

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

In the matter of the amendment of )  
ARM 24.159.301, 24.159.915, and )  
24.159.916, the adoption of New )  
Rules I and II, and the repeal of ARM )  
24.159.404, 24.159.407, 24.159.408, )  
24.159.409, 24.159.502, 24.159.901, )  
24.159.911, and 24.159.912, )  
pertaining to the Board of Nursing )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT,  
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 30, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/88297061688>  
Meeting ID: 882 9706 1688, Passcode: 588404  
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 882 9706 1688, Passcode: 588404

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 department no later than 5:00 p.m., on August 23, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail [laborlegal@mt.gov](mailto:laborlegal@mt.gov).

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

24.159.301 DEFINITIONS (1) and (2) remain the same.

(3) "Allowable routes" means oral, sublingual, topical, ophthalmic, otic, nasal, and inhalant methods of administration, except as otherwise provided by rule.

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

~~(4) "Board" means the Montana Board of Nursing.~~

(5) through (12) remain the same.

~~(13) "Department" means the Montana Department of Labor and Industry as provided for in Title 2, chapter 15, part 17, MCA.~~

(14) through (47) remain the same but are renumbered (13) through (46).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, 37-8-424, MCA

REASON: Reasonable necessity exists to include the definition of "allowable routes" due to the proposed repeal of ARM 24.159.901, which is otherwise unnecessary. For this reason also, the implementation statutes must be amended to include reference to Medication Aide II. Reasonable necessity exists to strike the definitions of "board" and "department" because the terms are statutory and need not be restated in rule.

24.159.915 STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE I (1) remains the same.

(2) "General supervision" for purposes of this rule means at least quarterly onsite review by a supervising nurse of a medication aide I's medication administration skills, and the guidance of a supervising nurse to include a written plan addressing questions and situations that may arise when the supervising nurse is not available. Such a plan must include access to a health care professional.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-202, 37-8-422, MCA

REASON: Reasonable necessity exists to include the definition of "general supervision" in this rule because the unique definition is only needed for this rule and is taken from ARM 24.159.901, which is proposed to be repealed.

24.159.916 STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE II (1) and (2) remain the same.

(3) "Supervision" for purposes of this rule means a provision of general supervision by a professional or practical nurse who is on the premises for the accomplishment of medication administration.

AUTH: 37-8-426, MCA

IMP: 37-8-424, MCA

REASON: Reasonable necessity exists to include the definition of supervision in this rule because the unique definition is only needed for this rule and is taken from ARM 24.159.901, which is proposed to be repealed.

4. The proposed new rules are as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

NEW RULE II CIRCUMSTANCES CONSTITUTING A LOW RISK OF ADVERSE HOMEBIRTH OUTCOMES (1) A low risk of adverse birth outcomes indicates a clinical scenario for which there is not clear demonstrable benefit for a medical intervention or transfer to a physician's care.

(2) Consultation with a physician does not preclude a low risk of adverse birth outcomes.

(3) Preexisting arrangements for emergency transportation to a nearby hospital if needed do not preclude a low risk of adverse birth outcomes.

(4) The following conditions preclude a low risk of adverse birth outcomes.

(a) Pre-existing conditions (not gynecological):

(i) subarachnoid hemorrhage, aneurysm;

(ii) recent or acute herniated nucleus pulposus;

(iii) active tuberculosis or ongoing treatment;

(iv) human immunodeficiency virus, acquired immunodeficiency syndrome, hepatitis B or hepatitis C;

(v) heart defect with hemodynamic consequences;

(vi) clotting disorders;

(vii) kidney dysfunction;

(viii) hypertension;

(ix) diabetes mellitus;

(x) unmedicated thyroid disorders with present TSH receptor antibodies;

(xi) inflammatory bowel disease, including ulcerative colitis and Crohn's disease;

(xii) systemic and rare disorders, including Addison's disease, Cushing's syndrome, systemic lupus erythematosus, antiphospholipid syndrome, scleroderma, rheumatoid arthritis, polyarteritis nodosa, Raynaud's disease, and Marfan syndrome;

(xiii) illegal drug use; or

(xiv) alcoholism.

(b) Pre-existing gynecological conditions:

