



Economic Affairs Interim Committee

67th Montana Legislature

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June 6, 2024

TO: Economic Affairs Interim Committee
FROM: Jameson Walker, Staff Attorney
RE: Administrative Rulemaking and Rule Review, June 2024

The Economic Affairs Interim Committee is required to review administrative rules promulgated by the Department of Agriculture, Department of Commerce, Department of Labor and Industry, Department of Livestock, State Auditor's Office, Division of Banking and Financial Institutions, Governor's Office of Economic Development, and Department of Revenue, Alcoholic Beverage Control Division and Cannabis Control Division for compliance with the Montana Administrative Procedure Act (MAPA). 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 new rules.

Department of Commerce and administratively attached entities

There are no new rules.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-138-83

Subject: Adoption, amendment, and repeal of rules pertaining to the Board of Dentistry.

Summary: The board proposes to adopt New Rules I and II:

NEW RULE I APPLICATION FOR LICENSURE (1) Each application for licensure from the board must include:

- (a) a completed application form;
- (b) the initial license fee;
- (c) verification of applicable educational requirements;
- (d) proof of a current cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS) card. Internet courses will be accepted if a hands-on evaluation of clinical competency is also included; and

- (e) successful completion of the jurisprudence exam with a score of at least 75 percent.
- (2) The department will obtain a query from the National Practitioner Data Bank.
- (3) An applicant licensed in any other jurisdiction at any time shall cause the other jurisdictions to submit a current verification of licensure directly to the board.
- (4) An applicant may voluntarily withdraw their application by written request if the application has not appeared on a board agenda. Application fees are not refundable.

NEW RULE II CONTINUING EDUCATION (1) Licensees must obtain the following continuing education (CE) hours per three-year cycle with a starting date of 2015, prior to renewal:

- (a) 60 hours for dentists. If a dentist also holds an anesthesia permit, the dentist must obtain as part of the 60 hours the following anesthesia-specific education:
 - (i) 20 hours for deep sedation/general anesthesia; or
 - (ii) 12 hours for moderate sedation.
- (b) 36 hours for dental hygienists:
 - (i) three hours of fluoride agents, topical oral anesthetics, or nonsystemic oral antimicrobials for dental hygienists who qualify for limited prescriptive authority under [37-4-401](#), MCA; and
 - (ii) 12 additional hours for dental hygienists with a limited access permit.
- (c) 36 hours for denturists.
- (2) Continuing education requirements do not apply until a licensee's first full year of licensure.
- (3) Board/staff will not preapprove CE programs or sponsors. Licensees must select quality programs that:
 - (a) contribute to professional knowledge and competence;
 - (b) contain significant intellectual or practical content; and
 - (c) are germane to the licensed profession.
- (4) All licensees shall affirm an understanding of their recurring duty to comply with CE requirements as part of annual license renewal.
- (5) Licensees must maintain CE documentation and make the documentation available upon request. Documentation must include:
 - (a) licensee name;
 - (b) presenter or sponsor;
 - (c) course title and/or description of content;
 - (d) course date(s); and
 - (e) number of CE hours earned.
- (6) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.
- (7) Any CE hours required by disciplinary order do not apply toward hours required annually.
- (8) The department, with respect to any CE audit it performs, shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

(9) In addition to the continuing education requirements above, all licensees shall maintain a current cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS) card. Internet courses will be accepted if a hands-on evaluation of clinical competency is also included.

(10) One-time credit for first-time preparation and teaching of a program which meets the criteria in (3) qualifies for the number of hours granted to individuals who take the program.

Additionally, the board proposes to amend 24.138.301, 24.138.402, 24.138.406, 24.138.407, 24.138.419, 24.138.502, 24.138.503, 24.138.511, 24.138.514, 24.138.530, 24.138.906, 24.138.2301, 24.138.2703, 24.138.2707, 24.138.2710, 24.138.2712, 24.138.3003, 24.138.3101, 24.138.3221, 24.138.3223, 24.138.3225, 24.138.3227, and 24.138.3231. Generally, the board is proposing the rule amendments to simplify and standardize procedures used by all licensing board. The board is also amending the continuing education content and allowing for credit for preparing and teaching programs.

