

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
24.111.401 fees, 24.111.407)	
nonroutine applications, 24.111.511)	
naturopathic physician natural)	
substance formulary list, 24.111.602)	
direct-entry midwife apprenticeship)	
requirements, 24.111.603 direct-entry)	
midwife protocol standard list required)	
for application, 24.111.604 licensing by)	
examination, 24.111.605 licensure of)	
out-of-state applicants, 24.111.611)	
conditions which require physician)	
consultation or transfer of care, and)	
24.111.2103 midwives continuing)	
education requirements)	

TO: All Concerned Persons

1. On February 6, 2018, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Alternative Health Care (board) no later than 5:00 p.m., on January 30, 2018, 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) 841-2305; 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) and (2) remain the same.

(3) "Home birth" means an anticipated or actual birth whereby the woman in labor is advised, attended, and assisted by a licensed direct-entry midwife or a Level III-B apprentice direct-entry midwife.

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

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

IMP: 37-1-131, 37-27-205, 37-27-311, 37-27-320, MCA

REASON: Section 37-27-311(2)(d), MCA, requires licensed direct-entry midwives to obtain written informed consent from prospective clients, which includes providing a description of the possible risks of "home birth," primarily those conditions that may arise during delivery. After board legal counsel noticed that the term is not defined in board statute or rule, the board determined it is reasonably necessary to add (3) and define "home birth."

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

24.111.401 FEES (1) through (1)(g) remain the same.

~~(h) midwife examination~~ 800

(i) through (k) remain the same but are renumbered (h) through (j).

~~(l) midwife exam proctor only fee~~ 150

(3) remains the same.

(4) The midwife examination fee is set by the examination administrator and is paid by the applicant directly to the examination administrator.

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

AUTH: 37-1-134, 37-26-201, 37-27-105, MCA

IMP: 37-1-134, 37-1-141, 37-26-201, 37-26-403, 37-27-203, 37-27-205, 37-27-210, MCA

REASON: The board is amending this rule to remove the specific midwife examination and proctor fees which were previously collected by the board. The board-approved midwife examination authority, North American Registry of Midwives (NARM), determines the examination fees and now also collects the total exam fee, including any proctor fees, directly from applicants. Because these fees were always passed through to NARM, their elimination will not affect board revenue.

24.111.407 NONROUTINE APPLICATIONS (1) All applications for direct-entry midwife licensure and direct-entry midwife apprentice Level III-A and Level III-B licensure must be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

(2) An application for direct-entry midwife apprentice Level I or Level II licensure will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license if the applicant:

(a) has a prior felony conviction of any nature. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) has had two or more alcohol-related convictions over any period of time or has had one alcohol-related conviction within the past five years;

(c) has had any occupational or professional licenses disciplined or has voluntarily surrendered any occupational or professional license in another state or jurisdiction;

(d) has a pending or completed legal or disciplinary action involving licensure in this state, another state, or jurisdiction;

(e) has a supervisor or proposed supervisor who has had an occupational or professional license disciplined or voluntarily surrendered in this state or another jurisdiction; or

(f) has presented an application with any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

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

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

IMP: 37-1-101, 37-1-131, 37-26-401, 37-26-402, 37-26-403, 37-26-405, 37-27-201, 37-27-203, 37-27-205, MCA

REASON: The board determined it is reasonably necessary to amend this rule and further implement 37-1-101, MCA, which states the department shall process routine licensure applications on behalf of the professional and occupational licensing boards. The board adopted this rule in 2007 to define those nonroutine applications requiring board review and approval, which included all applications for direct-entry midwife and direct-entry midwife apprentice licensure. Following suggestions by the executive officer and department licensing staff, the board is amending this rule now to identify additional criteria that will allow department staff to review and approve certain applications for Level I and Level II direct-entry midwife apprentices. Applications for Level III apprentices and direct-entry midwife licensure will still require board review and approval prior to issuance.

