

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

In the matter of the amendment of)
ARM 24.159.301 definitions,)
24.159.401 fees, 24.159.662 faculty)
for practical nursing programs,)
24.159.901, 24.159.903, 24.159.905,)
24.159.910, and 24.159.915)
medication aides, 24.159.1011)
prohibited intravenous therapies,)
24.159.1024 and 24.159.1224)
licensure by examination, the)
adoption of NEW RULES I through V)
medication aides, and the repeal of)
ARM 24.159.1025 and 24.159.1225)
nurse reexamination)

TO: All Concerned Persons

1. On August 18, 2011, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, 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 Nursing (board) no later than 5:00 p.m., on August 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Cari Harris, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov.

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

24.159.301 DEFINITIONS (1) "Accrediting organization" means a professional organization, ~~which has been approved by the board,~~ that establishes standards and criteria for continuing education programs in nursing, advanced nursing, medicine, and other health care specialties.

(2) through (4) remain the same.

(5) "Charge nurse" means the nurse who is in charge of patient and/or resident care during a nursing shift. An LPN may serve as a charge nurse in the absence of an RN in a ~~long-term~~ long-term care facility, pursuant to 37-8-102, MCA.

(6) "CNOR" means the documented validation of the professional achievement of identified standards of practice by an individual registered nurse providing care for patients before, during, and after surgery.

~~(6)~~ (7) "Competency" means performing skillfully and proficiently the functions that are within the role of the licensee, and, demonstrating the interrelationship of essential knowledge, judgment, and skills.

(7) through (25) remain the same, but are renumbered (8) through (26).

~~(26)~~ (27) "Practical nurse" means the same thing as "licensed practical nurse," "PN," and "LPN," unless the context of the rule dictates otherwise. The practice of practical nursing is defined at 37-8-102, MCA.

(27) through (30) remain the same, but are renumbered (28) through (31).

~~(31)~~ (32) "Registered nurse" means the same thing as "RN" and "professional nurse," unless the context of the rule dictates otherwise. The practice of professional nursing is defined at 37-8-102, MCA.

(32) through (34) remain the same, but are renumbered (33) through (35).

~~(35)~~ (36) "Strategy of care" means the goal-oriented plan developed to assist individuals or groups to achieve optimum health potential. This includes initiating and maintaining comfort measures, promoting and supporting human functions and responses, establishing an environment conducive to ~~well-being~~ well-being, providing health counseling and teaching, and collaborating on certain aspects of the medical regimen, including but not limited to, the administration of medications and treatments.

(36) through (38) remain the same, but are renumbered (37) through (39).

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

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

REASON: The board adopted the definition of accrediting organization in November 2008, when the board implemented the continuing education (CE) requirement for advanced practice registered nurses. Since the board implemented CE for RNs and LPNs in late 2010, the board has received numerous requests to approve many professional organizations that establish standards and criteria for continuing education programs in nursing. Having reviewed a significant number of those requests, the board concluded that no such professional organization will fail to meet board approval. The board is amending (1) to delete the process of obtaining board approval as it is unnecessary, time-consuming, and tends to limit nurses' access to quality CE programs.

The 2011 Montana Legislature enacted Chapter 173, Laws of 2011 (House Bill 547), an act providing insurance coverage for Registered Nurse First Assistants (RNFAs), and requiring the board to adopt rules specifying criteria for recognition of registered nurses certified as registered nurse first assistants. The Governor signed the bill on April 14, 2011, and the bill became effective on July 1, 2011.

It is reasonably necessary to add the definition of CNOR to further implement HB 547. The CNOR is a credential that indicates a registered nurse has demonstrated the knowledge and skills denoting competency in the specialized field of perioperative nursing to provide care for patients before, during, and after surgery.

24.159.401 FEES (1) through (14) remain the same.

(15) The fee for medication aide I or II initial licensure is \$25.

(16) The fee for medication aide I or II licensure renewal is \$20 per year.

(17) through (20) remain the same.

