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Economic Affairs Interim Committee

68th Montana Legislature

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November 13, 2023

TO: Economic Affairs Interim Committee
FROM: Jameson Walker, Staff Attorney
RE: Administrative Rulemaking and Rule Review, November 2023 (Updated)

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: 24-174-80

Subject: Adoption of rules pertaining to the Board of Pharmacy.

Summary: The board proposes to adopt New Rule I, relating to prescribing pharmacists:

NEW RULE I PHARMACIST PRESCRIBING: GENERAL REQUIREMENTS

- (1) Pursuant to [SB 112 (1), L. 2023] and these rules, any pharmacist may independently prescribe.
- (2) The pharmacist prescribing under this rule must obtain adequate information about the patient's health status to make appropriate decisions based on the applicable standard of care and the best available evidence. For each drug or device the pharmacist intends to prescribe, the pharmacist must maintain a patient assessment based on current clinical guidelines, best practice standards, or evidence-based research findings, as applicable.
- (3) The pharmacist must document an appropriate follow-up care plan, including any monitoring parameters, as indicated by the patient assessment.

(4) The pharmacist must inquire about the identity of the patient's primary care provider or provider of record. If a provider is identified, the pharmacist must document the information and notify the provider at the earliest reasonable time following the prescribing of a drug or device.

(5) The pharmacist must maintain documentation adequate to justify the care provided, including, but not limited to the information collected as part of the patient assessment, the prescription record, any notification provided as required under this rule, and the follow-up care plan. Records must be made available for inspection by the board.

The board states that the new rule implements Senate Bill 112, which allowed for independent prescribing authority for pharmacists in limited situations. Previously, pharmacists could prescribe only as part of a collaborative practice agreement and could issue emergency refills of prescriptions in limited situations. It is therefore necessary to set standards for patient care, evaluation, recordkeeping, and provider notification required of pharmacists prescribing under SB 112's authority.

Notes/Hearing: The board will hold a public hearing on November 28, 2023, to consider the notice.

MAR Notice Number: 24-209-1

Subject: Adoption of rules pertaining to property management licensure.

Summary: The department proposes to adopt New Rules I through VI:

NEW RULE I FEE SCHEDULE

- (1) Original application \$50
- (2) Renewal 50
- (3) Prelicensing course application 150
- (4) All fees are nonrefundable.
- (5) Examination fees are paid directly to the testing service.

NEW RULE II APPLICATION TIMELINE (1) Applicants must:

- (a) complete a 30-hour approved property management prelicensing course within 24 months preceding application;
- (b) pass the licensure examination; and
- (c) apply for licensure within 12 months of the examination date. Failure to do so will invalidate exam results.

NEW RULE III TRUST ACCOUNTS (1) Property managers who receive any deposits, rent payments, or other monies on behalf of other persons must deposit such funds in a trust account per [37-56-101](#), MCA, and maintain the account according to this rule.

- (2) Trust accounts must be:
 - (a) liquid;
 - (b) readily accessible;
 - (c) insured in Montana financial institutions;
 - (d) identified as trust accounts; and
 - (e) reconciled each month having activity.
- (3) Trust funds cannot be:
 - (a) maintained in sweep accounts; or
 - (b) invested in certificates of deposit, repurchase agreements, or any other method that places funds at risk.
- (4) Property managers:
 - (a) may separately maintain multiple trust accounts;
 - (b) are responsible for all funds in and maintenance of their trust accounts;

(c) may delegate authority for trust account maintenance to another licensed property manager. Both property managers are responsible for failure to comply with trust account requirements; and

(d) must deposit monies belonging to others into a trust account within three business days, unless otherwise provided in the lease or rental agreement.

(5) Trust funds may be maintained in interest-bearing accounts with interest payable to the property manager or any other person. Interest payable to a property manager must be identified as consideration for services performed and are personal funds unless otherwise designated.

(6) Property managers may deposit and hold in a trust account up to \$1000 of personal funds that include interest accrued to the property manager.

(a) Personal funds may be distributed for trust account bank charges, related trust account maintenance expenses, and when due and payable to the property manager.

(b) Money due the property manager must be withdrawn within ten business days once due and payable.

(7) When managing one's own real estate, property managers must deposit security deposits in a trust account. Rents and disbursements are managed as follows:

(a) Property managers owning 100 percent of the real estate are not required to place rents in a trust account but may do so.

(b) Property managers owning less than 100 percent of the real estate must place all rents in a trust account.

