes that Medicaid beneficiaries may be eligible for Medicaid-funded tenancy support services if they are 18 years of age or older; have a qualifying substance use disorder and/or serious mental illness; and are experiencing, or at risk of, homelessness.

Contingency management is the most effective evidence-based treatment approach for stimulant use disorder. Under a contingency management program, individuals receive incentives following the submission of a stimulant-free urine sample, as part of a structured treatment program to reinforce behavioral change. Covering contingency management programs will help Montana address the ongoing substance use crisis. It will expand access to an effective evidence-based stimulant use disorder intervention and will also advance Montana's commitment to strengthen the full continuum of behavioral health and treatment programs for Montana communities.

The department proposes to cover contingency management as a structured 12-week intervention program where individuals who participate in the program can receive incentives for non-use of stimulants. The incentives help trigger the brain's reward systems in the absence of stimulant use. The department proposes that Medicaid beneficiaries may be eligible for Medicaid-funded contingency management if they are 18 years of age or older and have a stimulant use disorder.

To implement these new coverages, the department proposes the following amendments to the BHDD Medicaid Manual:

- Amend Policy 002 – Definitions to align new program terminology.
 - Incorporate new definitions in relation to the HEART Waiver manual such as a Serious Mental Illness, Point-of-Care testing, Clinical Laboratory Improvement Amendments, and Homelessness.

- Amend Policy 305 – Retrospective and Quality Reviews to align new program terminology.
 - TSS does not require clinical assessment and/or diagnosis. Retrospective and Quality reviews are determined on a case-by-case basis and eligibility criteria.
- Amend Policy 505 – Specimen Collection to align new program roles and responsibilities.
 - Add medical necessity criteria and service requirements for specimen collection specific to Contingency Management services.
- Amend Policy 530- SUD Partial Hospitalization (ASAM 2.5) Adult and Adolescent.
 - Amend language to clarify that care coordination is required, but not included in the bundled rate. This is necessary based on public comments on prior rulemaking.
- Add new Sub-manual policy section within the current BHDD Medicaid Manual: Section 600- HEART Waiver, encompassing new Policies 600, 602, 603, 604,605, 606, and 610.
- Add new Policy 600 – HEART Waiver Purpose.
 - Incorporates rules and regulations pertaining to programs developed under the HEART Waiver Authority.
- Add new Policy 602 – HEART Waiver Tenancy Support Services – Progress Notes.
 - Provider must include progress notes for each service contact in accordance with ARM 37.85.414 *Maintenance of Records and Auditing*.
- Add new policy 603 – HEART Waiver Tenancy Support Services – Eligibility and Enrollment.
 - Defines eligibility requirements and enrollment criteria.
- Add new policy 604 – HEART Waiver Tenancy Support Service- Housing Plan (Plan of care).
 - Individualized continuing care plan for each member utilizing HEART Waiver Authority.
 - Must include a summary of the services provided, including recommendations for aftercare services, relapse prevention, and referrals to other services.
- Add new Policy 605 – HEART Waiver Tenancy Support Services - Tenancy Support Services (TSS) are provided to assist members in acquiring and maintaining safe and reliable housing.
 - Define Assessment and Planning to include screening, assessment, and development of a housing plan to support a member's ability to identify, prepare for, and/or maintain stable housing.
 - Define Pre-Tenancy to include services to assist with the housing search; move-in support; working with landlords/property owners/property managers; and implementing housing plan goals and outcomes, including connection to additional supportive services.

- Define Tenancy Sustaining to include services provided once a member is housed, and may include additional education to the member, if needed; monitoring; and follow-up.
- Add new Policy 606- HEART Waiver Tenancy Support Services – Application Fees and Security Deposit Assistance.
 - Define Tenancy Support Services allowed for reimbursement to include:
 - Application fees up to a maximum amount of \$250.00, annually, from date of approved prior authorization.
 - Security deposit assistance up to a maximum amount of \$1650.00, annually, from date of security deposit payment to landlord.
- Add new BHDD Policy 610 Contingency Management.
 - Define the service.
 - Identify eligibility requirements and medical necessity criteria.
 - Define standards for eligible Contingency management providers.
 - Define service requirements.

ARM 37.85.105 Effective Dates, Conversion Factors, Policy Adjusters, and Cost-to-Charge Ratios of Montana Medicaid Provider Fee Schedules

(2)(a) and (b) Resource-Based Relative Value Scale (RBRVS)

The department proposes to reimburse procedure codes created on or after January 1, 2025, using the relative value units currently in place, and then revise the fee schedule effective date to January 1, 2025, which is being revised to reflect the updated Medicare procedure codes adopted by the federal Medicare program. The department also proposes to clarify the claims service dates to which the fee schedules apply.

