

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.162.420, fee schedule)

TO: All Concerned Persons

1. On August 11, 2005, the Board of Nursing Home Administrators published MAR Notice No. 24-162-37 regarding the public hearing on the proposed amendment of the above-state rule relating to fee schedule at page 1490 of the 2005 Montana Administrative Register, issue number 15.

2. The hearing was held on September 6, 2005. One written comment was received.

3. The Department has thoroughly considered the comment received. A summary of the comment received and the Board's response are as follows:

COMMENT: Mr. Ron Balas commented that the proposed rate increase for the active renewal was exorbitant, in excess of 30%. The reason offered by the Board for the increase is the restructuring within the Department of Labor. He suggested that the Department and the Board of Nursing Home Administrators should have allowed comment prior to restructuring and nursing home administrators should have been given an opportunity to understand the value of restructuring and its added costs. To his knowledge there is no additional service provided by the Board. He feels that perhaps the restructuring should not have taken place if funds were not available, otherwise at this point comments seem perfunctory.

RESPONSE: The Board acknowledges and thanks Mr. Balas for his comment. In 2001, the Legislature mandated that the Board be attached for administrative purposes to the Department of Labor and Industry. As noted in the statement of reasonable necessity, the accounting allocations for the Board's costs have been restructured to track the actual time spent by Department staff in handling the Board's business. That accounting change was made by the Department in response to criticisms by some Boards of the cost allocations that had been historically used to calculate each Board's share of administrative costs. Similar concerns were independently voiced by the Legislative Audit Division, and the Department's decision to implement the accounting changes kept the Department from being "written up" by the legislative auditors. The Board respectfully notes that it and the Department, as part of the executive branch of government, have an obligation to be responsive to the concerns of the legislative branch. Section 37-1-134, MCA, requires that the Board's fees must be commensurate with costs. One portion of

the fee increase is due to the more accurate and fair allocation of costs to the Board and its licensees. Another portion of the increase is attributable to normal increase in the cost of salaries, utilities, computer technology, and such.

The Board also notes that the Department of Labor and Industry has a duty to establish uniform processes for licensing and related functions for all of the various occupations regulated by professional and occupational licensing boards. As explained in the statement of reasonable necessity, those functions occur at various levels within the portion of the Department that the Board is attached to. The Board notes that the staffers who perform those various functions for the Board are employees of the Department, and are assigned and managed by the Department. Although the Board cannot speak for the Department, it is aware that state law has historically never required executive branch agencies to obtain public comment on matters of internal organization and operation. The Board will, however, make sure that the Department's management is aware of the commenter's concerns.

4. The Board has amended ARM 24.162.420 exactly as proposed.

BOARD OF NURSING HOME ADMINISTRATORS
DEBORAH WILSON, CHAIRPERSON

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified by the Secretary of State October 31, 2005