

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,)
24.159.1601 purpose, 24.159.1611)
criteria for delegation of nursing)
tasks, 24.159.1625 general nursing)
functions, and the repeal of)
24.159.411 parliamentary authority,)
24.159.1036 and 24.159.1236)
preparation of licenses, 24.159.1040,)
24.159.1240, and 24.159.1430)
duplicate or lost licenses, and)
24.159.1602, 24.159.1604,)
24.159.1605, 24.159.1610,)
24.159.1612, 24.159.1616,)
24.159.1630, 24.159.1631,)
24.159.1636, and 24.159.1640 all)
relating to nursing delegation)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On April 8, 2016, at 10:00 a.m., a public hearing will be held in the Basement Conference Room, 301 South Park Avenue, Basement, Helena, Montana, to consider the proposed amendment 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 April 1, 2016, to advise us of the nature of the accommodation that you need. Please contact Cynthia Gustafson, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: At its July 23, 2014, full board meeting, the board established a committee to review the delegation and assignment rules and provide suggested rule revisions to the board. This committee of three board members and 11 practicing nurses met seven times between September 2014 and June 2015, and provided final recommendations to the board on July 22, 2015.

The board determined it is reasonably necessary to amend and repeal the delegation and assignment rules in subchapter 16 to align with current changes in

nursing practice settings related to delegating to UAPs (unlicensed assistive persons) in public schools, prisons, emergency rooms, outpatient clinics, and dialysis settings. The amendments will eliminate outdated, redundant, confusing, and unnecessary provisions and provide simplicity, better organization, and ease of use for nurses in deciding how to safely delegate nursing functions to UAPs in any work setting. Subchapter 16 is a cumbersome and lengthy set of rules with lists and details for individual settings. Nurses have found them difficult to interpret and apply quickly when determining in practice when nursing tasks may be safely delegated. Nursing practice is evolving quickly to address the latest trends in healthcare, which has brought new types of UAPs to the work environment. The board intends for these amendments to generalize the delegation process and provide timely guidance to nurses in response to the new practice environments. When additional reasons exist for a particular change, they will immediately follow the specific rule.

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

24.159.301 DEFINITIONS (1) through (10) remain the same.

(11) "Delegation" means the act of authorizing and directing a UAP to perform a specific nursing task in a specific situation in accordance with these rules.

(11) through (24) remain the same, but are renumbered (12) through (25).

(26) "Nursing task" means an activity that requires the use of nursing knowledge, skills, and/or abilities.

(25) through (36) remain the same, but are renumbered (27) through (38).

(39) "Stable" means a situation in which the patient's clinical and behavioral status is determined to be non-fluctuating or in which the fluctuations are expected and the interventions planned.

(37) through (41) remain the same, but are renumbered (40) through (44).

(45) "Unlicensed assistive person" or "UAP" means any person, regardless of title, who is not a licensed nurse and who functions in an assistive role to the nurse and receives delegation of nursing tasks.

(42) remains the same, but is renumbered (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, MCA

REASON: The board determined it is reasonably necessary to amend and relocate the delegation definitions from ARM 24.159.1602 to this rule and achieve a single location for all definitions. The board is eliminating most of the delegation terms, and retaining only the necessary, relevant ones, to align with the comprehensive amendments proposed to the delegation rules.

24.159.1601 PURPOSE (1) The purpose of these rules relating to delegation ~~and assignment~~ is to:

(a) ~~serve as a standard for nurses who hire, supervise, and/or serve as a delegator~~ delegate to an unlicensed assistive personnel person (UAP); and

(b) remains the same.

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

24.159.1611 CRITERIA FOR DELEGATION OF NURSING TASKS (1) A licensed nurse may only delegate nursing tasks to UAPs in accordance with these rules. Delegation of a nursing task to a UAP shall be based solely on the determination of the patient's nurse, who has personally assessed the patient's condition, that delegation can be performed without jeopardizing the patient's welfare. Delegation shall be task-specific, patient-specific, and UAP-delegatee specific. Delegation is a nursing act distinct from teaching, supervising, consulting, and advising.

