



## NORTH DAKOTA BOARD OF NURSING

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To: Senator Tom Fischer, Chairman  
Administrative Rules Committee  
North Dakota Legislative Council

From: Constance B. Kalanek, Ph.D., RN  
Executive Director

Date: June 11, 2008

Re: Administrative Rules Published July 2008 Supplement, North Dakota Administrative Code

Thank you for the opportunity to address the administrative rules changes adopted by the North Dakota Board of Nursing.

The proposed, new and revised Title 54 Board of Nursing:

- CHAPTER 54-01-03 DEFINITIONS
- ARTICLE 54-02 NURSE LICENSURE
- PROPOSED NEW CHAPTER 54-02-12 CRIMINAL HISTORY RECORD CHECKS LICENSURE
- ARTICLE 54-03.2 STANDARDS FOR NURSING EDUCATION PROGRAMS
- ARTICLE 54-04.1 NURSING EDUCATION LOANS
- ARTICLE 54-05 STANDARDS OF PRACTICE
- ARTICLE 54-07 UNLICENSED ASSISTIVE PERSON
- PROPOSED NEW CHAPTER 54-07-02.1 UNLICENSED ASSISTIVE PERSON REGISTRY CRIMINAL HISTORY RECORD CHECKS

The Administrative Rules Committee has asked for testimony related to the following questions:

**1. Whether the rules resulted from statutory changes made by the Legislative Assembly.**

Yes. SB 2260 which gave the Board of Nursing the authority to conduct criminal background checks as a condition for licensure/registration and during the course of an investigation. Other revisions were made to the Nurse Licensure Compact chapter to be consistent with the uniform requirements of the compact. Other revisions were related to consumer directed care, clean up of language in other sections and one fee increase.

**2. Whether the rules are related to any federal statute or regulation.**

None of the rules were as a result of a federal program.

**3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

- I. BOARD DEVELOP RULES FOR BOARD ADOPTION

- Developed in conjunction with the Nurse Practice Committee – Meetings held on September 12 & October 29
- II. BOARD ADOPT RULES FOR PUBLIC HEARING  
**November 16, 2007**
- III. PUBLICATION OF NOTICE
- Published in each county newspaper: **Mail to North Dakota Newspaper Association on November 27, 2007. Published once in each official County newspaper before December 17, 2007.**
  - \* Full Notice and copy of the proposed rules filed with Legislative Council - **Mailed by November 27, 2007.**

**PUBLIC HEARING - Twenty days must lapse between last date published in newspapers and date of first hearing – hearing dates- January 17, 2008 at 1:30 PM.**

#### **SUMMARY**

| <b>HEARING</b>                  | <b>January 17, 2008</b>  |
|---------------------------------|--|
| <b>Signed attendance roster</b> | <b>140</b>   |
| <b>Oral testimony</b>           | <b>1</b>   |
| <b>Written testimony</b>        | <b>1</b>   |
| <b>Board Staff present</b>      | Constance B. Kalanek, RN;<br>Patricia Hill, RN.<br>Karla Bitz, RN.<br>Linda Shanta RN<br>Julie Schwan, ASC<br>Brian Bergeson, Special<br>Assistant Attorney General                |
| <b>Board Members Present</b>    | Elizabeth Anderson LPN<br>Buzz Benson RN<br>Roxane Case, Public Member<br>Charlene Christianson RN<br>Julie Traynor RN<br>Metta Schell LPN<br>JoAnn Sund RN<br>Mary Tello Pool LPN |

**One hundred forty** individuals appeared and one made comments at the public hearing. During the comment period, one copy of written comments was received. Staff proposed the addition of the definition of Single State License as proposed by the Nurse License Compact Administrators. Also, staff suggested further clarification of 54-05-03.1-06.2 Reactivation of a license for the APRN.

- IV. Allow 10 days after last public hearing for public comment –period end **January 28, 2008.**
- V. BOARD ACTION - INITIALLY ADOPT RULES SUBJECT TO AG OPINION

Record of consideration of all testimony - oral and written prior to final adoption, amendment, or repeal **Board Meeting: March 19, 2008.**

- VI. ATTORNEY GENERAL OPINION AS TO LEGALITY OF RULES  
Submit to AG after board adopts rules **March 19, 2008.**
- VII. FINAL ADOPTION OF THE RULE BY BOARD – **March 19, 2008.** The suggested revisions made and adopted by NDBON on **May 21, 2008.**
- VIII. FILE RULES WITH OFFICE LEGISLATIVE COUNCIL
- IX. APPEAR BEFORE THE ADMINISTRATIVE RULES COMMITTEE- **June 11, 2008.**  
Prepare & present testimony in response to Legislative Council questions.
- X. RULES FORCE AND EFFECT OF LAW
  - Rules become effective July 1, 2008.