Because 37-27-205(1)(a), MCA, requires direct supervision of Level I and Level II apprentices by licensed direct-entry midwives, certified nurse-midwives, licensed physicians, or licensed naturopathic physicians who are certified in naturopathic childbirth attendance, the board concluded that public safety and health is adequately protected. The board determined the amendments will provide licensing staff the necessary clarification and guidance on differentiating between routine and nonroutine applications, and not unnecessarily delay licensure. These amendments will further streamline application processing by reducing the number of applications that need board review before issuance.

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

24.111.511 NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE FORMULARY LIST (1) through (5)(u) remain the same.

(v) tramadol;

(v) and (w) remain the same but are renumbered (w) and (x).

(6) through (10) remain the same.

(a) adrenal;

(i) through (13)(a) remain the same.

(b) anticoagulants:

(i) heparin; and

(ii) warfarin;

- (b) through (f) remain the same but are renumbered (c) through (g).
- ~~(g) heparin;~~
- (h) through (17) remain the same.

AUTH: 37-1-131, 37-26-201, MCA
IMP: 37-1-131, 37-26-301, MCA

REASON: Pursuant to 37-26-301, MCA, naturopathic physicians are authorized to prescribe natural substances, including pharmaceuticals derived from natural substances, in treating their patients. This rule provides a nonexclusive list of examples that may be prescribed by naturopathic physicians, serves as a resource for pharmacists, and facilitates patients' ability to fill prescriptions written by naturopathic physicians.

On September 11, 2015, the formulary committee, established by 37-26-301, MCA, considered information provided by the University of Montana Drug Information Service, Skaggs School of Pharmacy, that tramadol has been discovered in extracts of the root of the *Nauclea latifolia* plant in Africa. Accordingly, tramadol has a natural origin even though the tramadol available by prescription is a synthetic derivative of codeine. Codeine also has a natural origin and is listed in the formulary at ARM 24.111.511(5)(d). On January 22, 2016, the board reviewed and approved the formulary committee's recommendation and is now amending this rule to add tramadol to the formulary regarding botanical extracts and their derivatives.

On October 13, 2017, the formulary committee considered information provided by Sarah Hogue, R. Ph., and a member of the formulary committee, that warfarin is a derivation of dicoumarol which was discovered after cows died from eating moldy sweet clover. The formulary committee, noting that the formulary list already contained the anticoagulant heparin at (13)(g), recommended adding warfarin and suggested that heparin and warfarin be shown together under (13) as anticoagulants. Following the board's review and approval of the formulary committee's recommendation on October 13, 2017, the board is amending this rule to add warfarin and place heparin and warfarin together as anticoagulants.

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

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS (1) through (4)(b) remain the same.

- (c) complete Level I skills checklist; and
- (d) submit a positive evaluation of skills and educational progress form and written verification by supervisor of completion of Level I; ~~and~~
- ~~(e) obtain approval from the board to proceed to Level II.~~
- (5) remains the same.
- (a) attend ten births as primary birth attendant. Five of the ten births, as primary birth attendant in Level II, must be supervised by a licensed direct-entry midwife. The births must be verified by:
 - (i) signed birth certificates; and
 - (ii) signed affidavits from the birthing mothers; and or

(iii) documented records from the person who supervised the births to include all of the following:

- (i) prenatal records;
- (ii) birth records; and
- (iii) postpartum records;

(b) through (6) remain the same.

(a) complete 15 continuous-care births as the primary attendant;

(i) Eight of the 15 continuous-care births in Level III must be supervised by a Montana-licensed direct-entry midwife. The births must be verified by:

(A) signed birth certificates;

(B) signed affidavits from the birthing mothers; or

(C) documented records from the person who supervised the births to

include all of the following:

- (i) prenatal records;
- (ii) birth records; and
- (iii) postpartum records;

(b) provide documentation of each

(i) Five of the 15 continuous-care births as defined in 37-27-103, MCA, which 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 personal supervision of a qualified supervisor;

(iv) At least one of the 15 continuous-care births must include a postpartum exam;

(c) through (f) remain the same but are renumbered (b) through (e).

(7) through (7)(b) remain the same.

(i) verification of completion of ten directly supervised continuous-care births, as required by ARM 24.111.604 which include 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;

(ii) through (8) remain the same.