(3)(c), (q), (r), (s), (t), (v), (y), and (z) Fee Schedules

The department proposes to revise the effective date for the following fee schedules to January 1, 2025, to reflect the updated Medicare procedure codes adopted by CMS: hearing aid services, ambulance services, audiology, occupational therapists, physical therapists, and speech therapists, optometric services, lab and imaging services, and licensed direct-entry midwives fee schedules.

(3)(b)(i) Outpatient Prospective Payment System (OPPS) Federal Register

Effective January 1, 2025, the department proposes to adopt the Outpatient Prospective Payment System fee schedule published by CMS in the Nov. 27, 2024 Federal Register (effective January 1, 2025) for the OPPS reimbursement methodology. This adoption is necessary to ensure outpatient hospital updates are aligned with CMS.

(3)(k) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies

The department proposes to revise the effective date of the reference to the Region D Supplier Manual to January 1, 2025, and revise the effective date of local

coverage determinations (LCDs) and national coverage determinations (NCDs), that are provided in ARM 37.86.1802, to January 1, 2025.

The department is also proposing to revise the effective dates for the durable medical equipment fee schedule to January 1, 2025, to reflect the Calendar Year 2025 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

(5)(a) and (c) Behavioral Health and Developmental Disabilities Division Fee Schedules

The department proposes to amend the effective date to January 1, 2025, for the following fee schedules: mental health center services for adults. This is necessary to update the fee schedule to reflect changes to the BHDD Medicaid Provider Manual. Proposed updates to the mental health fee schedule include the addition of Contingency Management and Tenancy Support Services policies and related amendments to other policies.

Fiscal Impact

The proposed rule amendments to ARM 37.85.105(2) and (3) are expected to be budget neutral.

The proposed rule amendment to ARM 37.85.105(5) is expected to have a fiscal impact. The following table displays the number of providers affected by the proposed amendments to the mental health fee schedule to add Tenancy Support Services, Tenancy Support Services Application Fees and Security Deposit Assistance, and Contingency Management for SFY 2025:

Provider Type	SFY 2025 Budget Impact (Federal Funds)	SFY 2025 Budget Impact (State Funds)	SFY 2025 Budget Impact (Total Funds)	Active Provider Count
Contingency Management - 32, 55, 56, 59	\$193,164	\$82,824	\$275,988	Assuming 12-14
Tenancy - 89	\$542,276.92	\$232,515.08	\$774,792.00	16
Totals	\$735,440.92	\$315,339.08	\$1,050,780.00	-

5. The department intends to apply these proposed rule amendments retroactively to January 1, 2025. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 17, 2025.

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. Written requests may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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

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/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

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

In the matter of the amendment of)
ARM 37.90.402, 37.90.403, 37.90.406,)
37.90.408, 37.90.409, 37.90.410,)
37.90.412, 37.90.425, 37.90.433,)
37.90.434, 37.90.439, and 37.90.449)
and the adoption of NEW RULES I and)
II pertaining to Mental Health Medicaid)
Funded 1115 and 1915 Waivers)

CORRECTED NOTICE OF
AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1034 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1004 of the 2024 Montana Administrative Register, Issue Number 9. On September 20, 2024, the department published the notice of amendment and adoption at page 2234 of the 2024 Montana Administrative Register, Issue Number 18.

2. The department has discovered that ARM 37.90.406, as proposed in Notice No. 37-1034 on May 10, 2024, did not show the recent changes to the rule that had been adopted in Notice No. 37-1032 on March 22, 2024, which included a new (2) and a new (6).

3. In this corrected notice, the department is presenting the rule as it should have appeared in the proposal notice for Notice No. 37-1034. This version is the corrected version of the rule that was adopted in Notice No. 37-1034. Because this was merely a clerical oversight and no content of the rule has been changed—the rule text from two different rulemaking notices simply being reconciled—there is no need to adopt this rule again. The rule in its corrected form appears at rules.mt.gov.

4. The rule, as it should have been presented in Notice No. 37-1034, is as follows, deleted matter interlined, new matter underlined:

37.90.406 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PROVIDER REQUIREMENTS (1) The waiver program services may only be provided by a provider that:

- (a) is enrolled as a Montana Medicaid provider except as provided in (2)(3);
- (b) remains the same.
- (c) meets the criteria as a qualified provider authorized to deliver the service as specified in this subchapter. ~~the Provider Requirement Matrix for the SDMI HCBS waiver program. The department adopts and incorporates by reference the~~

~~Provider Requirements Matrix for the SDMI HCBS waiver program, dated July 1, 2020, and located at: <https://dphhs.mt.gov/amdd/HCBSPolicyManual>.~~

(2) remains the same.