Finally, the board proposes to repeal 24.138.206, 24.138.208, 24.138.306, 24.138.403, 24.138.414, 24.138.415, 24.318.416, 24.138.417, 24.138.418, 24.138.430, 24.138.504, 24.138.505, 24.138.506, 24.138.508, 24.138.512, 24.138.513, 24.138.525, 24.138.540, 24.138.601, 24.138.603, 24.138.2101, 24.138.2102, 24.138.2103, 24.138.2104, 24.138.2105, 24.138.2106, 24.138.2302, 24.138.2303, 24.138.2701, 24.138.2705, 24.138.2714, 24.138.2716, 24.138.2719, 24.138.3001, 24.138.3002, 24.138.3102, 24.138.3211, 24.138.3213, 24.138.3215, 24.138.3217, 24.138.3219, and 24.138.3229. Generally, the department states that the rule repeal will standardize procedures and the two proposed new rules will replace the repealed rules.

Notes/Hearing: The department held a meeting on May 1, 2024, to consider the notice.

MAR Notice Number: 24-29-417

Subject: Amendment and repeal of rules pertaining to workers' compensation.

Summary: The department proposes to amend 24.29.1401A, 24.29.1402, 24.29.1404, 24.29.1406, 24.29.1407, 24.29.1408, 24.29.1409, 24.29.1433, 24.29.1534, 24.29.1538, and 24.29.1616. The department proposes to repeal 24.29.1415 and 24.29.1432. The department provided the following general statement of reasonable necessity:

There is necessity to substantially review and revise subchapter 14 of the workers' compensation rules to clarify, simplify, and increase usability of the rules. The proposed amendments eliminate duplication of statute, repeal inapplicable and invalid rules, and clarify departmental processes for all interested parties who use the workers' compensation rules. This rulemaking is in furtherance of Executive Order 1-2021 and efforts to reduce red tape in administrative rules. The proposed amendments also incorporate the statutorily required annual updates to the department's workers' compensation medical fee schedule, utilization and treatment guidelines, and prescription drug formulary.

Notes/Hearing: The department held a meeting on June 4, 2024, to consider the notice.

Department of Livestock and administratively attached entities

There are no new rules.

State Auditor's Office

MAR Notice Number: 6-288

Subject: Adoption of a rule relating to Pharmacy Benefit Manager (PBM) Maximum Allowable Cost Appeals.

Summary: The board proposes to adopt New Rule I:

NEW RULE I BATCH APPEAL PROCESS (1) A pharmacy benefit manager's appeals procedure described in 33-22-173, MCA, must allow for the submission of appeals received from a pharmacy or a pharmacy services administrative organization as part of a batch or group of appeals.

The department provided the following statement of reasonable necessity:

CSI has received numerous complaints from pharmacies and PSAOs that some PBMs do not accept maximum allowable cost (MAC) appeals in batch format but require such appeals to be submitted one at a time through a portal or similar online interface. However, CSI also learned that these PBMs have the capability to process, and do in fact process, such batch appeals in other states. This process is not made available to pharmacies or PSAOs in Montana. Pharmacies and PSAOs have stated to CSI that they have been discouraged from filing MAC appeals because entering appeals one by one is an onerous, time-consuming process for them.

Section 33-22-173(1)(a), MCA, requires PBMS to provide a MAC appeal process for a pharmacy or PSAO to appeal "the price of a drug **or drugs** on the maximum allowable cost list." (emphasis added). If the process was meant to be constrained to individual appeals of a single drug on a one-at-a-time basis, the addition of the plural modifier after "a drug" would be unnecessary. The proposed rule helps clarify existing law and the relative obligations of the entities involved.

Further, PSAOs inherently involve multiple stakeholders and therefore multiple claims. PSAOs represent multiple pharmacies, some of whom raise complaints to the PSAO about MAC pricing of the same drug or similar drugs. Because PSAOs inherently involve multiple pharmacies and therefore multiple claims, a procedure that does not account for batch submissions is inherently deficient. Clarifying the legal obligations of PBMs to require them to allow pharmacies and PSAOs in Montana to submit MAC appeals in batch format, as PBMs already allow in other states, will ensure the efficient processing of MAC appeals.

In light of the addition of PSAOs to the provisions in 33-22-173, MCA, to allow orderly submission of appeals, and to clarify the requirements of this provision, the commissioner believes this new rule is necessary for, and an aid to, the effective administration of the statutory provision above.

that the proposed rule is reasonably necessary because it has received numerous complaints from stakeholders that some PBMs do not accept maximum allowable cost appeals in batch format but require the appeals to be submitted one at a time through a portal or similar online interface.