(c) If rents are included in a trust account, all disbursements must be described in the property management agreement.

(d) Disbursements may not be considered personal indebtedness if used for the maintenance of the property itself.

(8) Property managers must maintain complete and chronological records of all trust account funds received and disbursed including personal funds per (6). Each record must include a running balance and clearly identify for all transactions:

(a) dates;

(b) parties, payees, and sources of funds; and

(c) amounts received, disbursed, and deposited.

(9) When a property management agreement is terminated, a rental agreement is still in effect, and the property manager is holding tenant funds, the property manager must:

(a) notify the tenant, in writing and within five business days of termination that:

(i) the agreement is terminated; and

(ii) funds and current tenant files will be transferred to the property owner or designee within 30 days of the termination;

(b) provide the name and contact information of the person receiving the transfer; and

(c) within 30 days of termination, transfer all funds and current tenant files to the property owner or designee.

(10) Property managers must maintain the following documents for at least eight years from the property management agreement termination even if the property manager sells or ceases to operate the business:

(a) trust account records;

(b) complete files of properties managed; and

(c) all related documents.

(11) Trust account records must be maintained to facilitate auditing.

NEW RULE IV PRELICENSING COURSE REQUIREMENTS (1) Course approval is valid for three years and may be revoked for cause.

(2) To receive approval, courses must include the following topics:

(a) trust accounts;

(b) accounting procedures;

(c) landlord tenant law (Title 70, chapters 24 and 25, MCA);

(d) federal and state fair housing laws;

(e) Americans with Disabilities Act;

(f) state licensing law and rules;

- (g) contract law;
- (h) leasing principles;
- (i) agency; and
- (j) definitions and terms commonly used in the industry.

(3) Additionally, online courses must have current Association of Real Estate License Law Officials (ARELLO) certification. Approval is invalidated if ARELLO certification is discontinued for any reason.

NEW RULE V CONTINUING EDUCATION (1) Renewing licensees must complete a minimum of 12 hours of property management CE (continuing education) annually. 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 property management profession.

(2) New licensees are only required to complete four hours of property management trust account CE by their first renewal date. If no course occurs by the first renewal date, the licensee must complete the course when it is next offered.

(3) Licensees must maintain adequate CE documentation and make the documentation available upon request.

(4) Licensees found noncompliant with CE requirements may be subject to administrative suspension.

NEW RULE VI UNPROFESSIONAL CONDUCT (1) In addition to the provisions of [37-1-410](#), MCA, it is unprofessional conduct for property managers to:

- (a) violate a federal, state, or local law or rule relating to the conduct of the profession;
- (b) engage the services of any person or entity on behalf of a principal, third-party, or other person,

without:

- (i) informing and obtaining consent from the person obligated to pay for the services; and
- (ii) disclosing any family relationship, financial relationship, and/or financial interest that the licensee or the licensee's business may have in the person or entity being engaged;

(c) manage property owned by another person or entity without a written property management agreement in place, signed by the owner;

(d) accept, give, or charge an undisclosed commission, rebate, or profit on expenditures made for a principal;

(e) fail to adequately supervise employees;

(f) fail to cooperate with or respond to a department request;

(g) practice while one's license has expired or terminated. Receiving payments for the sale of the licensee's property management business without a valid license is not considered practicing as a property manager; and

(h) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

Generally, the department states that the new rules implement Senate Bill 455, which revised laws relating to realty regulation by transferring regulatory oversight of property managers from the Board of Realty to a department program. The department states that the new rules update current standards and procedures, and eliminate unnecessary, redundant, and overburdensome regulations and those duplicated in statute.

Notes/Hearing: The department will hold a public hearing on November 30, 2023, to consider the notice.

MAR Notice Number: 24-219-37

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

Summary: The board proposes to amend 24.219.301, 24.219.401, 24.219.421, 24.219.422, 24.219.431, 24.219.435, 24.219.501, 24.219.504, 24.219.601, 24.219.604, 24.219.701,

24.219.704, 24.219.907, 24.219.912, 24.219.1001, 24.219.1002, 24.219.1003, 24.219.1005, 24.219.1011, 24.219.1201, 24.219.1205, 24.219.1211, 24.219.1213, 24.219.1217, 24.219.2301, 24.219.5006, 24.219.5008, and 24.219.5010. Generally, the rule amendments implement House Bill 137, remove dated terminology, streamline sections, and eliminate repetitive subsections. The board proposes to adopt NEW RULES I through III.