(3) The department may authorize a SDMI-HCBS contracted case management entity to issue pass-through payment for reimbursement of services rendered by a non-Medicaid provider for the following services:

(a) through (6) remain the same.

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

IMP: 53-6-402, MCA

/s/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State December 10, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.18.121 pertaining to updates)
of the Montana Reappraisal Plan and)
Classification and Valuation Manuals)

TO: All Concerned Persons

1. On November 1, 2024, the Department of Revenue published MAR Notice No. 42-1085 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2433 of the 2024 Montana Administrative Register, Issue Number 21.

2. On November 26, 2024, the department held a public hearing to consider the proposed amendment. No interested persons appeared at the hearing. No oral or written comments were received.

3. The department has amended the above-described rule as proposed with an effective date of January 1, 2025.

4. With regard to the requirements of 2-4-305(11), MCA, this rulemaking meets the exceptions provided in (11)(b)(ii) because the current Plan and manuals, adopted and incorporated in ARM 42.18.121, are updated during the fourth calendar quarter of the year preceding the next reappraisal cycle for statutory compliance.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State December 10, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.21.155 and 42.22.1311)
pertaining to 2025 Personal Property)
Depreciation Schedules and Trend)
Tables)

TO: All Concerned Persons

1. On November 1, 2024, the Department of Revenue published MAR Notice No. 42-1089 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2440 of the 2024 Montana Administrative Register, Issue Number 21.

2. On November 26, 2024, the department held a public hearing to consider the proposed amendment. No interested persons appeared at the hearing. No oral or written comments were received.

3. The department has amended the above-described rules as proposed with an effective date of January 1, 2025.

4. With regard to the requirements of 2-4-305(11), MCA, this rulemaking meets the exceptions provided in (11)(b)(ii) because ARM 42.21.155 and 42.22.1311 are procedural rules that already acknowledge and disclose that the valuation data source, which the department has adopted and incorporated into the rules (e.g., Marshall & Swift Valuation Service Guide) and uses to update the Personal Property Depreciation Schedules and Trend Tables publication, is unavailable until the third calendar quarter of any year.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State December 10, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

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 (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- 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
- 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.

RECENT RULEMAKING BY AGENCY

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. This list includes notices in which those rules adopted during the period June 21 through December 20, 2024, occurred 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 list 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 September 30, 2024, this list, and the table of contents of this issue of the Register.

This list indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2024 Montana Administrative Register.

To aid the user, this list includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

- 2-5-643 Intent to Award - Public Notice - Competitive Sealed Bids - Competitive Sealed Proposals - Sole Source Procurement - Exigency Procurements - Alternative Procurement Methods - Requisitions From the Agencies to the Division - Enforcing the Contract - Contract Renewal - Completion Notification for Contracts With Performance Security - Bid, Proposal, and Contract Performance Security, p. 770, 1450
- 2-12-646 Local Government Public Meeting Recordings, p. 781, 1574

(Public Employees' Retirement Board)

- 2-43-647 Defined Contribution Retirement Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement - 457(b) Deferred Compensation Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement, p. 784, 1576
- 2-43-648 Basic Period of Service - Receipt of Service Credit on or After Termination of Employment - Calculation of Highest Average Compensation or Final Average Compensation, p. 787, 1577
- 2-43-649 Distribution to Participant – Distribution Upon Death of Participant, p. 1498, 2051

AGRICULTURE, Department of, Title 4

- 4-24-284 Montana Pesticides Act, p. 1903

STATE AUDITOR, Office of, Title 6

- 6-288 Pharmacy Benefit Manager Maximum Allowable Cost Appeals, p. 791, 1866
- 6-289 Registration Exemption for Investment Advisors to Private Funds – Examinations, p. 1405, 1999
- 6-291 Petition to Rulemaking – Model Procedural Rules, p. 2114

COMMERCE, Department of, Title 8

- 8-94-215 Administration of the Community Development Block Grant (CDBG) Program, p. 1939, 2179
- 8-99-213 Administration of the Tourism Development and Enhancement Revolving Loan Fund, p. 1257, 1871
- 8-99-214 Administration of the Agritourism Grants Program, p. 1941, 2180

EDUCATION, Title 10

(Board of Public Education)

- 10-53-140 World Language Content Standards, p. 1946
- 10-53-141 Mathematics Contents Standards, p. 2341
- 10-56-286 Assessment Standards, p. 662, 2000

(Montana Arts Council)

- 10-111-2401 Model Rules – Grant Eligibility and Conditions, p. 1963

(Montana Historical Society)

- 10-121-2401 Collection Acquisition and Select Collection Loans, p. 1088, 1872

(Montana State Library)

