

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Bureau of Insurance
Umbrella-Unit: **02-031**
Statutory authority: 24-A MRS §§ 212, 4202-A(1), 4218, 4222-A, 4309
Chapter number/title: **Ch. 191**, Health Maintenance Organizations
Filing number: **2017-098**
Effective date: 7/28/2017
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Substantial portions of current Ch. 750 are obsolete in light of 2011 PL c. 90 and the federal *Affordable Care Act*. This final adoption of previously provisionally adopted rulemaking repeals the obsolete provisions while incorporating remaining relevant provisions into Ch. 191. Some updating of Ch. 191 is also provided.

Basis statement:

Pursuant to the June 7, 2016, Notice of Rulemaking, Superintendent of Insurance Eric Cioppa held a public hearing on July 7, 2016 at the Department of Professional and Financial Regulation building, 76 Northern Avenue, Gardiner, Maine. The public comment period was held open until Friday July 22, 2016 at 4:30 p.m. The federal *Affordable Care Act* (ACA) and PL 2011 c. 90 rendered substantial portions of rule Ch. 750 obsolete. The purposes of the amendments are to repeal the obsolete standards of rule Ch. 750 and to incorporate the remaining relevant standards into the current rule Ch. 191 in a manner consistent with PL 2011 c. 90 and the ACA. The changes also update rule Ch. 191 as to financial requirements for HMOs.

Fiscal impact of rule:

None.

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Bureau of Insurance

Umbrella-Unit: **02-031**

Statutory authority: 24-A MRS §§ 212, 4202-A(1), 4218, 4222-A, 4309

Chapter number/title: **Ch. 750**, Standardized Health Plans

Filing number: **2017-099**

Effective date: 7/28/2017

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule / Basis statement / Fiscal impact of rule:
See filing 2017-098 (Ch. 191) above.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Office of Securities
Umbrella-Unit: **02-032**
Statutory authority: 32 MRS §§ 16304(6-A), 16605
Chapter number/title: **Ch. 523**, Rule Regarding Short-Form Seed Capital Registrations
Filing number: **2017-093**
Effective date: 7/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of the changes to Ch. 523, the administrative rules authorized under 32 MRS §16304(6-A), Maine's crowdfunding law known as Fund-ME, is to provide issuers with more efficient registration and administration processes and to enhance investor protections. The updates repeal and replace the current Offering Circular with a simpler version that would still require the disclosures necessary to inform the Office of Securities and potential investors of the details of an offering or potential offering. The updates also repeal the Fund Impoundment Agreement and allow issuers to assume responsibility for administering impounded funds, resolving the need for an issuer to locate a depository institution willing to perform the task. The current Subscription Agreement remains unchanged. Finally, in an effort to increase investor protections, Fund-ME's minimum offering amount is raised from 30 percent to 50 percent of the total offering amount and new reporting requirements increase the information available to the Administrator and the public during the course of a Fund-ME offering.

Basis statement:

The Securities Administrator adopted changes to Ch. 523 to simplify the process of offering securities under Fund-ME, Maine's crowdfunding law found at 32 MRS §16304(6-A). The changes streamline the Offering Circular, which is the registration document issuers must complete, reduce the requirements associated with the impoundment of funds raised, increase the minimum offering amount from 30% to 50% of the total offering amount, and institute basic reporting requirements.

Fiscal impact of rule:

The changes to Ch. 523 do not alter the filing fees paid by a Fund-ME issuer. The changes are intended to make Fund-ME a more attractive option to raise capital, but increases in Fund-ME filings are expected to be relatively insignificant. Although the potential economic impact of these changes is difficult to predict or quantify, they are intended to improve access to critical capital for small businesses and start-ups that have the potential to impact Maine's economy significantly.

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Agency name: Department of Professional and Financial Regulation,
Office of Securities
Umbrella-Unit: **02-032**
Statutory authority: 32 MRS §§ 16292(2)(D), 16605
Chapter number/title: **Ch. 536**, Securities Manuals
Filing number: **2017-094**
Effective date: 7/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of the amendment to this rule is to remove Standard & Poor's from the list of "nationally recognized securities manuals" available for use with the *Maine Uniform Securities Act's* manual exemption at 32 MRS §16202(2)(D), in response to notice that Standard & Poor's is no longer publishing its securities manual, and to add to the list of nationally recognized securities manuals OTCQX and OTCQB electronic markets.

Basis statement:

The Securities Administrator changes Ch. 536 to remove Standard & Poor's from the list of "nationally recognized securities manuals" for use with §16202(2)(D) of the *Maine Uniform Securities Act* because the manual is no longer in publication, adds OTCQX and OTCQB electronic markets to the list of nationally recognized securities manuals to expand Maine investors, access to information about potential investments, and initiates an annual certification process for securities manuals.