NOTICE OF INTENT TO ADOPT,  
AMEND OR REPEAL ADMINISTRATIVE RULES

TAKE NOTICE that the North Dakota Board of Nursing will hold a public hearing to address proposed new, amendments or repeal of North Dakota Administrative Code title 54. The hearing will be:

**January 17, 1:30 PM at the North Dakota Healthcare Association, 622 East Interstate Ave, Bismarck, North Dakota. The hearing will be held on the BTWAN and IVN system.**

The proposed new, amendments or repeal of the following:: Title 54 Board of Nursing: **NDAC Chapter 54-01-03 Definitions; Article 54-02 Nurse Licensure; Proposed new Chapter 54-02-12 Criminal History Record Checks for Licensure; Article 54-03.2 Standards for Nursing Education Programs; Article 54-04.1 Nursing Education Loans; Article 54-05 Standard of Practice; Article 54-07 Unlicensed Assistive Person; and new chapter 54-07-02.1 Criminal History Record Checks for Registration.**

The purpose of the proposed new and amendments is to implement statutes related to limited license and criminal history record checks for licensure and registration and provide clarification to previous rules. The proposed rules and amendments is to address nurse licensure, criminal history record checks for licensure and registration, standards for nursing education, nursing education loans, standards of practice and the unlicensed assistive person. The proposed rules are not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the North Dakota Board of Nursing, 919 S 7th St., Suite 504, Bismarck ND 58504-5881. A copy of the proposed rules may be requested by writing the above address or calling (701) 328-9777. Written or oral comments on the proposed rules sent to the above address or phone number and received **by January 28, 2008** the date the comment period closes, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota Board of Nursing at the above phone number or address at least one week prior to the public hearing.

Dated this 27<sup>th</sup> day of November 2007  
Constance B. Kalanek, RN Executive Director

#### **4. SUMMARY OF COMMENTS:**

The proposed rules were developed in conjunction with the NDBON Nurse Practice Committee, the staff of the ND Department of Human Services which included the Managed Care, Medical Services Division and the Special Assistant Attorney General of the Board of Nursing and Legal Services of the NDDHS. The result of this collaboration is the proposed rules.

All written and oral testimony is in support of the proposed changes. AARP North Dakota provided written support of the proposed changes to NDAC Chapter 54-05-04, Standards for Delegation, and Article 54-07 Unlicensed Assistive Person. A representative of the ND Department of Human Services recommended additional language for Chapter 54-05-04 Standards for Assignment and Delegation, Section 54-05-04-01 Statement of Intent, Section 54-05-04-03 Delegation process for nursing interventions, and Article 54-07 Unlicensed Assistive Person, Section 54-05-04-04 Medicaid recipient directed care. The NDDHS suggested changes would allow for appropriate administration of the attendant care and extended personal care services in the Medicaid Waiver Programs. It is important to note that an individual under the extended person care program does not have to be competent to be served under this program. No negative comments either written or oral were received by the BON.

**5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.**

The approximate cost of the rule promulgation process was \$2229.

**6. An explanation of the subject matter of the rules and the reasons for adopting these rules.** The Legislature passed an amendment to NDCC 12-60-24(O) which granted to the NDBON the authority to conduct criminal background checks (CBC) as a condition for licensure/registration and during the course of an investigation. The CBC is also a requirement for continuation in the Nurse Licensure Compact. ND joined the NLC on January 1, 2004. Also adopted revisions to chapter 10 related to the uniform requirements of the compact.

Consumer directed service providers allows for unlicensed assistive person to be competency verified providing nursing interventions for individuals directing their own care or for individuals who have a legally responsible person acting on their behalf. - NDCC 50-24.1-18.1 Personal case services – Residing at home.

**NORTH DAKOTA BOARD OF NURSING  
HEARING SUMMARY**

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The proposed new, amendments or repeal of the following:: Title 54 Board of Nursing: **NDAC Chapter 54-01-03 Definitions; Article 54-02 Nurse Licensure; Proposed new Chapter 54-02-12 Criminal History Record Checks for Licensure; Article 54-03.2 Standards for Nursing Education Programs; Article 54-04.1 Nursing Education Loans; Article 54-05 Standard of Practice; Article 54-07 Unlicensed Assistive Person; and new chapter 54-07-02.1 Criminal History Record Checks for Registration.**