Notes/Hearing: The department held a meeting on May 16, 2024, to consider the notice.

Division of Banking and Financial Institutions

There are no new rules.

Department of Revenue, Alcoholic Beverage Control Division and Cannabis Control Division

MAR Notice Number: 42-1076

Subject: Adoption and amendment of rules relating to implementation of legislation enacted by the 2023, legislature.

Summary: The board proposes to adopt New Rules I through III:

NEW RULE I ADDITIONAL RETAIL SERVICE BUILDINGS OR STRUCTURES

(1) A golf course beer and wine licensee or an all-beverages licensee operating a license at a golf course may use an additional building or structure, one per nine holes of the golf course that is designed to serve golfers alcoholic beverages during the course of play.

(2) An all-beverages licensee or resort all-beverages licensee may sell alcoholic beverages for consumption on the premises in:

(a) a building that constitutes the primary indoor lodging quarters of a hotel or other short-term lodging facility;

(b) a permanent, licensed alcohol service structure in a swimming area separate from the main licensed premises;

(c) up to two additional permanent structures on a ski hill separate from the main licensed premises; or

(d) an additional structure that constitutes the clubhouse or primary indoor recreational quarters of the golf course separate from the main licensed premises.

(3) The department may approve a licensee for storage of alcoholic beverages at an additional retail service building if adequate physical safeguards prevent access by individuals other than the licensee or its employees.

(4) A licensee must submit the following to the department via its online licensing portal for approval of an additional retail service building or structure:

(a) a completed additional retail service building request form;

(b) the application fee provided in 16-3-302, MCA, as applicable;

(c) the processing fee provided in ARM 42.12.111, as applicable;

(d) a copy of the floor plan for each proposed additional retail service building or structure;

(e) a plat-style map showing the location of each proposed additional retail service building or structure on the licensee's property;

(f) documentation of the licensee's possessory interest in the proposed additional retail service building or structure;

- (g) evidence of approvals from state or local officials that the proposed additional retail service building or structure meets building, health, and fire code requirements, as required by state or local law; and
 - (h) any additional documentation the department deems reasonably necessary to approve the licensee's request.
- (5) Upon its acceptance and review of a licensee's submissions in (4), the department will arrange an inspection of the proposed additional retail service building or structure and review the inspection findings.
- (6) The department will notify the licensee, in writing, of its approval or denial of the additional retail service building or structure.
- (7) Upon approval, an updated license will be issued and reflect the location of any additional retail service building or structure. The licensee must display a copy of the license in a prominent place at any additional retail service building or structure.
- (8) No alcoholic beverages may be stored or served by a licensee at a proposed additional retail service building or structure prior to receiving department approval.

NEW RULE II COLOCATED LICENSE – CONDITIONS FOR OPERATING

- (1) In addition to the conditions for operating the license types provided in ARM 42.13.405, 42.13.601, 42.13.802, 42.13.1102, 42.13.1103, and 42.13.1104, a colocated licensee shall:
- (a) provide and serve through its retail license, alcohol beverages that were produced by other manufacturers that are not affiliated or financially interested, either directly or indirectly, in the operation of the manufacturing business at the colocated premises. This includes sufficient on-hand inventory to meet the demand of the public;
 - (b) store alcoholic beverages in compliance with applicable federal laws; and
 - (c) only deliver alcoholic beverages to retail licenses, including other retail licenses owned by the licensee, pursuant to the limitations set forth in 16-3-214 and 16-3-411, MCA.
- (2) A manufacturing licensee is responsible for paying alcoholic beverage taxes and filing any required returns for any alcoholic beverages transferred from the manufacturing area to the retail area at the colocated license.