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, examination, and experience requirements; and
 - (d) a Federal Bureau of Investigation fingerprint background check within six months of the application date.
- (2) 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.
- (3) 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.
- (4) LCSW, LMSW, LCPC, or LMFT applicants holding a current, active license in good standing in another state or jurisdiction with an education requirement that is not substantially equivalent to Montana's requirement must have a master's degree in the profession the applicant is applying to from an accredited institution with a minimum of 48 semester or 72 quarter credits and have completed five years of post-degree experience in the profession, in addition to the supervised work experience.
- (5) Degree programs in the candidate stage of accreditation are accredited for purposes of a qualifying degree.
- (6) LBSW and LMSW who qualify for licensure pursuant to [HB 499/HB 137 Section 10] must provide evidence of social work experience:
- (a) attested to by a licensed social worker or a direct supervisor from a former or current employer who is familiar with the applicant's work experience; and

NEW RULE II EXAMINATIONS (1) The following examinations are approved for licensure.

- (a) LCSW: Association of Social Work Boards (ASWB) clinical examination;
 - (b) LMSW: ASWB master's examination;
 - (c) LBSW: ASWB bachelor's examination;
 - (d) LCPC:
 - (i) National Board for Certified Counselors (NBCC) National Counselor examination (NCE); or
 - (ii) NBCC National Clinical Mental Health Counseling examination (NCMHCE);
 - (e) LMFT: the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) examination in marriage and family therapy;
 - (f) LAC:
 - (i) Level 1 or Level 2 National Certification Commission for Addiction Professionals (NCC AP);
 - (ii) Northwest Certification II or III;
 - (iii) Southwest Certification II; or
 - (iv) International Certification and Reciprocity Consortium (IC&RC) Alcohol and Drug Counselor (ADC) examination or Advanced Alcohol and Drug Counselor (AADC) examination.
- (2) Individuals who have not already passed an approved examination can be approved by department staff to register for one of the approved examinations:
- (a) upon submission of a complete application; or
 - (b) once a candidate license is issued and the licensee requests to be approved to take the exam.
- (3) Applicants or candidates may not take an examination more than three times unless approved to retake the examination. Applicants or candidates requesting to retake the examination must submit a request including but not limited to a specific study plan.

NEW RULE III ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

- (a) administratively suspend licenses for deficiencies set forth in [37-1-321](#)(1)(a) though (e), MCA;

or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

The board states that the new rules implement house Bill 137. The board proposes to repeal 24.219.415, 24.219.423, 24.219.502, 24.219.505, 24.219.508, 24.219.512, 24.219.602, 24.219.605, 24.219.608, 24.219.612, 24.219.702, 24.219.705, 24.219.706, 24.219.712, 24.219.923, 24.219.1004, 24.219.1014, 24.219.1017, 24.219.1020, 24.219.1023, 24.219.1026, 24.219.1029, 24.219.1032, 24.219.1035, 24.219.1038, 24.219.1209, 24.219.1215, 24.219.2404, 24.219.5005, 24.219.5007, 24.219.5013, and 24.219.5020. Generally, the board is attempting to streamline its rules and transfer existing rules to the proposed new rules.

Notes/Hearing: The board will hold a public hearing on November 30, 2023, to consider the notice.

MAR Notice Number: 24-225-43

Subject: Adoption and amendment of rules pertaining to the Board of Pharmacy.

Summary: The board proposes to amend 24.174.401, 24.174.2301, 24.225.301, 24.225.401, and 24.225.550. The Board proposes to adopt New Rules I through IV:

NEW RULE I VETERINARY DISPENSING TECHNICIAN REGISTRATION

(1) Applicants for registration must:

- (a) submit a completed application form;
- (b) pay the required fee;

(c) provide the name and license number of the veterinary retail facility where the technician is working; and

(d) review and attest to understanding the board's educational materials.

(2) A person licensed as an LVT does not require a separate license to work as a dispensing technician but must provide the board with the name and license number of the veterinary retail facility where the LVT is employed and attest to review of the board's educational materials.

NEW RULE II VETERINARY RETAIL FACILITY LICENSE REQUIREMENTS

(1) Applicants for licensure as a veterinary retail facility must:

- (a) submit a completed application form;
- (b) pay the required application fee or renewal fee;
- (c) designate a registered veterinary dispensing technician as person-in-charge; and
- (d) comply with the provisions of [37-18-803](#), MCA.