AUTH: 37-1-134, 37-1-319, 37-8-202, MCA; Chap. 392, section 6, L. of 2011

IMP: 37-1-134, 37-1-141, 37-8-202, MCA; Chap. 392, section 6, L. of 2011

REASON: The 2011 Montana Legislature enacted Chapter 392, Laws of 2011 (House Bill 377), an act providing for licensure of medication aides employed at long-term care facilities, and giving rulemaking authority to the board to implement the legislation. A chapter number was assigned on May 12, 2011, and the bill will become effective on October 1, 2011. The board is amending this rule to further implement HB 377 and establish a licensure fee for both types of medication aide licenses.

24.159.662 FACULTY FOR PRACTICAL NURSING EDUCATION

PROGRAMS (1) All nursing faculty for practical nursing programs, including part-time, shall hold at least a ~~baccalaureate or master's degree in nursing~~ one of the following degrees from a nationally accredited program:

(a) a baccalaureate degree in nursing, supplemented by courses with coursework in curriculum development, principles and methods of teaching, and measurement and evaluation;

(b) a master's degree in nursing; or

(c) a doctorate degree in nursing or a related field.

(2) and (3) remain the same.

(4) A maximum of ten percent or two faculty members, whichever is greater, based on full-time equivalents, may qualify under an exception at any point in time at a given school.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address confusion by clarifying the level of education required of faculty members teaching in practical nursing education (PN) programs. Individuals have expressed the mistaken belief that faculty of a PN program holding a master's degree must also have taken supplemental courses before being qualified to provide instruction. Such a requirement is inconsistent with ARM 24.159.659, which allows faculty members to teach in registered nursing education (RN) programs with a master's degree and no supplemental courses. The board concluded that this rule is not clear and is amending it accordingly.

24.159.901 DEFINITIONS ~~As used in this subchapter, the following definitions apply:~~

(1) remains the same.

(2) "General supervision", with respect to a medication aide I, means at least quarterly ~~on-site~~ onsite review, by a supervising nurse, of a medication aide's ~~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.

(3) "Medication aide I" means an employee of an assisted living facility who, under the general supervision of a Montana licensed nurse, administers PRN and routine medication as defined in ARM 24.159.301, to residents of the assisted living facility, and who:

(a) and (b) remain the same.

(c) has successfully passed a ~~board approved~~ board-approved medication aide I training program and examination.

(4) "Medication aide II" means an employee of a long-term care facility licensed to provide skilled nursing care as defined in 50-5-101, MCA, uses standardized procedures in the administration of drugs as defined in 37-7-101, MCA, as assigned by and under the supervision of a Montana licensed nurse, administers medication to residents of the long-term care facility, and who:

(a) has a high school diploma or equivalent;

(b) is a Certified Nursing Assistant (CNA);

(c) has 4,000 hours of experience as a CNA in a long-term care facility;

(d) maintains a current Cardio-Pulmonary Resuscitation Certification (CPR);

and

(e) has successfully passed a board-specified medication aide II training program.

(5) "Supervision", with respect to medication aide II, means a provision of general supervision by a professional or practical nurse who is on the premises for the accomplishment of medication administration.

AUTH: 37-8-202, MCA; Chap. 392, section 6, L. of 2011

IMP: 37-8-202, MCA; Chap. 392, sections 3 and 6, L. of 2011

REASON: The 2011 Montana Legislature enacted Chapter 392, Laws of 2011 (House Bill 377), an act providing for licensure of medication aides employed at long-term care facilities (Medication Aide II), and giving rulemaking authority to the board to implement the legislation. A chapter number was assigned on May 12, 2011, and the bill will become effective on October 1, 2011.

The board determined it is reasonably necessary to amend the Medication Aide I rules (ARM 24.159.901, 24.159.903, 24.159.905, 24.159.910, and 24.159.915) to further implement HB 377 and distinguish between those and the Medication Aide II rules (proposed New Rules I through IV). These amendments will define Medication Aide II practice, address confusion and ambiguity within the Medication Aide I rules, and streamline licensure processes and requirements where possible between the two medication aide licensure types. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

24.159.903 PURPOSE OF STANDARDS OF PRACTICE FOR THE LICENSED MEDICATION AIDE AIDES (1) The purpose of the ~~standard~~ standards is to:

- (a) establish minimal acceptable levels of safe and effective practice for the medication aide aides; and
- (b) remains the same.