- 10-102-2303 State Aid to Public Libraries, p. 984, 1578

(Office of Public Instruction)

- 10-7-124 School Finance, p. 1501, 1944, 2182
- 10-16-133 Education Savings Accounts, p. 1085, 2052

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-625 Department Liaisons, p. 304, 666, 1873
- 12-628 Montana Wildlife Habitat Improvement Act Termination Date and Eligible Expenditures, p. 668, 1452
- 12-630 Closing the Yellowstone River From the Joe Brown Fishing Access Site to the Carbella BLM Boat Ramp in Park County, p. 1387, 1453
- 12-631 Electronic Tagging, p. 1517, 2140

- 12-633 Closing the Bitterroot River From Chief Looking Glass Fishing Access Site to Its Confluence With the Clark Fork River in Missoula County, p. 2001
- 12-634 Closing the Clark Fork River From the Milltown State Park to the Petty Creek Fishing Access Site in Missoula County, p. 2003
- 12-635 Closing the Stillwater River From the Absaroka Fishing Access Site to the Jeffrey's Landing Fishing Access Site in Stillwater County, p. 2005
- 12-636 Closing Tower Rock State Park in Cascade County, p. 2054
- 12-637 Closing the Tongue River Reservoir in Big Horn County, p. 2142
- 12-638 Closing the Cornell Park Fishing Access Site in Beaverhead County, p. 2551

(Fish and Wildlife Commission)

- 12-624 Resident Super-Tag Hunting License, p. 1514, 2135
- 12-626 Big Game Management Policy, p. 502, 1579

(State Parks and Recreation Board)

- 12-629 Smith River Private and Commercial Use Permit System, p. 1412, 2137

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-439 Ground water Mixing Zones - Nondegradation of Water Quality - Criteria for Determining Nonsignificant Changes in Water Quality - Criteria for Nutrient Reduction From Subsurface Wastewater Treatment Systems - Amendments to Circular DEQ-20 - Source Specific Well Isolation Zones, p. 361, 1581
- 17-441 Motor Vehicle Recycling and Disposal - Reimbursement Payments for Abandoned Vehicle Removal, p. 504, 1878
- 17-442 Amendment to Circular DEQ-1 - Ultraviolet Treatment of Groundwater Sources of Public Water Systems, p. 1417, 2144
- 17-443 Need Findings in the Major Facility Siting Act (MFSA), p. 818, 1879
- 17-444 Adoption of a New Version of Department Circular DEQ-8 Montana Standards for Subdivision Storm Water Drainage, p. 1259, 2191
- 17-445 Incorporation by Reference of Federal Air Quality Regulations, p. 1278, 2056
- 17-446 Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act, p. 1095, 2201
- 17-447 Application Contents, p. 1424, 2057
- 17-448 Cleaning Up Repealed References in ARM Title 17, Chapter 50, p. 2386
- 17-449 Regulatory Reform and Clean Up of Repealed References in ARM Title 17, Chapter 4, p. 2392
- 17-450 Removal of Affirmative Defense Provisions in Title V Permits and Administrative Rules, p. 2410

TRANSPORTATION, Department of, Title 18

- 18-197 Alternative Fuels, p. 1104, 1628
- 18-198 Railroad Crossing Signalization, Tourist-Oriented Directional Signs, and Right-of-Way Occupancy by Utilities, p. 1288, 1880
- 18-200 Motor Carrier Services, p. 987, 1454
- 18-201 Aeronautical Grant and Loan Program, p. 1966, 2202

CORRECTIONS, Department of, Title 20

- 20-7-72 Siting, Establishment, and Expansion of Prerelease Centers, p. 826, 1455
- 20-7-73 Pre-Parole Screening, p. 1109, 1881
- 20-7-74 Conditions on Probation or Parole, p. 1639, 2146

JUSTICE, Department of, Title 23

(Public Safety Officer Standards and Training Council)

- 23-13-284 Certification of Public Safety Officers, p. 2118

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-7-419 Unemployment Insurance Appeals Board, p. 1519, 2060
- 24-17-422 Prevailing Wages, p. 2455
- 24-29-417 Workers' Compensation, p. 991, 1456
- 24-30-408 Industrial and Workplace Safety, p. 1968, 2203
- 24-35-420 Independent Contractors, p. 1521, 2061
- 24-35-421 Independent Contractor Exemption Certificate, p. 1528, 2063
- 24-40-414 Unemployment Insurance, p. 511, 1457
- 24-301-409 State Building Code, p. 1708, 2223
- 24-301-418 Underground Facilities, p. 1431, 2013

(Board of Barbers and Cosmetologists)