(2) Veterinary retail facilities must notify the board within 30 days of the following changes:

- (a) designated person-in-charge; and
- (b) termination in service.

NEW RULE III VETERINARY RETAIL FACILITY REQUIREMENTS

(1) A veterinary retail facility may dispense veterinary prescription drugs as defined in [37-18-801](#), MCA, upon receipt of a Montana licensed veterinarian's prescription, standing order, or other order for use in livestock. Drugs must be dispensed by a veterinary dispensing technician registered with the Board of Veterinary Medicine.

(2) A veterinary retail facility may refill a prescription only if the initial prescription authorizes a specific number of refills, or as identified in a standing order or other appropriate authorization from the prescribing veterinarian.

(3) All licensed veterinary retail facilities shall:

(a) for two years, maintain readily accessible written or electronic records of veterinary prescription drug inventory and prescriptions received, and make the records available for board inspection;

- (b) provide for secure storage of and accurate recordkeeping for veterinary prescription medications, records, and drug inventory;
 - (c) limit access to veterinary prescription medications and records to the facility's person-in-charge and registered veterinary dispensing technician(s) only;
 - (d) store veterinary prescription drugs separately from over-the-counter drugs and as recommended by the manufacturer;
 - (e) operate in a sanitary manner;
 - (f) purchase veterinary prescriptions drugs, as defined in [37-18-801](#), MCA, from a wholesale distributor or pharmacy licensed by the board;
 - (g) maintain policies and procedures to manage and dispose of outdated, expired, damaged, or returned drugs to prevent such drugs from being dispensed, distributed, or resold. Facilities may utilize a reverse distributor licensed as a wholesale distributor by the board; and
 - (h) create and maintain a dispensing record and a client information sheet that includes the following:
 - (i) name, address, and telephone number of the Montana licensed prescribing veterinarian;
 - (ii) client name;
 - (iii) identification of animals or herds treated;
 - (iv) date(s) each prescription was written, and the drugs dispensed;
 - (v) name and quantity of dispensed drug;
 - (vi) directions for the drug's dosage, frequency, and duration for use;
 - (vii) manufacturer's cautionary statements; and
 - (viii) manufacturer's expiration date.
- (4) If the information in (3)(h) is included on the manufacturer's label, it is unnecessary to repeat the same information on the client's information sheet, but it must be included in the dispensing record.

NEW RULE IV VETERINARY DISPENSING TECHNICIAN SCOPE OF PRACTICE (1) A veterinary dispensing technician, working in a veterinary retail facility licensed by the Board of Pharmacy, must:

- (a) create a written or electronic client record;
- (b) dispense veterinary prescription drugs upon receipt of a prescription order, standing order, or other order as authorized by a licensed veterinarian;
- (c) consult with the prescribing veterinarian in order to clarify a prescription and/or other relevant information necessary to dispense the veterinary prescription drug;
- (d) dispense veterinary prescription drugs based on package size and quantity as provided by the manufacturer;
- (e) perform inventory control to remove expired or damaged drugs from stock, prevent returned drugs from being returned to stock, and ensure such drugs are not dispensed, distributed, or resold;
- (f) ensure the drug product and client information sheet match the prescription order and the information on the manufacturer's labeling with respect to drug, dosage form, strength, and quantity; and
- (g) comply with prescription labeling, recordkeeping, storage, security, and inventory control required of veterinary retail facilities, per [NEW RULE III].

The board states that the proposed rule notice implements Senate Bill 561, which required licensing of veterinary retail facilities and veterinary dispensing technicians. The board states that the proposed rule notice will set fees and application requirements and establish scopes of practice and unprofessional conduct applicable to the new license types.

Notes/Hearing: The board will hold a public hearing on November 28, 2023, to consider the notice.

MAR Notice Number: 24-351-357

Subject: Adoption, amendment, and repeal of rules pertaining to the building and commercial measurements bureau.

Summary: The department proposes to amend 24.351.101, 24.351.211, 24.351.215, 24.351.227, 24.351.411, and 24.351.1117. Specifically, the amendment to 24.351.211 will establish the following fees:

24.351.211 FEES FOR TESTING AND CERTIFICATION (1) The following fees shall apply to the testing of all devices subject to these rules:

(a) PA Meters	(20 GPM or less)	\$10.00
(b) PB Meters	(20 GPM-130 GPM)	\$30.00
(c) PC Meters	(above 130 GPM)	\$30.00
(d) PD Meters	(Liquified Petroleum Gas)	\$50.00
(e) SA/S1 Scales	(499 LB or less)	\$20.00
(f) SB/S2 Scales	(500 LB-1,999 LB)	\$30.00
(g) SC/S3 Scales	(2,000 LB-7,999 LB)	\$35.00
(h) SD/S4 Scales	(8,000 LB-60,000 LB)	\$150.00
(i) SE/S5 Scales	(60,000 LB or more)	\$150.00

(2) A reinspection of a rejected device shall not incur the testing and certification fee.