AUTH: 37-1-131, 37-8-202, MCA; Chap. 392, section 6, L. of 2011

IMP: 37-8-101, MCA; Chap. 392, section 6, L. of 2011

24.159.905 GENERAL REQUIREMENTS FOR MEDICATION AIDE I TRAINING PROGRAMS AND INSTRUCTORS (1) The board shall approve medication aide I training programs. The program must include the following components:

- (a) through (d) remain the same.
- (e) care, storage, and regulation of controlled substances and medications;
- (f) through (k) remain the same.
- (l) ~~completion of the board-approved~~ a skills checklist.
- (2) remains the same.
- (3) The training program must assure an instructor to student ratio of ~~no less than~~ one instructor to no more than five students in the clinical practice setting and one instructor to no more than ten students in the clinical laboratory setting. The supervised clinical experience shall be obtained under the direction of a nurse with an unencumbered Montana license, and who need not be the board-approved instructor.
- (4) The board shall approve instructors for medication aide I training programs. The training program instructor must:
 - (a) through (c) remain the same.

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

IMP: 37-8-101, 37-8-202, 37-8-422, MCA

REASON: The board is deleting from (1)(l) the requirement for a board approved skills checklist. It has always been the board's intent that the checklists are created by the training programs to be consistent with the curriculum.

24.159.910 GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE I (1) The applicant for licensure may apply to take the Montana medication aide I exam if the applicant:

- (a) has completed a ~~board-approved~~ board-approved medication aide I training program as outlined in these rules; or
- (b) remains the same.
- (2) In order to be licensed as a medication aide I in Montana, the applicant shall pass the ~~board-approved~~ board-approved medication aide I exam at ~~85 percent~~ proficiency.
 - (a) The applicant may ~~retake~~ take the examination ~~once if not successful the first time~~ up to three times. If not successful on the ~~second~~ third try, the applicant

must retake and pass the medication aide I training program before being eligible to take the examination again.

(b) The applicant must pass the exam within ~~six~~ 12 months of satisfactorily completing the medication aide I training program, or else the applicant must complete the training program again before being eligible to take the exam.

(3) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application and fee will be required.

(4) remains the same.

(5) Renewal notices will be sent as specified in ARM 24.101.414, which must be completed and returned to the board before the date set by ARM 24.101.413, together with the renewal fee.

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

IMP: 37-1-131, 37-1-141, 37-8-101, 37-8-202, MCA

REASON: The board determined it is reasonably necessary to delete the 85% required cut score for the Medication Aide I examination in (2). The statutes do not mandate a specific cut score, and such a score does not allow test vendors any flexibility to establish a better test that is sensitive to applicants' level of knowledge.

The board is raising the number of allowable testing attempts from two to three. An exam provider informed the board that candidates gain an advantage after three tries because the test is mastered, not the material required for competency.

Last, the board is increasing the examination time period from 6 to 12 months as the board concluded 6 months was unnecessarily restrictive, but that a 12-month limit is needed to ensure the aide's training is recent enough.

24.159.915 STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE'S AIDE I RESPONSIBILITIES AS A MEMBER OF HEALTH TEAM

(1) The medication aide I shall:

(a) through (e) remain the same.

(i) ~~insulin may be subcutaneously injected from a prefilled, labeled, unit dose syringe labeled and preset or predrawn insulin delivery device;~~ and

(f) remains the same.

(i) the patient has a change in medication, and the medication is not available as described in (1)(c); or

(ii) remains the same.

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

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

REASON: The board is correcting an outdated term used in (1)(e)(i).

24.159.1011 PROHIBITED INTRAVENOUS (IV) THERAPIES (1) and (1)(a) remain the same.

~~(b) mix unit dose IV medication solutions;~~

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

(2) remains the same.

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

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

REASON: In January 2011, both supervising RNs and LPNs suggested the board amend this rule to allow LPNs to mix unit dose IV solutions as it is difficult in small facilities to bring RNs in to mix IVs. It is also important to note that LPNs already mix injections using the same process. The board concluded that this amendment will facilitate the safe and sensible use of an LPN's skills while eliminating a rigid and unreasonable restraint that is inconsistent with the practice of practical nursing in 37-8-102, MCA.