- 24-121-18 Board of Barbers and Cosmetologists, p. 1292, 2007

(Board of Chiropractors)

- 24-126-39 Board of Chiropractors, p. 680, 1461

(Board of Dentistry)

- 24-138-83 Board of Dentistry, p. 837, 2205
- 24-138-84 Dental Hygiene Limited Access Permit, p. 1782, 1463

(Board of Funeral Service)

- 24-147-41 Board of Funeral Service, p. 697, 2012

(Board of Nursing)

24-159-96 Board of Nursing, p. 1428, 2218

(Board of Outfitters)

24-171-43 Board of Outfitters, p. 1642, 2149

(Board of Pharmacy)

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in November 2024 appear. Potential vacancies from January 1, 2025 through January 31, 2025, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2024.

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

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2024

Appointee

Appointed By

Succeeds

Appointment/End Date

None

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
9-1-1 Advisory Council		
Mr. Steve Lavin, Boulder Qualifications (if required): Representative from the Department of Justice, Montana Highway Patrol	Governor	1/5/2025
Mr. Chan Barry, Boulder Qualifications (if required): Montana Highway Patrol Representative	Governor	1/5/2025
Board of Aeronautics		
Mr. Timothy Sheehy, Bozeman Qualifications (if required): Chamber of Commerce member	Governor	1/5/2025
Mr. Wade Cebulski, Seely Lake Qualifications (if required): Montana Pilots Association member	Governor	1/5/2025
Mr. Robert Bergeson, Billings Qualifications (if required): Interstate airline member	Governor	1/5/2025
Ms. Pamela Chamberlin, Butte Qualifications (if required): Montana Airport Management Association member	Governor	1/5/2025
Mr. Tim Robertson, Lewistown Qualifications (if required): Montana Association of Counties	Governor	1/5/2025
Mr. Darrold Hutchinson, Hingham Qualifications (if required): Montana Aerial Applicators	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Aeronautics Cont. Mr. Bill Lepper, Whitefish Qualifications (if required): Fixed based operator	Governor	1/5/2025
Mr. Grayson Sperry, Belgrade Qualifications (if required): Chamber of Commerce Member	Governor	1/5/2025
Board of Behavioral Health Ms. Elaine Maronick, Helena Qualifications (if required): Licensed marriage and family therapist	Governor	1/5/2025
Ms. Annette Darkenwald, Billings Qualifications (if required): Licensed clinical social worker	Governor	1/5/2025
Mr. Cooper Baldwin, Melrose Qualifications (if required): Licensed clinical social worker	Governor	1/5/2025
Board of Chiropractors Mr. Dustin Rising, Bozeman Qualifications (if required): Licensed Chiropractor	Governor	1/1/2025
Board of Crime Control Mr. Scott Twito, Billings Qualifications (if required): Montana County Attorney's Association Representative	Governor	1/1/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Crime Control Cont.		
Ms. Katherine Weston, Billings Qualifications (if required): Corrections Representative	Governor	1/5/2025
Mr. Robert Weber, Glasgow Qualifications (if required): Chief of Police	Governor	1/5/2025
Mr. Wyatt Glade, Miles City Qualifications (if required): none stated	Governor	1/6/2025
Mr. Austin Knudsen, Helena Qualifications (if required): Attorney General	Governor	1/6/2025
Director Brian Gootkin, Helena Qualifications (if required): Director of Department of Corrections	Governor	1/6/2025
Mr. Jared Charles Cobell, Great Falls Qualifications (if required): none stated	Governor	1/6/2025
Ms. Amy Tenney, Helena Qualifications (if required): none stated	Governor	1/6/2025
Ms. Shantelle Gaynor, Missoula Qualifications (if required): none stated	Governor	1/6/2025
Sheriff Leo Dutton, Helena Qualifications (if required): none stated	Governor	1/6/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Crime Control Cont. Ms. Vicki Delger, Wolf Point Qualifications (if required): none stated	Governor	1/6/2025
Mr. Michael Sanders, Helena Qualifications (if required): none stated	Governor	1/6/2025
Mr. Terry Boyd, Billings Qualifications (if required): none stated	Governor	1/6/2025
Mr. Wyatt English, Miles City Qualifications (if required): none stated	Governor	1/6/2025
Board of Horse Racing Ms. Janis Calton, Bigfork Qualifications (if required):	Governor	1/1/2025
Mr. Corey Jones, Miles City Qualifications (if required): Horseracing Industry Representative	Governor	1/1/2025
Board of Housing Mr. John Grant, Helena Qualifications (if required): Experienced in housing, economics or finance	Governor	1/1/2025
Ms. Amber Parish, Billings Qualifications (if required): Experienced in housing, economics, or finance	Governor	1/1/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Housing Cont.		
