

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.111.301 definitions,)	PROPOSED AMENDMENT,
24.111.510 certification for specialty)	ADOPTION, AND REPEAL
practice of naturopathic childbirth)	
attendance, 24.111.605 licensure of)	
out-of-state applicants, 24.111.2103)	
midwives continuing education)	
requirements; the adoption of New)	
Rule I minimum education and)	
experience requirements for midwife)	
and midwife apprentice applicants)	
after January 1, 2020, New Rule II)	
direct-entry midwife apprenticeship)	
requirements for midwife apprentice)	
applicants after January 1, 2020; and)	
the repeal of 24.111.2101 renewals)	

TO: All Concerned Persons

1. On October 16, 2019, at 10:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Alternative Health Care no later than 5:00 p.m., on October 9, 2019, to advise us of the nature of the accommodation that you need. Please contact Rhonda Morgan, Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; or dlibsdahc@mt.gov (board's e-mail).

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

24.111.301 DEFINITIONS (1) "Continuous care" as defined in 37-27-103, MCA, includes at least five prenatal visits spanning two trimesters, the birth, newborn exam, and two postpartum visits.

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

(6) "MEAC" means the Midwifery Education Accreditation Council.

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

(8) "NARM" means the North American Registry of Midwives.

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

(10) "Primary birth attendant" means the person responsible for providing primary care to a woman in labor.

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-1-131, 37-26-304, 37-27-103, 37-27-201, 37-27-205, 37-27-311, 37-27-320, MCA

REASON: Board staff recommended the board add a definition of "continuous care" after receiving questions from applicants and noticing inconsistent usages of the term in the board's rules. The new definition at (1) is also consistent with NARM's terminology and requirements and existing statutory language.

The board is adding a definition of "primary birth attendant" as the term is used in both statute and rule for direct-entry midwives and naturopathic doctors. Staff receives numerous questions from midwife applicants and midwife supervisors regarding the term's meaning for purposes of meeting the experience requirements for licensing for direct-entry midwifery. The board also determined it is reasonably necessary to define "MEAC" and "NARM" to align with and facilitate the adoption of NEW RULES I and II in this notice.

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

24.111.510 CERTIFICATION FOR SPECIALTY PRACTICE OF NATUROPATHIC CHILDBIRTH ATTENDANCE (1) through (1)(c)(v)(A) remain the same.

(B) the applicant has observed and assisted with the intrapartum care and delivery in 50 natural childbirths in a hospital or alternative birth setting, including 25 births that document the applicant as the primary birth attendant. Of the 25 births for which the applicant was the primary birth attendant, three of the births must have occurred within the two years immediately preceding the submission of the application and in at least one of those three births, the applicant must have provided continuous care. ~~For purposes of this rule, "continuous care" means at least five prenatal visits occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and one postnatal visit.~~

(d) provide proof of having passed a specialty examination in obstetrics ~~given by or approved by the board, or the American College of Naturopathic Obstetrics' (ACNO) obstetrics specialty examination, or the Naturopathic Physician Licensing Examination's (NPLEX) obstetrics specialty examination.~~

AUTH: 37-26-201, MCA

IMP: 37-26-201, 37-26-304, MCA

REASON: Because the board is adding a new definition of "continuous care" to ARM 24.111.301, the board is amending this rule to strike unnecessary and repetitive language. The board determined it is reasonably necessary to amend (1)(d) to update to current processes as the board no longer administers exams.

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

24.111.605 LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice as a direct-entry midwife in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. ~~Applications for licensure from out-of-state applicants shall expire one year from the date of receipt of the application.~~ The candidate must meet the following requirements:

(a) The candidate holds a current, valid, and unrestricted license to practice as a direct-entry midwife in another state or jurisdiction, ~~which was issued under that~~ has current standards substantially equivalent to or greater than current standards in this state as established in 37-27-201 or 37-27-203, MCA, and the administrative rules.

(i) Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

~~(b) The candidate shall supply certified transcripts sent directly from an institute of higher education, or certificates of completion from other courses of study, indicating the candidate has successfully completed educational requirements in pregnancy and natural childbirth, approved by the board as per ARM 24.111.601;~~

~~(c) The candidate shall supply proof of successful completion of all parts of the North American Registry of Midwives (NARM) examination with a scaled score of 75 or higher. Candidate scores on the examination must be forwarded by the exam agency directly to the board;~~

~~(d) Candidates who were licensed without sitting for the NARM examination shall supply proof of successful completion of a qualifications examination (acceptable to the board) administered by the licensing authority of the state or jurisdiction granting the license;~~

~~(e) The candidate shall supply written documentation of good moral character consisting of three letters of reference, at least one of which must be from a licensed direct-entry midwife;~~

(f) (ii) The candidate shall must supply a copy of the current laws and rules from the state of licensure, ~~which were in effect at the time the license was granted in the other state.~~

~~(2) Out-of-state applicants for direct-entry midwife licensure who do not meet the experience qualifications in (1)(a) and 37-27-201 or 37-27-203, MCA, whichever is applicable at the time of application, through an apprenticeship or other supervisory setting, but who participated as the primary birth attendant at 25 births, 15 of which included continuous care, may be approved by the board to enter directly into direct-entry midwife apprenticeship license Level III-B.~~