| <b>Article/Chapter/<br/>Section</b> | <b>Title</b>    | <b>Purpose of Amendment</b>   |
|-------------------------------------|-----------------|---|
| Chapter 54-01-03                    | Definitions     | <ul style="list-style-type: none"> <li>• Clarification and update of language.</li> <li>• Addition and revision of definitions for assign, assignment, Criminal History Record Checks and direct/indirect supervision.</li> </ul>   |
| Article 54-02                       | Nurse Licensure | <ul style="list-style-type: none"> <li>• Clarification and update of language</li> <li>• Clarification and update of language for credentials evaluation services for foreign graduates, work authorization and recognition of nursing programs and requirements for licensure by endorsement.</li> <li>• Chapter 54-02-05 Renewal of License expanded to include limited license for renewal.</li> <li>• Clarification of section 54-02-07-04.1 regarding evidence and evaluation of treatment.</li> <li>• Addition of the authority to issue a cease and desist order. 54-02-07-12. Unlicensed assistive persons on board-recognized registries. Language revised to be permissive for investigations.</li> <li>• Chapter 54-02-10 Nurse Licensure Compact- added limitations on multistate licensure privilege and information system levels of access. Definitions added to include board and information system specific for the compact. Revisions to 54-02-10-02.1 Issuance of license by a compact state for clarification purposes.</li> </ul> |

|                                  |   |  |
|----------------------------------|---|--|
| Proposed New Chapter<br>54-02-12 | Criminal History Record<br>Checks for Licensure | <ul style="list-style-type: none"> <li>Language for the requirement of criminal history record checks for nurses, APRNs, and SPRNs.</li> </ul>   |
| Article 54-03.2                  | Standards for Nursing<br>Education Programs     | <ul style="list-style-type: none"> <li>Clarification and update of language.</li> <li>Section 54-03.2-03-05 Unqualified administration and section 54-03.2-04-08 Unqualified faculty clarified with the addition of the term "employment".</li> <li>Section 54-03.2-04-01 Faculty Responsibilities clarified. Section 54-03.2-04-04 clarified faculty qualifications. Section 54-03.2-06-07 added to the title "nursing" curriculum.</li> <li>Chapter 54-03.2-07 clarified approval status throughout and added a new section on program delivery.</li> <li>Chapter 54-03.2-08 minor changes.</li> </ul>   |
| Article 54-04.1                  | Nursing Education Loans                         | <ul style="list-style-type: none"> <li>Clarification and update of language related to qualification in section 54-04.1-02-01. Program must be accredited by USDOE recognized regional accreditation entity.</li> <li>Chapter 54-04.1-04 -01 Repayment. Added military service.</li> </ul>   |
| Article 54-05                    | Standards of Practice                           | <ul style="list-style-type: none"> <li>Clarification and update of language related to the assigning and the standards for delegation.</li> <li>Clarification of the role of the LPN and RN in assigning, assignment, and delegation.</li> <li>Section 54-05-03.1-04 added "or in a compact state" and new section related to reactivating a APRN license.</li> <li>Chapter 54-05-03.2 SPRN. Reactivating a license.</li> <li>Chapter 54-05-04 revised title by deleting "assignment". Added clarification in statement of intent.</li> <li>Repealed section 54-05-04-02. Assignment. Verbiage moved to Standards of Practice for the LPN &amp; RN respectfully and to section 54-05-04-04. Accountability and responsibility within the delegation process.</li> <li>Added a new # 5 to section 54-05-04-03. Delegation process for nursing interventions.</li> <li>NDAC section 54-05-04-06 repealed.</li> </ul> |
| Article 54-07                    | Unlicensed Assistive Person                     | <ul style="list-style-type: none"> <li>General provisions section 54-07-01-</li> </ul>   |

|                                   |   |   |
|-----------------------------------|---|---|
| <p>New Chapter<br/>54-07-02.1</p> | <p>Unlicensed Assistive Person<br/>Registry<br/>Criminal History Record<br/>Checks for and Registration</p> | <p>04 title changed to reflect current statute – NDCC section 50-24.1-18.1.</p> <ul style="list-style-type: none"> <li>Chapter 54-07-02 increased the fee for registration to \$30.00 and doubles the fee for late renewals. Clarified reactivation of a registration and added new section 54-07-02-03 Limited registration for renewal.</li> <li>Chapter 54-07-05 Medication Administration by a Medication Assistant added a new section on reactivating a registration.</li> <li>Section 54-07-05-09. Routes or types of medication administration. Added 4(d) Pre-measured injectable medication for allergic reactions; 7(b) "except oral maintenance chemotherapy.</li> <li>New section 54-07-05-11 Medication interventions that may not be delegated. Consistent with national model rules.</li> <li>Chapter 54-07-06.1. Medication Assistant Program I Requirements. Updates and clarifications throughout Chapter 54-07-07. Medication Assistant Program II Requirements. Updates and clarifications.</li> <li>Language for the requirement of criminal history record checks for UAPs &amp; Medication Assistants.</li> </ul> |
|-----------------------------------|---|---|

7. **Whether a regulatory analysis was required by North Dakota Century code (NDCC) Section 28-32-08 and whether a regulatory analysis was issued.** The board did not issue a regulatory analysis.
8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued.** The board did not issue a regulatory analysis.
9. **Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09.** None was prepared.
10. **The rules were not adopted as emergency rules.**