Mr. Adam Hertz, Missoula Qualifications (if required): Public member	Governor	1/5/2025
Ms. Cari Yturri, Great Falls Qualifications (if required): Public member	Governor	1/5/2025
Mr. Charles Robison, Helena Qualifications (if required): Attorney	Governor	1/5/2025
Mr. Bruce Posey, Billings Qualifications (if required): Public member	Governor	1/5/2025
Ms. Tonya Plummer, Kalispell Qualifications (if required): Housing, Economics, or Finance Experience	Governor	1/5/2025
Mr. John Wright, Billings Qualifications (if required): Lawyer	Governor	1/5/2025
Board of Investments		
Mr. Jeffrey A. Greenfield, Shepherd Qualifications (if required): TRS representative	Governor	1/5/2025
Mr. Mark Barry, Helena Qualifications (if required): Financial community representative	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Investments Cont. Mr. Jack Prothero, Great Falls Qualifications (if required): Financial community representative	Governor	1/5/2025
Ms. Maggie Jean Peterson, Anaconda Qualifications (if required): Member of PERS	Governor	1/5/2025
Mr. Jeff Meredith, Kalispell Qualifications (if required): Small business representative	Governor	1/5/2025
Board of Livestock Representative Alan Redfield, Livingston Qualifications (if required): Cattle producer	Governor	1/5/2025
Board of Livestock Loss Ms. Elaine Allestad, Big Timber Qualifications (if required): Member of public with wildlife impacts experience	Governor	1/5/2025
Ms. Doreen Gillespie, Ethridge Qualifications (if required): Member of the livestock industry with wildlife impacts experience	Governor	1/5/2025
Mr. Joseph Kipp, Browning Qualifications (if required): Member of public with wildlife impacts experience	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Milk Control		
Mr. W. Scott Mitchell, Billings Qualifications (if required): Attorney	Governor	1/5/2025
Mr. Brian Beerman, Fairfield Qualifications (if required): Member	Governor	1/5/2025
Ms. Staci Ketchum, Miles City Qualifications (if required): Member	Governor	1/5/2025
Mr. Ken Bryan, Roundup Qualifications (if required): Member	Governor	1/5/2025
Mr. Travis Stroh, Glendive Qualifications (if required): Member	Governor	1/5/2025
Board of Oil and Gas Conservation		
Mr. Mac McDermott, Shelby Qualifications (if required): Member of the oil and gas industry	Governor	1/5/2025
Mr. Corey Michael Welter, Billings Qualifications (if required): Member of the oil and gas industry	Governor	1/5/2025
Mr. Jeff Wivholm, Medicine Lake Qualifications (if required): Landowner with minerals	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Oil and Gas Conservation Cont. Mr. Roy Brown, Billings Qualifications (if required): Public member	Governor	1/5/2025
Board of Pardons and Parole Ms. Kristina Lucero, Missoula Qualifications (if required): Extensive work experience in corrections, the criminal justice system, or criminal law	Governor	1/1/2025
Mr. Darrell Bell, Billings Qualifications (if required): Extensive work experience in corrections or the criminal justice system	Governor	1/1/2025
Board of Personnel Appeals Ms. Stacey Yates, Colstrip Qualifications (if required): full time employee or elected official of a labor union or recognized association	Governor	1/5/2025
Mrs. Jenny Lin Stringer, Livingston Qualifications (if required): Management employee	Governor	1/5/2025
Mr. Joseph Halladay, Columbus Qualifications (if required): Full-time employee or elected official of a labor union	Governor	1/5/2025
Board of Realty Regulation Mr. William Grant, Helena Qualifications (if required): Public Member	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Capitol Complex Advisory Council		
Ms. Kim Brown, Billings Qualifications (if required): Public representative	Governor	1/5/2025
Mr. Jon Knokey, Bozeman Qualifications (if required): None stated	Governor	1/5/2025
Mr. Ralph Kuney, Helena Qualifications (if required): None stated	Governor	1/5/2025
Coal Board		
Mr. Bill Fuglevand, Havre Qualifications (if required): District 2 in an impact area	Governor	1/5/2025
Ms. Catherine Laughner, Big Sky Qualifications (if required): District 1 and attorney	Governor	1/5/2025
Mr. Pat Lorello, Belgrade Qualifications (if required): District 1 and engineer	Governor	1/5/2025
Mr. Jon Wells, Hardin Qualifications (if required): District 2 in an impact area and business	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Commission For Human Rights		
Ms. Deb Broadbent, Kalispell Qualifications (if required): Public member	Governor	1/1/2025
Mr. Curtis Almy, Miles City Qualifications (if required): Public member	Governor	1/1/2025
Mr. Peter Damrow, Billings Qualifications (if required): Attorney	Governor	1/1/2025