- NEW RULE III GUEST RANCHES (1) An all-beverages licensee, an on-premises consumption beer and wine licensee, or an applicant for an all-beverages license or an on-premises consumption beer and wine license operating its license at a guest ranch, as described in 16-3-302(5), MCA, shall submit the following to the department, at its sole expense, and in addition to the requirements of ARM 42.12.101:
- (a) a plat-style map that accurately describes the guest ranch property including all indoor and outdoor portions of the premises; the permanent building where alcoholic beverages will be served; all other temporary, mobile, or partial structures; and indicators of the property's boundaries;
 - (b) a written description of the overnight lodging, dining, and onsite outdoor recreational activities offered at the guest ranch;
 - (c) a written description of the property line if a perimeter barrier is not used to confine the service of alcoholic beverages only to those areas under control of the licensee; and

- (d) any other documents the department deems reasonably necessary to reach a final decision.
- (2) In addition to the documents listed in (1), an applicant for a new license operating at a guest ranch must also comply with the applicable licensure requirements under the Alcoholic Beverage Code and ARM 42.12.101.
- (3) If the documents required in (1) and (2), as applicable, are not provided, the department will notify the licensee or applicant, in writing, and provide an opportunity to correct any stated deficiencies.
- (4) The department will notify the licensee or applicant, in writing, of the approval or denial of the guest ranch operation.

Generally, the department states that the proposed rules implement House Bills 97, 539, and 305.

The department proposes to amend 42.11.402, 42.12.101, 42.12.106, 42.12.109, 42.12.110, 42.12.111, 42.12.118, 42.12.128, 42.12.131, 42.12.132, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.148, 42.12.149, 42.12.150, 42.12.151, 42.12.152, 42.12.204, 42.12.205, 42.12.208, 42.12.209, 42.12.307, 42.12.323, 42.12.324, 42.12.501, 42.12.502, 42.12.503, 42.12.504, 42.13.106, 42.13.107, 42.13.109, 42.13.111, 42.13.112, 42.13.201, 42.13.211, 42.13.405, 42.13.601, 42.13.802, 42.13.804, 42.13.901, 42.13.1002, 42.13.1003, 42.13.1102, 42.13.1103, 42.13.1104, 42.13.1105, 42.13.1202. Generally, the rule amendments House Bills 455, 705, 305, 97, 127, 48, 68, 75, 97, 155, 164, 578, 72, 242, 98, 160, 155, 579, 120, 43, 71, 144, 123, 166, 95, 519, 254, 49 and 539 in addition to Senate Bills 59, 21, 312.

Notes/Hearing: The department held a meeting June 4, 2024, to consider the notice.

MAR Notice Number: 42-1071

Subject: Amendment of rules pertaining to revised marijuana sampling protocols and quality assurance testing requirements.

Summary: The board proposes to amend ARM 42.39.601, 42.39.603, 42.39.610, and 42.39.614. The department provided the following statement of reasonable necessity:

The department proposes to amend ARM 42.39.601, 42.39.603, 42.39.610, and 42.39.614 which is necessary to expand, improve, or clarify marijuana and marijuana product quality assurance sampling protocols and laboratory testing rules for the health and wellbeing of the Montana marijuana consumer based on the continually changing array of available marijuana products in Montana. Other amendments continue implementation of House Bill 128 (2023)(HB 128) (transfer of the cannabis laboratory program to the department) and initial implementation of House Bill 229 (2023)(HB 229) (statutory testing laboratory licensing criteria).

Proposed amendments include additions to definitions or terminology and updates to the Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, Marijuana-Infused Products, and Marijuana Pre-Rolls (SOP-001) to provide more comprehensive language for required quality assurance testing. The department also proposes to implement a Quality Assurance Testing Requirements Appendix (Appendix) which will be adopted and incorporated by reference in ARM 42.39.614, as permitted under 2-5-307, MCA. The purpose of the Appendix is to remove testing requirements

found in the administrative rules tables and restate them in a publication which the department believes is clearer and more concise than the current tables and rule.

The proposed SOP-001 and Appendix are available for review at www.mtrevenue.gov/cannabis and are subject to the rulemaking process under the Montana Administrative Procedure Act.

The proposed rule amendments also seek to improve clarity for testing marijuana items that fall into gaps or cover more than one product type. Ultimately, as the marijuana industry in Montana evolves so must the rules concerning marijuana product safety testing.

The department proposes numerous amendments to the above-described rules, as a part of Governor Gianforte's Red Tape Relief Initiative, to improve rule text, employ beneficial cross-references, and simplify the rules.

While this general statement of reasonable necessity covers the basis for the proposed rule amendments, it is supplemented below to explain rule-specific proposals.

Notes/Hearing: The department will hold a public hearing on June 18, 2024, to consider the notice.

Governor's Office of Economic Development

There are no new rules.