

Frequently Asked Questions (FAQ) – HB 210 and Licensing Assistants Montana Board of Speech-Language Pathologists and Audiologists

(FAQ created 1/25/22)

This FAQ is specific to questions pertaining to the passage of [HB 210\(2021\)](#) and implementation of speech-language pathology and audiology assistant licenses and the continuing work of unlicensed individuals formally referred to as "aides".

If you have general questions pertaining to licensure and the board that are not specifically related to assistant licensure and supervised work of unlicensed individuals we encourage you to review the board's website at www.slpaud.mt.gov. If you cannot find the answer on the website you can e-mail customer service staff at dlibsdhel@mt.gov.

General Overview – What Does HB 210 Do?

[HB 210](#) was sponsored by the Montana Speech-Language Hearing Association (MSHA). The bill creates licenses for speech-language pathology and audiology assistants under the Board of Speech-Language Pathologists and Audiologists. Creation of this "mid-tier" licensure between unlicensed individuals and licensed speech-language pathologists and audiologists will ultimately allow for greater access to qualified speech-language pathology and audiology services in this large, rural state as assistants are required to have higher education than unlicensed individuals and will also be able to engage in telepractice.

The bill also repeals language referencing registration of unlicensed individuals (previously called "aides or assistants") by licensed speech-language pathologists and audiologists although there is nothing in the bill which alters the fact that there will always be unlicensed individuals legally working under the supervision and direction of licensees (see below for more information on unlicensed individuals who work under supervision of licensees).

At this time the state of Montana has not started issuing licenses to either speech-language pathology assistants or audiology assistants since a licensing exam needs to be developed in order to meet the statutory requirements for licensure and implement rules and a licensing application.

Note the term "aide or assistant" or "aide/assistant" that existed in statute or administrative prior to the passage of HB 210 referred only to unlicensed individuals who were not required to have the same qualifications and skills that will be required to obtain licensure as an assistant as it has been defined under the new HB 210 statute. Unlicensed individuals can still practice under the supervision of licensed speech-language pathologists and audiologist just as they did under the previous statute. The only difference is there is no longer a

specific term in statute for unlicensed individuals. See the remainder of this FAQ for further information on assistants and moving forward with implementing a process so people can eventually apply for licensure as assistants.

Implementation of the Bill and When the Board Will Begin Issuing Assistant Licenses

Question 1:

When will the statute take effect and when can people start applying for licensure as speech-language pathology or audiology assistants?

Response 1:

The statute took effect on 10/1/21. The board's original intent was to have rules implementing the licensing requirements and scopes of practice in place as close to that date as possible in order to allow qualifying individuals to apply and become licensed. However, in September 2021 staff discovered that there is in fact no licensing exam available for all potential applicants. Without a viable exam the board cannot meet the statutory requirements to move forward with completing the rules to begin issuing licenses.

The board's only path forward at this time to implement the legislation is to begin the Request for Proposal (RFP) contracting process to award a contract to write and administer a psychometrically sound licensing exam for assistants. The board voted to proceed with an RFP at its 10/27/21 meeting. The best case scenario estimate is that it will be approximately eight months to a year before there will be an exam in place under the completed RFP so that the board can complete rulemaking and people can begin applying for assistant licenses.

Question 2:

Can the board complete the rulemaking and begin issuing licenses without a licensing exam?

Response 2:

No. The language passed by the Legislature in the statute specifically requires a licensing exam as one of the minimum licensing requirements. The board cannot supersede statute with administrative rules so there is no way the board can lessen or remove the exam requirement by using the rulemaking process. Boards can only implement rules within the statutory authority given to them by the Legislature. They cannot overturn or reduce requirements set by the Legislature.

Question 3:

Why is there no licensing exam for assistants? I thought there was testimony during the session that there was an existing exam that Montana would be able to utilize?