~~(a) The applicant must submit for board review and approval: a proposed supervisor agreement; a formal outline of the indirect supervision communication; and proof of the 25 births including 15 continuous care births.~~

~~(i) The 25 births and 15 continuous care births shall be evidenced by:~~

~~(A) the signed birth certificate as primary birth attendant;~~

~~(B) an affidavit from the birth mother; or~~

~~(C) documented records from the person who supervised the births to include prenatal records, birth records, and postpartum records.~~

~~(ii) Documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must include at least five prenatal exams, one of which must have been performed before the beginning of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postpartum exam.~~

~~(iii) Ten of the 15 continuous care births must have been performed under the direct supervision of a qualified supervisor.~~

~~(b) To complete Level III-B, at least eight continuous care births must be supervised by a Montana-licensed direct-entry midwife.~~

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-1-304, 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with current application procedures and provide a simpler and more efficient avenue for qualified applicants with existing licenses in good standing to achieve Montana licensure. Further, staff suggested the changes to (1)(a) regarding substantial equivalency after determining current language contradicts statute. The board is amending this rule to specify the requirements for licensure by endorsement as allowed by 37-1-304, MCA.

The board is deleting (2) because the board has current rules regarding applicants who do not meet experience requirements, and both applicants and licensing staff reported confusion in completing and processing applications.

24.111.2103 DIRECT-ENTRY MIDWIVES CONTINUING EDUCATION REQUIREMENTS (1) through (5) remain the same.

~~(6) In accordance with 37-1-131, MCA, compliance with this rule shall be attested to by the midwife on the renewal application. The board will conduct random audits after each renewal period closes of 20 percent of all midwives with renewed licenses, for documentary verification of compliance. Documentary evidence of completion of nonlive programs (e.g., internet, videotape, audiotape, DVD) may be in the form of proof that the midwife passed an exam on the program content, a certificate of completion, or the midwife's notes summarizing the program content. Documentary evidence of program completion must be maintained by the midwife for a period of two years for audit purposes.~~

~~(7) and (8) remain the same.~~

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: Following a recommendation by department legal staff, the board is amending (6) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The change aligns with standardized department procedure in which licensees with mandatory CE affirm an understanding of the CE requirement at renewal and are then subject to random audit.

The board also determined it is reasonably necessary to no longer require a specific audit percentage following a department recommendation to all boards to allow the board flexibility in conducting CE audits of renewed licensees. The board is amending the title to align with the rest of the direct-entry midwifery rules.

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

4. The proposed new rules are as follows:

NEW RULE I MINIMUM EDUCATION AND EXPERIENCE REQUIREMENTS FOR DIRECT-ENTRY MIDWIFE APPLICANTS AFTER JANUARY 1, 2020 (1) An applicant must be a NARM Certified Professional

Midwife, demonstrated by:

- (a) graduation from a MEAC-accredited program; or
- (b) completing the Portfolio Evaluation Process through NARM; and
- (c) passing the NARM examination with a scaled score of 75.

(i) Applicants must have the examination score reported to the board from NARM.

(ii) Applicants who have failed the examination twice must file a remedial plan with the board, which includes arrangements for securing further professional training and experience prior to each examination attempt.

(2) In addition to NARM certification, applicants must show:

- (a) observation of ten births; and
- (b) participation as the primary birth attendant at five continuous care births, shown by the signed birth certificate as primary birth attendant, an affidavit from the birth mother; or documented records from the person who supervised the births to include prenatal records, birth records, and postpartum records.

AUTH: 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-202, MCA

REASON: After extensive board discussion and comments from applicants as to the difficulty of obtaining licensure in Montana as a direct-entry midwife, the board is adopting NEW RULES I and II to provide a better avenue for qualified students and applicants to achieve licensure in Montana. The board determined it is reasonably necessary to align licensure of midwife apprenticeships and direct-entry midwives with national licensing standards. Therefore, after the January 1, 2020, effective dates of NEW RULES I and II, the board will utilize the NARM (North American Registry of Midwives) Certified Professional Midwife program for all new applicants.

NEW RULE II DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS AFTER JANUARY 1, 2020 (1) Applicants who are acquiring practical experience shall apply for an apprentice license.

(2) Applicants must provide proof of enrollment in a MEAC-accredited program or enrollment in NARM's Portfolio Evaluation Process at the time of application.

(3) Midwife apprentices must work under the supervision of a currently licensed direct-entry midwife, a certified nurse midwife, a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance, or a physician.

(a) Apprenticeship supervisors must be registered with NARM as preceptors.

AUTH: 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-205, MCA

REASON: See REASON for NEW RULE I.

5. The rule proposed to be repealed is as follows:

24.111.2101 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-26-201, 37-27-105, 37-27-205, MCA

IMP: 37-1-131, 37-1-141, 37-26-201, 37-27-105, 37-27-205, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards. Additionally, the rule referenced in (1) was repealed in 2015.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., October 18, 2019.

7. An electronic copy of this notice of public hearing is available at althealth.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsdahc@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.111.301, 24.111.510, 24.111.605, and 24.111.2103 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.111.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2323; or to dlibsdahc@mt.gov.

11. Rhonda Morgan, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF ALTERNATIVE HEALTH CARE
NANCY PATTERSON, ND
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 10, 2019.