



Economic Affairs Interim Committee

66th Montana Legislature

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April 23, 2020

To: Economic Affairs Interim Committee
From: Jameson Walker, Legislative Attorney
Re: Administrative Rule Report, April 2020

The Economic Affairs Interim Committee (EAIC) is responsible for reviewing administrative rules promulgated by several state agencies for compliance with the Montana Administrative Procedure Act (MAPA).¹ The following notices are filed with the Secretary of State's Office for publication in the Montana Administrative Register (MAR). Notices are available at <http://www.mtrules.org> (search by notice number).

PROPOSAL NOTICES

Department of Agriculture and administratively attached entities

There are no pending rules.

Department of Commerce and administratively attached entities

There are no pending rules.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-29-354

Subject: Amendment of rules pertaining to medical fee schedules for workers' compensation purposes.

Summary: The department proposes to amend 24.29.1433, 24.29.1534, and 24.29.1538. The department states that the rule amendments are necessary to incorporate the annually updated medical fee schedules and related materials in order to comply with 39-71-704, which requires the department to annually establish a medical fee schedule.

¹ The Committee reviews rules promulgated by the following entities: Department of Agriculture, Department of Commerce, Department of Labor and Industry, Department of Livestock, State Auditor's Office, Division of Banking & Financial Institutions, Governor's Office of Economic Development, and Department of Revenue, Liquor Control Division. This report does not represent any action or opinion of the Committee and does not preclude additional action that may be taken by the Committee pursuant to its authority under the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

Notes/Hearing: The department will hold a public hearing on May 8, 2020, to consider the notice. The meeting will be via remote conferencing or telephone conferencing.

MAR Notice Number: 24-126-37

Subject: Amendment and adoption of rules pertaining to the Board of Chiropractors.

Summary: The department proposes to amend 24.126.2103 (continuing education requirements) and 24.126.2105 (acceptable continuing education). The board is proposing these amendments to align and further facilitate the department's standardized renewal, administrative suspension, and audit procedures. The board proposes to adopt New Rule I (dry needling) that reads:

- NEW RULE I DRY NEEDLING** (1) Dry needling is a skilled technique performed using a mechanical device, filiform needle(s), to penetrate the skin and/or underlying tissues as a treatment method to manipulate tissues of the body for the correction of nerve interference.
- (2) Dry needling requires a chiropractic examination and diagnosis.
 - (3) To perform dry needling, chiropractors must have completed training in dry needling.
 - (a) Dry needling training shall include, but not be limited to, training in the following areas:
 - (i) indications;
 - (ii) contraindications;
 - (iii) potential risks;
 - (iv) proper hygiene;
 - (v) proper use and disposal of needles.
 - (b) To perform dry needling, chiropractors must have completed training in dry needling affiliated with or approved by:
 - (i) national, regional, or state chiropractic associations;
 - (ii) state licensing boards;
 - (iii) academies;
 - (iv) colleges of chiropractic; or
 - (v) the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).
 - (c) Initial training in dry needling must include hands-on training.
 - (4) A chiropractor shall perform dry needling in a manner consistent with generally accepted standards of practice, including relevant standards of the Center for Disease Control and Prevention, and Occupational Safety and Health Administration blood borne pathogen standards as per 29 CFR 1910.1030 et. seq.
 - (5) Dry needling shall only be performed by a chiropractor and may not be delegated.
 - (6) Chiropractors performing dry needling must maintain proof of appropriate training as required by this rule. Failure to provide proof of training upon the board's request may result in disciplinary action.

The board states that this rule is necessary to allow chiropractors to incorporate the practice of dry needling. The board states that dry needling is allowed in 35 states nationwide.

Notes/Hearing: During the 2015-2016 Legislative interim, the EAIC reviewed a Board of Physical Therapy Examiners rule relating to dry needling. The EAIC informally objected to the proposed rule and staff prepared a memo on the topic:

<https://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/dry-needling-memo.pdf>. The proposed rule drew opposition from acupuncturists: https://www.bozemandailychronicle.com/news/health/acupuncturists-oppose-dry-needle-rule-committee-decides-next-week/article_e0c9927b-a33f-5b7e-aca6-7bc6a9d009aa.html. The

department will hold a public hearing on May 11, 2020, to consider the notice. The meeting will be via remote conferencing or telephone conferencing.

MAR Notice Number: 24-156-88

Subject: Amendment of rules pertaining to the Board of Medical Examiners.

Summary: The board proposes to amend 24.156.2720, pertaining to training courses. The board proposes to allow the substitution of patient simulators for up to 50 percent of the live patient requirements in the rule. The board states that the rule amendment is necessary to enable many advanced emergency medical technicians to complete the clinical component of their training courses by permitting some clinical experience with patient simulators.

Notes/Hearing: The department will hold a public hearing on May 13, 2020, to consider the notice. The meeting will be via remote conferencing or telephone conferencing.

MAR Notice Number: 24-159-90

Subject: Amendment of rules pertaining to the Board of Nursing.

Summary: Montana is a party state of the Nurse Licensure Compact. The board is noticing rulemaking under the Interstate Commission of Nurse Licensure Compact Administrators (Commission). The Commission's rules are available on its website:

<https://www.ncsbn.org/nlcrules.htm>.

Notes/Hearing: The board is soliciting public comment to the Commission's proposed rules.

MAR Notice Number: 24-159-91

Subject: Amendment of rules pertaining to the Board of Nursing curriculum goals and general requirements for programs.

Summary: The board proposes to amend 24.159.670 (curriculum goals and general requirements for programs). The board proposes to allow the board to temporarily allow all programs to exceed the 50 percent cap on simulation due to extenuating circumstances. This includes a state or national emergency. The board states that this rule is necessary in light of the COVID-19 outbreak, as many nursing programs are unable to complete clinical coursework at facilities through other hands-on methodology. The board states that this may serve as a barrier to timely course completion and potential licensure during declared emergencies.

Notes/Hearing: The department will hold a public hearing on May 8, 2020, to consider the notice. The meeting will be via remote conferencing or telephone conferencing.

Department of Revenue, Liquor Control Division

There are no pending rules.

Department of Livestock and administratively attached entities

There are no pending rules.

State Auditor's Office

There are no pending rules.

Division of Banking & Financial Institutions

There are no pending rules.

Governor's Office of Economic Development

There are no pending rules.

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