~~(3)~~(3) Special inspections fees are not required by statute and only occur upon request to the bureau. The fees for special inspections are as follows:

(a) through (c) remain the same.

~~(4)~~(4) Where fees are not paid within 30 days after the special any inspection completed by the bureau, the bureau may seal and remove from service the device in question from service, until such the fees have been paid. The bureau will coordinate the special inspections, whenever possible, with other inspection activities in an effort to keep charges as reasonable as possible.

The department states that the rule is amended to establish a fee-for-services model where fees only accrue if testing occurs, rather than raise fees on all devices subject to testing. The department estimates that the fee will affect 4,355 current licenses that operate 28, 203 devices that require testing and will increase annual fees by \$668,968. The department proposes to adopt New Rules I and II:

NEW RULE I ADOPTION OF STATE WEIGHTS AND MEASURES STANDARDS AND RECOMMENDATIONS (1) Subject to the provisions of Title 32, chapter 12, part 2, and Title 82, chapter 15, part 1, MCA, the bureau adopts and incorporates by reference the following publications for weights and measures in Montana:

(a) NIST Handbook 44, 2023 edition: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices with the following modifications:

(i) Delete paragraph UR.3.3. Single-Draft Weighing found in section 2.20, Scales.

(ii) Delete paragraph UR.2.2. Ticket Printer, Customer Ticket found in section 3.31, Vehicle-Tank Meters.

(b) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality with the following modifications:

(i) IV Uniform Regulations part A, Uniform Packaging and Labeling Regulation section 14, insert in the blank space [effective date], for the effective date.

(ii) IV Uniform Regulations part B, Uniform Regulation for the Method of Sale of Commodities, section 5 insert in the blank space [effective date], for the effective date.

(iii) IV Uniform Regulations part D, Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, section 3, Registration Fee, insert in all blank spaces, \$25.00. Section 8 insert P.O. Box 200516 Helena Mt 59620 in the blank space.

(iv) IV Uniform Regulations part E. Uniform Regulation for National Type Evaluation, section 4(c) through (g) insert in all blank spaces January 1, 2024 for the effective date.

(v) IV Uniform Regulations part E. Uniform Regulation for National Type Evaluation, section 7, insert in the blank space [effective date], for the effective date.

(c) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality with the following modifications:

(i) Delete in its entirety Section III, part B Uniform Weighmaster Law.

(ii) Delete in its entirety Section IV, part C Uniform Unit Pricing Regulation.

(d) NIST Handbook 133, 2022 edition: Checking the Net Contents of Packaged Goods.

(2) A copy of NIST Handbooks 44, 130, and 133 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference on Weights and Measures, Gaithersburg, MD 20899-0001, or online at www.nist.org.

NEW RULE II VOLUNTARY REGISTRATION PROGRAM FOR SERVICEPERSONS AND SERVICE AGENCIES - FEES (1) The bureau adopts and incorporates by reference the Uniform Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices in NIST Handbook 130, 2023 edition, for the voluntary registration of individuals and entities that have demonstrated an ability to accurately install, service, repair, or recondition a commercial weighing or measuring device.

(2) The individual or entity shall apply for registration on application forms provided by the bureau.

(3) The application and annual renewal fees are as follows:

(a) serviceperson \$25

(b) service agency 25

(c) late renewal fee 12.50

(4) The bureau shall maintain and make public a list of registered servicepersons and registered service agencies.

The department proposes to repeal 24.351.201, 24.351.203, 24.351.204, 24.351.207, 24.351.301, 24.351.321, 24.351.401, 24.351.1101, 24.351.1104, 24.351.1107, 24.351.1111, and 24.351.1115. Notes/Hearing: The department will hold a public hearing on November 28, 2023, to consider the notice.

Department of Livestock and administratively attached entities

There are no new rules.

State Auditor's Office

There are no new rules.

Division of Banking and Financial Institutions

There are no new rules.

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

There are no new rules.

Governor's Office of Economic Development

There are no new rules.