(2) Delegation may only be performed in settings which have a designated chief nursing officer. Before delegating, the LPN or RN should consider the five rights of delegation: the right task, the right person to whom the delegation is made, the right circumstances, the right direction and communication by the LPN or RN, and the right supervision and evaluation.

(3) The delegating nurse must: Delegation of a nursing task to a UAP shall be based solely on the determination of the patient's nurse, who has personally assessed the patient's condition, so that delegation can be performed without jeopardizing the patient's welfare.

(a) personally make a nursing assessment of the patient's care needs before delegating;

(b) verify the UAP's competency to perform the specific task for the specific patient and provide instruction as necessary followed by reverification of competency before delegating;

(c) provide supervision in accordance with ARM 24.159.1612; and

(d) inform the patient of the decision to delegate.

(4) The nursing task to be delegated must be:

(a) within the area of responsibility, scope of practice, and competency of the nurse delegating the task;

(b) one which does not require complex observations, critical decision-making, exercise of nursing judgment, or repeated nursing assessments;

(c) one which is frequently performed and is generally considered technical in nature;

(d) one for which results are reasonably predictable and which has minimal potential for risks; and

(e) one which can be safely performed according to exact, unchanging directions.

(5) The LPN or RN shall delegate to another only those nursing tasks for which that person has the necessary skills and competence to accomplish safely. In maintaining accountability for the delegation, the LPN or RN shall ensure:

(a) that the UAP has the education and demonstrated competency to perform the delegated task;

(b) the task delegated is consistent with the UAP's job description;

(c) patient needs match the UAP's qualifications, available resources, and appropriate supervision;

- (d) results of the task are reasonably predictable;
- (e) the task does not require assessment or independent decision making during its performance or at completion;
- (f) patient needs and circumstances of the delegation are such that the delegation of the task poses minimal risk to the patient and can be safely performed according to clear and exact directions;
- (g) directions and guidelines are clearly communicated regarding the delegated task;
- (h) for delegation of a routine task on stable patients, there is verification that the UAP follows each written facility policy or procedure when performing the delegated task;
- (i) those to whom nursing tasks are delegated are properly supervised by monitoring performance, progress, and outcomes;
- (j) evaluation of the effectiveness of the delegation;
- (k) follow-up on problems and intervention and revision of the plan of care as needed;
- (l) the observation and communication of the outcomes of the delegated task;
- and
- (m) documentation of the task.
- (6) The delegating nurse retains professional accountability for the delegated nursing task.

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

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

24.159.1625 GENERAL NURSING FUNCTIONS AND TASKS THAT MAY NOT BE DELEGATED (1) The following nursing ~~functions~~ tasks require nursing knowledge, judgment, and skill and may not be delegated:

- (a) through (e) remain the same.
- (2) ~~Nursing interventions, including but not limited to the following, require nursing knowledge, judgment, and skill and may not be delegated except as provided in ARM 24.159.1616, 24.159.1630, 24.159.1631, 24.159.1636, and 24.159.1640:~~

- ~~(a) calculation of any medication dose;~~
- ~~(b) administration of medications:~~
 - ~~(i) by mouth;~~
 - ~~(ii) sublingually;~~
 - ~~(iii) by subcutaneous injection;~~
 - ~~(iv) by intramuscular injection;~~
 - ~~(v) intravenous injection or drip;~~
 - ~~(vi) per tube;~~
 - ~~(vii) by aerosol/inhalation; or~~
 - ~~(viii) by suppository;~~
- ~~(c) administration of topical:~~
 - ~~(i) opiates;~~
 - ~~(ii) cardiovascular medications;~~
 - ~~(iii) anesthetic medications; or~~

- ~~(iv) systemic medications;~~
 - ~~(d) administration of blood products;~~
 - ~~(e) administration of chemotherapeutic agents; and~~
 - ~~(f) administration of total parenteral nutrition (TPN), hypertonic solutions, or IV additives;~~
 - ~~(g) insertion of peripheral IV catheters;~~
 - ~~(h) insertion of central IV catheters;~~
 - ~~(i) insertion of nasogastric or other feeding tubes;~~
 - ~~(j) removal of:~~
 - ~~(i) endotracheal tubes;~~
 - ~~(ii) chest tubes;~~
 - ~~(iii) Jackson-Pratt drain tubes (JP tubes);~~
 - ~~(iv) arterial or central catheters; and~~
 - ~~(v) epidural catheters; and~~
 - ~~(k) patient triage.~~
- (3) and (4) remain the same, but are renumbered (2) and (3).