Response 3:

The only exam that staff and the board have been able to find that currently exists and would meet licensing criteria is the assistants licensing exam developed and overseen by the American Speech-Language Hearing Association (ASHA). MSHA who sponsored this bill is the Montana chapter of ASHA. During the course of its bill development and testimony, MSHA believed this ASHA exam was open and available to all; however, while completing drafting of the board's rules, staff discovered

that the ASHA exam was only open individuals who are applying for professional association certification through ASHA. ASHA denied the board's request to allow the department and board to enter into an agreement to allow anyone applying for licensure in Montana to register for the ASHA assistant exam. That means the ASHA exam is not a viable option to meet the statutory requirement for a licensing exam and the board cannot proceed with rulemaking and opening up the application process until there is at least one board approved exam all potential applicants for assistant licensure can take.

Question 4:

Why does the board have to go out for bid for someone to write an assistants exam? Couldn't the board member and/or department staff write an exam?

Response 4:

The board and department cannot write a legally defensible, psychometrically sound licensing exam to evaluate minimum competency as set by the Legislature. Neither staff nor the board members are trained to write licensing exams. Therefore, a board written exam is not an option either for the short- or long-term which. An RFP is necessary so an entity qualified to write and administer an exam can be found and the integrity of the licensing requirements set by the Legislature is maintained.

Question 5:

Since the board will not be able to begin licensing assistants by the end of the year what is the new timeline?

Response 5:

- The board voted at its 10/27/21 meeting to authorize the department to move forward with drafting an exam RFP.
- Staff have drafted the RFP and as of January 2022 are working with the Department of Administration (DOA) per standard state contracting procedures so DOA can release . The RFP process will take approximately two to four months from the time staff begins drafting until the bid closes.
- Assuming there are bidders, the bidder who is awarded the contract will still need to develop the exam(s). It would only be at this stage in the process that it will make sense for the board to officially begin moving forward with the rulemaking process.
- The current estimate is that it will be eight months to a year before this entire process to create a board exam is complete. That means that people will not be able to begin applying for assistant licenses for approximately another eight months to a year although a more precise timeline cannot be known until the RFP is released and an exam contract is awarded.

Question 6:

Can the board engage in emergency rulemaking to speed up this process?

Response 6:

No. Drafting rules and the rulemaking process itself is not the holdup to being able to begin issuing assistant licenses. The reason the board stopped the regular rulemaking process is that there is no exam to utilize the meet the licensure requirements set by the Legislature in statute. See also Question/Responses #3 and #4. Emergency rules cannot solve the issue of not having an exam

which is what is preventing the board from moving forward with implementing rules so individuals can begin applying for licenses. The board will be timing the ongoing rulemaking process with the RFP so that when an exam is in place the rules will also be in place and there will not be a lag.

General Questions Regarding Assistant Licenses and Unlicensed Individuals Formerly Called "Aides" under pre-HB 210 Statute

Question 7:

Are the aides/assistants who were previously mentioned in statute and registered by licensed speech-language pathologists and audiologists the same thing as the licensed assistants created under HB 210?

Response 7:

No—assistant licenses under HB 210 are not synonymous with what was referred to as an unlicensed aide/assistant in the previous statutes. The individuals referred to as aides/assistants prior to 10/1/21 were never licensed or regulated by this board though some of them were registered by their licensed supervisors. Legally speaking registration could only be done by licensee supervising, not the person being registered, and was never synonymous with holding a license.

"Aides" were always unlicensed even before the statutes regarding registration by the licensees supervising them were repealed in HB 210. Not all aides were even registered by their supervisors prior to HB 210 becoming effective—only aides who were working during the very narrow window of aide registration were actually registered by the licensees who supervised. There were many aides who never actually registered since the Legislature never gave the board authority to require unlicensed aide registration by the supervising licensees year round. It was a very narrowly constructed statute. The licensees still had to supervise anyone hired outside of aide registration but did not register them with the state.

Note that even though unlicensed individuals are no longer called a specific name under the board's statutes and there is no longer a registration requirement for unlicensed individuals, those people working under supervision and direction of licensees will continue to exist and there is nothing in the statutory language that precludes that type of support work. See also Question/Response #8 and #9.

Assistant licenses created by HB 210 are actual licenses that will be issued by the board to individuals who must meet certain qualifications set by the Legislature to practice under a scope(s) of practice as set by the board through rulemaking. In order to obtain a license these individuals must submit applications just as the board's current licensees do (i.e. speech-language pathologists and audiologists).

Question 8:

Will all people who were formally referred to as unlicensed aides/assistants automatically qualify to become licensed assistants?