- (i) pelvic floor reconstruction;
- (ii) conization;
- (iii) myomectomy or other uterine surgery; or
- (iv) uterine distortion, including bicornuate, septate, unicornuate, or didelphic conditions.
- (c) Obstetric history:
  - (i) blood group antagonism, including Rhesus, Kell, Duffy, and Kidd glycoproteins;
  - (ii) previous pre-term (before 34 weeks) birth. If a normal pregnancy occurred after the premature birth, the current birth may be considered to be low risk;
  - (iii) cervical insufficiency or cerclage;
  - (iv) placental abruption;
  - (v) caesarean section - must transfer current pregnancy at 37 weeks if no reason for transfer prior;
  - (vi) dysmaturity;
  - (vii) uncontrolled post-partum hemorrhage;
  - (viii) manual placental removal;
  - (ix) placenta accreta; and
  - (x) total uterine rupture with no functional recovery; or
  - (xi) history of intrauterine fetal demise.
- (d) Occurring or diagnosed during pregnancy:
  - (i) rubella;
  - (ii) cytomegalovirus;
  - (iii) genital herpes (primo infection);
  - (iv) parvovirus;
  - (v) tuberculosis;
  - (vi) human immunodeficiency virus or acquired immunodeficiency syndrome;
  - (vii) syphilis;
  - (viii) illegal drug use;
  - (ix) alcoholism;
  - (x) maternal anemia;
  - (xi) extrauterine pregnancy;
  - (xii) amniotic fluid loss or preterm labor before 37 weeks;
  - (xiii) uncontrolled diabetes mellitus;
  - (xiv) gestational diabetes mellitus;
  - (xv) gestational hypertension with diastolic blood pressure above 100 or systolic blood pressure above 160;
  - (xvi) preeclampsia, superimposed preeclampsia, hemolysis, or elevated liver enzymes and low platelets (HELLP) syndrome;
  - (xvii) blood group antagonism;
  - (xviii) deep vein thrombosis;
  - (xix) clotting disorders;
  - (xx) vasa previa;
  - (xxi) velamentous cord insertion;
  - (xxii) placenta previa;
  - (xxiii) placental abruption;

- (xxiv) serotonin syndrome;
- (xxv) cervical insufficiency prior to 37 weeks of gestation;
- (xxvi) multiple pregnancy;
- (xxvii) breech or abnormal position at term; or
- (xxviii) fetal mortality; or
- (xxix) prolonged gestation > 42 weeks.

AUTH: 37-1-131, MCA  
IMP: 37-8-202, MCA

**REASON:** The 2023 Legislature enacted House Bill (HB) 655, requiring Medicaid coverage of midwife-attended home births (effective 7/1/2023). Accordingly, the Board of Nursing determined it is reasonably necessary to outline circumstances constituting a low risk for adverse outcomes for a planned homebirth.

5. The rules proposed to be repealed are as follows:

24.159.404 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA  
IMP: 37-1-145, MCA

**REASON:** Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to HB 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.159.407 MEETINGS OF THE BOARD

AUTH: 37-8-202, MCA  
IMP: 37-8-202, MCA

**REASON:** Reasonable necessity exists to repeal the rule because it sets forth requirements which need not be set out in rule. Meetings, approval of the schedule, and special meetings need not be in rule, and duplicate the requirements of statute.

24.159.408 OFFICERS OF THE BOARD

AUTH: 37-8-202, MCA  
IMP: 37-8-202, MCA

**REASON:** Reasonable necessity exists to repeal this rule because it is duplicative of requirements set forth in HB 87, Section 2 (2023).

24.159.409 DUTIES OF THE PRESIDENT OF THE BOARD

AUTH: 37-8-202, MCA  
IMP: 37-8-202, MCA

REASON: Reasonable necessity exists to repeal this rule because it sets forth business process of the board which need not be in rule.

24.159.502 NURSE LICENSURE COMPACT RULES

AUTH: 37-8-202, MCA  
IMP: 37-8-501, MCA

REASON: Reasonable necessity exists to repeal this rule because it does not provide any substance.

24.159.901 DEFINITIONS

AUTH: 37-8-202, 37-8-426, MCA  
IMP: 37-8-202, 37-8-423, MCA

REASON: Reasonable necessity exists to repeal this rule as unnecessary based on changes proposed in this rulemaking. The definition of "allowable routes" is proposed to be included in ARM 24.159.301. The definition of "general supervision," applicable to Medication Aide I, is proposed to be included in ARM 24.159.915 so that all standards related to that license type are collocated. The definition of "Medication Aide I" is duplicative of requirements set forth in ARM 24.159.915. The sole unique section was the age requirement for Medication Aide I. This requirement is proposed to be repealed as unnecessary for licensure. This is in keeping with other board license types. Section (4) is duplicative of 37-8-423, MCA. The definition of "supervision," applicable to Medication Aide II, is proposed to be included in ARM 24.159.916 so that all requirements for that license type are collocated.

24.159.911 GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE II

AUTH: 37-8-426, MCA  
IMP: 37-8-423, 37-8-426, MCA

REASON: Reasonable necessity exists to repeal this rule because it merely restates the statutory requirements for licensure set forth in 37-8-423, MCA. Rules are not permitted to duplicate statute. Subsection (1)(h) recognizes substantial equivalency, which is also statutory. See 37-1-304, MCA.

24.159.912 CONTINUING EDUCATION REQUIREMENTS FOR MEDICATION AIDE II

AUTH: 37-8-426, MCA

IMP: 37-8-423, 37-8-426, MCA

REASON: Reasonable necessity exists to repeal this rule because the board has proposed moving away from audit requirements for continuing education. HB 154 clarifies and specifies the obligations of medication aide II licensees with regard to continuing education. It need not be restated in rule.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 1, 2023.

7. An electronic copy of this notice of public hearing is available at [dli.mt.gov/rules](http://dli.mt.gov/rules) and [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on May 25, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
SARAH SPANGLER, RN,  
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ JOHN ELIZANDRO  
John Elizandro, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.