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

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

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

24.159.411 PARLIAMENTARY AUTHORITY at ARM page 24-16450.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: Because the board may adopt rules of order at each meeting as needed and is not limited to Robert's Rules, the board is repealing this unnecessary rule.

24.159.1036 PREPARATION OF LICENSES at ARM page 24-16577.

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

IMP: 37-1-101, 37-8-202, 37-8-401, MCA

REASON: The board is repealing this rule because the processes are outdated since licenses are prepared electronically and available on the department web site.

24.159.1040 DUPLICATE OR LOST LICENSES at ARM page 24-16579.

AUTH: 37-8-202, MCA

IMP: 37-1-134, 37-8-202, MCA

REASON: It is reasonably necessary to repeal this outdated rule because official licensee data, including renewal dates, is available on the department web site. Additionally, there is no fee associated with using the web site.

24.159.1236 PREPARATION OF LICENSES at ARM page 24-16623.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-101, 37-8-202, 37-8-401, MCA

REASON: See REASON for ARM 24.159.1036.

24.159.1240 DUPLICATE OR LOST LICENSES at ARM page 24-16623.

AUTH: 37-8-202, MCA
IMP: 37-1-134, 37-8-202, MCA

REASON: See REASON for ARM 24.159.1040.

24.159.1430 DUPLICATE OR LOST LICENSES at ARM page 24-16672.

AUTH: 37-8-202, MCA
IMP: 37-1-134, 37-8-202, MCA

REASON: See REASON for ARM 24.159.1040.

24.159.1602 DEFINITIONS at ARM page 24-16723.

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

REASON: Relevant definitions are being relocated to ARM 24.159.301.

24.159.1604 TASKS WHICH MAY BE ROUTINELY ASSIGNED TO AN UNLICENSED PERSON IN ANY SETTING WHEN A NURSE-PATIENT RELATIONSHIP EXISTS at ARM page 24-16727.

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

24.159.1605 STANDARDS RELATED TO THE FACILITY'S CHIEF NURSING OFFICER REGARDING DELEGATION PRACTICES at ARM page 24-16728.

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

24.159.1610 ACCOUNTABILITY at ARM page 24-16731.

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

24.159.1612 STANDARDS RELATED TO THE NURSE FUNCTIONING AS A DELEGATOR at ARM page 24-16732.

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

24.159.1616 NURSING TASKS RELATED TO MEDICATIONS THAT MAY BE DELEGATED at ARM page 24-16733.

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

24.159.1630 ADVANCED DELEGATION, GENERALLY at ARM page 24-16738.

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

24.159.1631 ADVANCED DELEGATION TO UAP NURSING STUDENTS at ARM page 24-16739.

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

24.159.1636 ADVANCED DELEGATION TO UAPS WORKING IN THE EMERGENCY DEPARTMENT at ARM page 24-16745.

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

24.159.1640 ADVANCED DELEGATION TO UAPS WORKING IN THE DIALYSIS UNIT at ARM page 24-16746.

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

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 e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., April 15, 2016.

7. An electronic copy of this notice of public hearing is available at www.nurse.mt.gov (department and board's web site). 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 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 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, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.159.301, 24.159.1601, 24.159.1611, and 24.159.1625 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.159.411, 24.159.1036, 24.159.1040, 24.159.1236, 24.159.1240, 24.159.1430, 24.159.1602, 24.159.1604, 24.159.1605, 24.159.1610, 24.159.1612, 24.159.1616, 24.159.1630, 24.159.1631, 24.159.1636, and 24.159.1640 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations are available upon request to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov.

11. Cynthia Gustafson, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
HEATHER O'HARA, RN, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 7, 2016