(a) The 25 births and 15 continuous-care births shall be evidenced by:

(i) the signed birth certificate as primary birth attendant;

(ii) an affidavit from the birth mother; or

(iii) documented records from the person who supervised the births to include all of the following:

- (i) prenatal records;
- (ii) birth records; and
- (iii) postpartum records.

(b) remains the same.

(9) To be approved by the board as a supervisor of a direct-entry midwife apprentice, each supervisor applicant must submit an application on a form provided by the department and shall:

(a) hold a current, unencumbered Montana license as a 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 as defined in 37-3-102, MCA-;

~~(i) A licensed direct-entry midwife supervisor shall have 20 postlicensure continuous-care births as primary attendant before becoming a supervisor for Level II and III apprentices, except for those licensees who have successfully passed the first licensing exam administered by the board.~~

~~(ii) remains the same but is renumbered (i).~~

(ii) A licensed direct-entry midwife who has completed 20 postlicensure continuous-care births as primary attendant may apply to supervise Level II and III apprentices;

~~(b) through (10) remain the same.~~

~~(11) The supervision requirements set forth in (5)(a), (6)(a), and (8) shall not apply to licensees who were licensed as Level II and Level III apprentices on or before April 13, 2012.~~

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

IMP: 37-1-131, 37-27-105, 37-27-201, 37-27-205, 37-27-321, MCA

REASON: The board is striking (4)(e) to no longer require board approval before a direct-entry midwife apprentice Level I can move to Level II. This amendment is consistent with proposed amendments to ARM 24.111.407 to allow department staff to review and approve routine applications for Level I and Level II apprentices. No other qualifications for completing a Level I apprenticeship are changing.

The board is amending this rule throughout to reorganize and renumber the provisions for verifying direct-entry midwife apprenticeship births. The reorganization will not change the apprentice experience requirements, but will address questions by improving readability.

The board is adding (6)(a)(iv) and amending (7)(b)(i) to relocate the direct-entry midwife apprenticeship experience requirements from ARM 24.111.604, the licensing by examination rule. Moving these provisions does not change any apprentice Level III requirements, but puts them in a single location.

The board is amending (9) to align with current application procedures by clarifying that midwife supervisor applicants must submit an application form. The board is also reorganizing (9)(a)(i) and (ii) to address questions and more clearly set forth the qualifications for a licensed direct-entry midwife to supervise Level II and Level III apprentices. The qualifications are not changing.

The board is deleting (11) to remove the supervision exemptions for Level II and Level III apprentices licensed before April 13, 2012, as there are no longer any of these apprentices.

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

24.111.603 DIRECT-ENTRY MIDWIFE PROTOCOL STANDARD LIST
REQUIRED FOR APPLICATION (1) through (4)(i) remain the same.

(i) newborn critical congenital heart disease screening using pulse oximetry;

(j) through (q) remain the same but are renumbered (k) through (r).

AUTH: 37-1-131, 37-27-105, MCA
IMP: 37-1-131, 37-27-201, MCA

REASON: The board determined it is reasonably necessary to amend this rule and add newborn congenital heart disease screening using pulse oximetry (CCHD) to the newborn protocol standards for licensed direct-entry midwives.

The Department of Public Health and Human Services (DPHHS) adopted administrative rules regarding screenings for infants and requiring the registrars of births to cause certain screenings to be completed or affirmatively waived by an infant's parents. See ARM 37.57.307 and 50-15-221, MCA. Licensed direct-entry midwives are birth registrars for infants born to their clients outside of a health care facility pursuant to 50-15-221, MCA, and therefore, they are subject to the DPHHS protocol for infant CCHD. This amendment is reasonably necessary to align this rule with the DPHHS rule and include all the required infant screening protocols in (4).