24.159.1024 LICENSURE BY EXAMINATION REQUIREMENTS (1) and (2) remain the same.

(3) All candidates desiring to take or retake the licensing examination for practical nursing shall:

(a) make application for licensure to the board on a form provided by the board, accompanied by the fee required by the board; and

(b) ~~shall~~ make application for ~~the examination or reexamination~~ to the national council licensing examinations on a form distributed by the board as provided by the National Council of State Boards of Nursing, accompanied by the fee required by the National Council of State Boards of Nursing.

(4) through (7) remain the same.

(8) Candidates shall be notified, in writing only, regarding the examination results.

(9) through (11) remain the same.

(12) Individual results of the examination shall not be released to anyone, unless the release is authorized by the candidate in writing.

(13) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-1-131, 37-8-406, 37-8-416, MCA

REASON: The board is amending this rule and ARM 24.159.1224 to align with the proposed repeal of ARM 24.159.1025 and 24.159.1225, and address exam retakes for professional and practical nursing applicants. The rules proposed for repeal limit the number of times applicants take the exam, require applicants submit a plan of study after failing twice, and require that applicants reeducate after failing five times.

There is no national data to support a correlation between any number of exam attempts with the ability of the professional or practical nurse to practice. Also, an educational institution cannot grant the same degree twice, so requiring an applicant to reeducate is not a reasonable requirement. Board staff are available for the candidate to consult should a plan of study be sought by a candidate, but submitting a plan of study does not guarantee success in the next retest. The National Council of State Boards of Nursing (NCSBN), which administers the exams,

has an acceptable process for applicants to follow regarding exams, and the board determined it is unnecessary to set additional limits in rule.

Moreover, the current restriction has no practical purpose since applicants may simply retake the examination in bordering states and then endorse their license into Montana, without consideration of the number of attempts that were necessary to pass the exam.

24.159.1224 LICENSURE BY EXAMINATION REQUIREMENTS (1) and (2) remain the same.

(3) All candidates desiring to take or retake the licensing examination for registered nursing shall:

(a) make application for licensure or reexamination to the board on a form provided by the board, accompanied by the fee required by the board; and

(b) ~~shall~~ make application for ~~the examination~~ or reexamination to the national council licensing examinations on a form distributed by the board as provided by the National Council of State Boards of Nursing, accompanied by the fee required by the National Council of State Boards of Nursing.

(4) through (7) remain the same.

(8) Candidates shall be notified, in writing only, regarding the examination results.

(9) through (11) remain the same.

(12) Individual results of the examination shall not be released to anyone, unless the release is authorized by the candidate in writing.

(13) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-1-131, 37-8-406, 37-8-416, MCA

4. The proposed new rules provide as follows:

NEW RULE I MEDICATION AIDE II TRAINING PROGRAM CURRICULUM

(1) The board adopts and incorporates by reference the curriculum content outline as published in the December 2010 report of House Joint Resolution 17, regarding the utilization of medication aides in long-term care nursing homes. Copies of the curriculum content outline are available from the Board of Nursing, 301 S. Park Avenue, P.O. Box 200513, Helena Montana, 59620, or can be viewed on the Board of Nursing's web site at www.nurse.mt.gov.

(2) The medication aide II must also receive training in the subcutaneous injection of insulin from labeled and preset or predrawn insulin delivery device(s).

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 3 and 6, L. of 2011

REASON: The 2011 Montana Legislature enacted Chapter 392, Laws of 2011 (House Bill 377), an act providing for licensure of medication aides employed at long-term care facilities, and giving rulemaking authority to the board to implement

the legislation. A chapter number was assigned on May 12, 2011, and the bill will become effective on October 1, 2011.

The board is proposing New Rules I through IV to implement the legislation and establish licensure qualifications and requirements, application and renewal fees, approved education program curriculum, continuing education requirements, and mandatory cardiopulmonary resuscitation certification.