Response 8:

No and that was not the bill sponsor's intent as a certain level of education and/or experience must exist for a person to obtain assistant licensure as opposed to the very basic tasks that can be performed by unlicensed individuals under supervision.

There will be two pathways to licensure for individuals who want to become licensed as assistants under HB 210. The first is to meet the minimum education/degree and exam requirements set by the board in rule. The second, as allowed under the language in HB 210, will be to meet the exam requirements and have obtained a board-determined amount of qualifying experience in lieu of formal education by having worked under an SLP or audiologist as an unlicensed individual prior to 10/1/21. The board will be setting these experience requirements (in lieu of education requirements) in rule as part of the rulemaking that will start up again once the exam issue discussed above is addressed.

Question 9:

Can unlicensed individuals such as volunteers (e.g. grandparents, parents, etc.), employed school district paraprofessionals, people formally referred to as "aides," etc. still continue to perform services in schools and for employers even though the board has not begun licensing assistants?

Response 9:

Yes, absolutely. Under the board's regulatory authority as granted by the Legislature, nothing has changed regarding the services that can be performed by unlicensed individuals working under the direction and supervision of a licensed speech-language pathologist or audiologist. The only real difference is the fact that licensees are no longer required to register the names of any of the unlicensed individuals working under their supervision and license and there is no longer a specific term for unlicensed individuals in statute.

From a practical standpoint, the only thing that striking the term "aide" from statute in HB 210 does is remove any use of a title for unlicensed individuals practicing under an SLP or audiologist. Aides (or whatever their working job title was that was given to them by their employer such as a paraprofessional at a school) were always unlicensed and worked under the license and supervision of the speech-language pathologist or audiologist who was supervising them. The licensee has always been and will always continue to be responsible for all actions and duties performed by an unlicensed individual working under their license.

Question 10:

How will the changes in HB 210 affect billing by unlicensed individuals who were formally referenced as "aides/assistants"?

Response 10:

Aides (or whatever their working job title was that was given to them by their employer) were always unlicensed and worked under the license and supervision of the speech-language pathologist or audiologist who was supervising them. Laws pertaining to billing, including private insurance and Medicare and Medicaid are still outside the board's jurisdiction and regulatory authority just as they were prior to the passage of HB 210.

- Licensed speech-language pathologists and audiologists are expected to comply with other state and federal laws that pertain to their scopes of practice. However, it is not this board that regulates those specific areas of billing and reimbursement so questions regarding unlicensed individuals working under the supervisor of a licensee regardless of the working title given to them by their employer are best directed to the Office of the Commissioner of Securities and Insurance and the Montana Department of Public Health and Human Services. State and/or national professional association(s) such as MSHA, the professional association who sponsored this bill might also have some insights into billing.
- If there are issues with changes to billing related to the passage of HB 210, those issues are outside the jurisdiction of this board and the board cannot take any action in this area just as it cannot take actions regarding billing by speech-language pathologists or audiologists.
- However, as previously discussed in this FAQ, even when some individuals were registered as "aides" in the past, not all were actually ever registered and they were never licensed. They were and remain unlicensed individuals working under another person's supervision and license authority.

Question 11:

Once the board begins issuing licenses to assistants will that change anything regarding billing practices?

Response 11:

As stated in Question/Response #10, billing and reimbursement by speech-language pathologists and audiologists currently licensed under this board is outside the board's jurisdiction. That will also be true of licensed assistants as well. When the board does begin issuing licenses to speech-language pathology and audiology assistants those licensees will be expected to comply with all state and federal laws that pertain to their scopes of practice with regard to billing.

Additionally as stated in Question/Responses #9 and #10, the board and bill sponsor (MSHA) always presumed there would still be unlicensed individuals working in schools, practices, etc. even with the licensure and employment of assistants. Not all unlicensed individuals would qualify to be licensed as assistants or even need/want to become licensed for the service they are providing their employers under the direction of licensees. Assistants would be able to bill as allowed under state and federal laws for that scope and level of licensure while unlicensed individuals—regardless of working title assigned by their employers, including school districts and co-ops—will still be working as unlicensed individuals under the license authority of the speech-language pathologist, audiologist, or assistant supervising them.