Montana Council on Developmental Disabilities		
Mr. John Gorton, Helena Qualifications (if required): OPI Representative	Governor	1/5/2025
Mr. Jason Billehus, Missoula Qualifications (if required): Self-advocate	Governor	1/5/2025
Ms. Melissa Clark, Great Falls Qualifications (if required): Self-advocate	Governor	1/5/2025
Ms. Jan Wenaas, Great Falls Qualifications (if required): Parent/family advocate	Governor	1/5/2025
Mr. Martin Blair, Missoula Qualifications (if required): Sister program representative	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Council on Developmental Disabilities Cont. Mr. Bob Des Jardin, Dillon Qualifications (if required): None stated	Governor	1/5/2025
Ms. Rebekah DeCamara, Helena Qualifications (if required): DPHHS Title XIX representative	Governor	1/5/2025
Mrs. Dianna Crawford, Valier Qualifications (if required): Parent/family advocate	Governor	1/5/2025
Mr. Devin Howard Booth, Kalispell Qualifications (if required): Self-advocate	Governor	1/5/2025
Ms. Ann Buss, Helena Qualifications (if required): DPHHS Title V representative	Governor	1/5/2025
Ms. Chanda Hermanson, Helena Qualifications (if required): DPHHS vocational rehabilitation representative	Governor	1/5/2025
Ms. Kerrie Reidelback, Helena Qualifications (if required): DPHHS Older Americans Act representative	Governor	1/5/2025
Ms. Christiane Rudmann, Helena Qualifications (if required): Sister program representative	Governor	1/5/2025
Mr. Jonathan Davis, Helena Qualifications (if required): Self-advocate	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Council on Developmental Disabilities Cont. Ms. Tiffany Granholm, Glasgow Qualifications (if required): Self-advocate	Governor	1/5/2025
Drought and Water Supply Advisory Commission Director Amanda Kaster, Helena Qualifications (if required): None stated	Governor	1/5/2025
Education Commission of the States Mr. Craig Smith, Wolf Point Qualifications (if required): Educator engaged in the field of higher education	Governor	1/4/2025
Mr. Timothy Tharp, Savage Qualifications (if required): Educator engaged in the field of K-12 education	Governor	1/4/2025
Facility Finance Authority Mr. Vu Pham, Billings Qualifications (if required): Attorney	Governor	1/5/2025
Mr. Mel Reinhardt, Billings Qualifications (if required): Member	Governor	1/5/2025
Mr. Jade Goroski, Shelby Qualifications (if required): Member	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Facility Finance Authority Cont. Mr. John Iverson, Helena Qualifications (if required): Member	Governor	1/5/2025
Fish and Wildlife Commission Mr. Bill Lane, Ismay Qualifications (if required): Region 7 Commissioner	Governor	1/1/2025
Mr. Patrick Tabor, Whitefish Qualifications (if required): District 1 commissioner	Governor	1/5/2025
Mr. K.C. Walsh, Martinsdale Qualifications (if required): District 3 commissioner	Governor	1/5/2025
Mr. Brian Cebull, Billings Qualifications (if required): District 5 commissioner	Governor	1/5/2025
Ms. Lesley Robinson, Dodson Qualifications (if required): District 4 Commission	Governor	1/5/2025
Hard Rock Mining Impact Board Representative Gerald Bennett, Libby Qualifications (if required): Elected county commissioner, District 1	Governor	1/5/2025
Mr. Mark Thompson, Butte Qualifications (if required): Mining representative, impact area District 1	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Hard Rock Mining Impact Board Cont.		
Mr. Ray Sheldon, Huntley Qualifications (if required): public member, District 2	Governor	1/5/2025
Mr. Clint Rech, Harlowtown Qualifications (if required): Financial institution representative, District 2	Governor	1/5/2025
Humanities Montana		
Mr. Jeremy Carl, Bozeman Qualifications (if required): Public Member	Governor	1/5/2025
Information Technology Board		
Mr. John Daugherty, Helena Qualifications (if required): Corrections Director or designee	Governor	1/1/2025
Mr. James Fehr, Helena Qualifications (if required): DEQ Director or designee	Governor	1/1/2025
Mr. Arthur Pembroke, Helena Qualifications (if required): Local government representative	Governor	1/5/2025
Director Brian Gootkin, Helena Qualifications (if required): Director of a state agency	Governor	1/5/2025
Mr. Sean Higginbotham, Great Falls Qualifications (if required): Local government representative	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Information Technology Board Cont. Director Christopher Dorrington, Helena Qualifications (if required): Director of a state agency	Governor	1/5/2025
Director Adam Meier, Helena Qualifications (if required): Director of a state agency	Governor	1/5/2025