NEW RULE II GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE II (1) The applicant for licensure as medication aide II must:

- (a) submit a completed application and application fee;
- (b) provide proof of high school diploma or equivalent;
- (c) hold a valid certificate from the Department of Public Health and Human Services as a certified nursing assistant (CNA);
- (d) have been employed as a CNA in a long-term care facility for a minimum of 4,000 hours;
- (e) hold a valid CPR certificate;
- (f) provide proof of successful passage of the board-approved medication aide II exam at 80 percent proficiency; and
- (g) provide a certificate of completion from a medication aide II training program as outlined in these rules; or
- (h) hold an unencumbered certification or license in another state or U.S. jurisdiction that is determined by the board to be reasonably equivalent to the board-specified program.

(2) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application and fee will be required.

(3) Licenses shall be issued for one-year periods and shall expire on the date set by ARM 24.101.413.

(4) Renewal notices will be sent as specified in ARM 24.101.414, which must be completed and returned to the board before the date set by ARM 24.101.413, together with the renewal fee.

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 3 and 6, L. of 2011

NEW RULE III STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE II (1) The medication aide II shall:

- (a) practice only in a long-term care facility licensed to provide skilled nursing care as defined by 50-5-101, MCA;
- (b) practice under the supervision of a professional or practical nurse who holds an unencumbered Montana nursing license and is on the premises;
- (c) administer medications only by allowable routes as defined in ARM 24.159.901, except insulin may be subcutaneously injected from a labeled and preset or predrawn insulin delivery device;
- (d) notify the supervising nurse if the medication aide II has observed a change in the normal condition of the patient; and
- (e) follow the conduct rules as found in ARM 24.159.2301.

- (2) A medication aide II cannot:
 - (a) administer PRN medication as defined in ARM 24.159.301;
 - (b) convert or calculate dosages;
 - (c) take verbal orders related to changes in medications or dosages; or
 - (d) provide information or education to a patient beyond basic knowledge of medications and medication administration.

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 4 and 6, L. of 2011

NEW RULE IV CONTINUING EDUCATION REQUIREMENTS FOR MEDICATION AIDE II (1) A Montana licensed medication aide II must complete 12 contact hours of continuing education each annual license renewal period. The continuing education must be in pharmacology and medication administration.

(2) The board may prorate the requirement for continuing education contact hours upon the written request of a medication aide II who practices in Montana for a period of less than one year.

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 3 and 6, L. of 2011

NEW RULE V REGISTERED NURSE FIRST ASSIST (1) A registered nurse first assistant (RNFA) is a perioperative registered nurse who:

- (a) is certified as a CNOR with proof of completion from the Competency and Credentialing Institute (CCI) approved RNFA education program;
- (b) works in collaboration with the surgeon and other health care team members to achieve optimal patient outcomes;
- (c) has acquired the necessary knowledge, judgment, and skills specific to the expanded role of RNFA clinical practice;
- (d) intraoperatively practices at the direction of the surgeon; and
- (e) does not concurrently function as a scrub person.

AUTH: 37-8-202, MCA

IMP: 33-22-114, 33-31-102, 37-8-202, MCA

REASON: The 2011 Montana Legislature enacted Chapter 173, Laws of 2011 (House Bill 547), an act providing insurance coverage for Registered Nurse First Assistants (RNFAs), and requiring the board to adopt rules specifying criteria for recognition of registered nurses certified as registered nurse first assistants. The Governor signed the bill on April 14, 2011, and the bill became effective on July 1, 2011. It is reasonably necessary to adopt New Rule V to further implement HB 547 to identify the role of a RNFA and require certification through a nationally recognized professional nursing organization.

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

24.159.1025 PRACTICAL NURSE REEXAMINATION found at ARM page 24-16571.

AUTH: 37-1-131, 37-8-202, 37-8-406, MCA
IMP: 37-8-202, 37-8-416, MCA

REASON: See reasonable necessity for ARM 24.159.1024.

24.159.1225 REGISTERED NURSE REEXAMINATION found at ARM page 24-16614.

AUTH: 37-1-131, 37-8-202, 37-8-406, MCA
IMP: 37-8-202, 37-8-406, MCA

REASON: See reasonable necessity for ARM 24.159.1024.

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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., August 26, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.nurse.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address 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 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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to nurse@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, apply and have been fulfilled. The primary bill sponsor was contacted on June 7, 2011, by electronic mail.

10. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
KATHY HAYDEN, LPN

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

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

Certified to the Secretary of State July 18, 2011