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

24.111.604 LICENSING BY EXAMINATION (1) Applicants for direct-entry midwifery licensure by examination shall submit a completed application with the proper fees and supporting documents, ~~at least 90 days prior to the examination date,~~ to the board office. Applications for licensure by examination shall expire one year from the date of receipt of the application. An applicant who, for any reason, fails or neglects to take the examination within the year shall be required to file another application and submit another application fee. Supporting documents shall include:

- (a) 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; and
 - ~~(b) a copy of a certified transcript sent directly from a high school, showing evidence the applicant has graduated from the school;~~
 - ~~(c) a GED or other high school equivalency program certificate of completion;~~
- or
- ~~(d)~~ (b) any other documents, affidavits, and certificates required by 37-27-201 or 37-27-203, MCA, whichever is applicable, and board rules;
 - ~~(i) 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. Ten of the 15 continuous care births must have been performed under the direct supervision of a qualified supervisor.~~

(2) and (3) remain the same.

AUTH: 37-27-105, MCA
IMP: 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The board is amending (1) to remove the unnecessary requirement to submit direct-entry midwife license applications and fees to the board at least 90 days prior to the examination date. In the current process, once the board approves

an applicant to sit for the examination, the department notifies the applicant and the board-approved testing authority (NARM), and the applicant contacts NARM to schedule an examination.

The board is striking (1)(b) and (c) as proof of completion of high school or a GED is required under 37-27-201(1), MCA.

The board is striking (1)(d)(i) regarding an applicant's required proof of 15 continuous-care births and relocating the provisions to ARM 24.111.602, the rule on direct-entry midwife apprentice requirements.

24.111.605 LICENSURE OF OUT-OF-STATE APPLICANTS (1) remains the same.

(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 standards 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. 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 ~~a copy of a high school diploma or its equivalent, plus verification in the form of~~ 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) remains the same.

(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) and (f) remain the same.

(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: Following a thorough review of the board statutes and rules, and to align with and further facilitate the department's standardized application procedure, the board's executive officer suggested the board clarify the requirements for out-of-state midwife applicants. The board determined it is reasonably necessary to amend this rule to clearly set forth the licensure standards for out-of-state applicants, remove unnecessary and duplicated provisions, and address questions from licensing staff.

The board is amending (1)(a) to reference the statutory provisions for direct-entry midwife applicants who are licensed in other states or jurisdictions. The board is amending (1)(b) as proof of completion of high school or a GED is specified in 37-27-201(1), MCA.

The board is adding (2) to set forth standards for those out-of-state applicants not qualified for direct-entry midwife licensure to apply for direct-entry midwife Level III-B apprentice licensure. After receiving a few out-of-state applications with standards not substantially equivalent to Montana's, the board concluded that some applicants may qualify for licensure as a Level III-B apprentice, and would not need to begin a brand-new apprenticeship at Level I. The board determined it is reasonably necessary to establish these standards in rule to assist applicants and licensing staff.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.111.611 CONDITIONS WHICH REQUIRE PHYSICIAN CONSULTATION OR TRANSFER OF CARE (1) through (1)(b)(iv) remain the same.

(v) ~~thick~~ meconium stained fluid with delivery not imminent;

(vi) through (c) remain the same.

AUTH: 37-27-105, MCA

IMP 37-27-105, MCA

REASON: The board is amending this rule to remove the requirement that meconium must be "thick" to require that licensed direct-entry midwives consult and/or transfer care to a physician. The board determined that any discernible meconium staining in the fluid when delivery is not imminent indicates a serious risk to the infant of meconium aspiration, and is amending the rule to further protect the health and safety of the infant.

24.111.2103 MIDWIVES CONTINUING EDUCATION REQUIREMENTS

(1) Midwives must obtain 14 continuing education credits each renewal period except, as provided in ~~(8)~~ (7). One hour of education (excluding breaks) equals one continuing education credit.

(2) through (8) remain the same.

AUTH: 37-1-131, 37-1-319, ~~37-27-105~~, MCA

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

REASON: The board is amending (1) to correct an error. The CE exemption for licensed direct-entry midwives renewing a Montana license for the first time is at (7), not (8). Authority citations are being amended to accurately reflect all statutes implemented through the rule.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., February 9, 2018.

5. 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.

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.111.301, 24.111.401, 24.111.407, 24.111.511, 24.111.602, 24.111.603, 24.111.604, 24.111.605, 24.111.611, and 24.111.2103 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination 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) 841-2305; or to dlibsdahc@mt.gov.

9. 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 January 2, 2018.