Interstate Oil and Gas Compact Commission Mr. Thomas P. Richmond, Billings Qualifications (if required): Assistant representative	Governor	1/5/2025
Mr. Ben Jones, Billings Qualifications (if required): Assistant representative	Governor	1/5/2025
Judicial Nomination Commission Mrs. Barbara Butler, Billings Qualifications (if required): Lay member who is not a judge or an attorney	Governor	1/1/2025
Montana Arts Council Ms. Sarah Calhoun, White Sulphur Springs Qualifications (if required): None stated	Governor	1/31/2025
Mr. Wylie Gustafson, Conrad Qualifications (if required): None stated	Governor	1/31/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Arts Council Cont. Ms. Linda Netschert, Helena Qualifications (if required): None stated	Governor	1/31/2025
Montana Council on Developmental Disabilities Mr. Mike Yakawich, Billings Qualifications (if required): State Legislature	Governor	1/1/2025
Montana Tax Appeal Board Mr. Dave McAlpin, Helena Qualifications (if required): Public Representative	Governor	1/1/2025
Northwest Power and Conservation Council Mr. Douglas E. Grob, Kalispell Qualifications (if required): member and resides in a county served by an electrical cooperative	Governor	1/5/2025
Representative Mike Milburn, Cascade Qualifications (if required): Member	Governor	1/5/2025
Phillips County Transportation Improvement Authority Mr. Duane Murray, Malta Qualifications (if required): Public member	Governor	1/5/2025
Public Safety Officer Standards and Training Council Sheriff Leo Dutton, Helena Qualifications (if required): Board of Crime Control representative	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Public Safety Officer Standards and Training Council Cont. Mr. Jim Thomas, Canyon Creek Qualifications (if required): experienced in law enforcement	Governor	1/5/2025
Mr. Conner Smith, Helena Qualifications (if required): State government law enforcement	Governor	1/5/2025
Mr. Bill Smith, Kalispell Qualifications (if required): detention center administrator or detention officer	Governor	1/5/2025
Mr. Brian Casey, Boulder Qualifications (if required): Law Enforcement Representative	Governor	1/5/2025
Mr. Jesse Slaughter, Great Falls Qualifications (if required): Sheriff	Governor	1/5/2025
Mrs. Kimberly Burdick, Fort Benton Qualifications (if required): Public member informed and experienced in law enforcement	Governor	1/5/2025
State Board of Parks and Recreation Ms. Jody Loomis, Helena Qualifications (if required): District 1	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Board of Parks and Recreation Cont. Mr. Russell Kipp, Polaris Qualifications (if required): District 2	Governor	1/5/2025
Ms. Kathy McLane, Glendive Qualifications (if required): District 4	Governor	1/5/2025
State Lottery and Sports Wagering Commission Sheriff Tony Harbaugh, Miles City Qualifications (if required): Law enforcement qualifications	Governor	1/5/2025
Mr. Steve Morris, Helena Qualifications (if required): Public member	Governor	1/5/2025
Transportation Commission Mr. Shane Sanders, Bozeman Qualifications (if required): District 2 commissioner	Governor	1/5/2025
Mr. Loran Frazier, Great Falls Qualifications (if required): District 3 commissioner	Governor	1/5/2025
Mr. Scott Aspenlieder, Billings Qualifications (if required): District 5 commissioner	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Traumatic Brain Injury Advisory Council Mr. Derik Sapp, Helena Qualifications (if required): DPHHS director designee	Governor	1/5/2025
Unemployment Insurance Appeals Board Mr. Derek Oestreicher, Helena Qualifications (if required): Attorney	Governor	1/1/2025
Ms. Laura Fix, Helena Qualifications (if required): Private sector business	Governor	1/5/2025
Ms. Ruthanne Hansen, Helena Qualifications (if required): Substitute public member	Governor	1/5/2025
Mr. Chris Gallus, Helena Qualifications (if required): Attorney and public member	Governor	1/5/2025
Water Pollution Control Advisory Council Mr. Mike Koopal, Columbia Falls Qualifications (if required): Conservation organization representative	Governor	1/5/2025
Mr. Dennis Teske, Terry Qualifications (if required): Production agriculture representative	Governor	1/5/2025
Ms. Amanda Knuteson, Bozeman Qualifications (if required): Public member	Governor	1/5/2025

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2025 THROUGH JANUARY 31, 2025

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Water Pollution Control Advisory Council Cont. Mr. Eric Campbell, White Sulphur Springs Qualifications (if required): Representative of inorganic waste disposal industry	Governor	1/5/2025

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