Fiscal impact of rule:

There are no fees associated with this rule, and there is no fiscal impact associated with these changes.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers

Umbrella-Unit: **02-288**

Statutory authority: 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015 c. 414 §1 (*amending* 32 MRS §220(1)(B))

Chapter number/title: **Ch. 12**, Licensure of Architects

Filing number: **2017-017**

Effective date: 2/13/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To reflect statutory changes implemented by PL 2015 c. 414 §1, "An Act to Amend Procedures for the Licensing of Architects and Foresters," which amended the practical experience requirement for applicants for architect licenses in Maine. The previous law required these applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

Basis statement:

In 2016, legislation amended the Board's statute regarding the practical experience requirement for applicants for architect licenses in Maine (see PL 2015 c.414 amending 32 MRS §220). The previous law required applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

In this rulemaking, the Board amended Ch. 12 by eliminating language that requires applicants for an architect license in Maine to have completed practical experience of at least 3 years duration.

In addition, the Board replaced all existing references to the "Intern Development Program" with references to the "Architectural Experience Program" to mirror changes to the program made by the National Council of Architectural Registration Boards ("NCARB"). Also, NCARB has updated the guidelines incorporated by reference into the board's rules. Therefore, the Board amended Ch. 12 to reference the most recent edition of those guidelines (June 2016).

Fiscal impact of rule:

None.

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Agency name: Department of Professional and Financial Regulation,
Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers

Umbrella-Unit: **02-288**

Statutory authority: 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015 c. 414 §1 (*amending* 32 MRS §220(1)(B))

Chapter number/title: **Ch. 15**, Application for Licensure

Filing number: **2017-018**

Effective date: 2/13/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To reflect statutory changes implemented by PL 2015 c. 414 §1, "An Act to Amend Procedures for the Licensing of Architects and Foresters," which amended the practical experience requirement for applicants for architect licenses in Maine. The previous law required these applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

Basis statement:

In 2016, legislation amended the Board's statute regarding the practical experience requirement for applicants for architect licenses in Maine (see PL 2015 c.414 amending 32 MRS §220). The previous law required applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

In this rulemaking, the Board amended Ch. 15 by clarifying the requirements for examination under specific pathways to licensure. In sub-section 1 regarding architects, the Board set forth, for the different licensure pathways, the requirements that must be met in order for an applicant to obtain preliminary approval from the Board to register for the exam.

In sub-section 2 regarding landscape architects, the Board eliminated the requirement that an applicant for a landscape architect license first obtain preliminary approval from the Board to register for the exam. With no evidence that registering for the exam without prior Board approval creates any notable problem in the application process, the Board found no need for such preliminary approval.

Fiscal impact of rule:

None.

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Agency name: Department of Professional and Financial Regulation,
**Maine State Board for Licensure of Architects, Landscape
Architects and Interior Designers**

Umbrella-Unit: **02-288**

Statutory authority: 32 MRS §§ 214(1), 220(1)(B), 220(2)(B), 220-B(2) & (3); PL 2015
c. 414 §1 (*amending* 32 MRS §220(1)(B))

Chapter number/title: **Ch. 19**, Incorporation by Reference

Filing number: **2017-019**

Effective date: 2/13/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To reflect statutory changes implemented by PL 2015 c. 414 §1, "An Act to Amend Procedures for the Licensing of Architects and Foresters," which amended the practical experience requirement for applicants for architect licenses in Maine. The previous law required these applicants to complete 3 years of practical experience before sitting for the required exam, a requirement that was found to be more stringent than the requirements of most other states and thus discouraged potential applicants from becoming licensed in Maine.

Basis statement:

The Board replaced all existing references to the "Intern Development Program" with references to the "Architectural Experience Program" to mirror changes to the program made by the National Council of Architectural Registration Boards ("NCARB"). Also, NCARB has updated the guidelines incorporated by reference into the board's rules. Therefore, the Board amended Ch. 19 to reference the most recent edition of those guidelines (June 2016).

Fiscal impact of rule:

None.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Professional and Financial Regulation,
Electricians' Examining Board
Umbrella-Unit: **02-318**
Statutory authority: 32 MRS §1102-B(2)
Chapter number/title: **Ch. 120**, Electrical Installation Standards
Filing number: **2017-170**
Effective date: 11/6/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule amendment adopts the *2017 National Electrical Code* ("NEC"), National Fire Protection Association ("NFPA") 70 and replaces the 2014 NEC. Changes in the rules adopt higher, safer standards for the construction industry for electricians and addresses public safety. This amendment reduces the risk of electric shock, electrocution and fire to the general public and electricians. This amendment is being adopted in many states as a necessary safety precaution.

The amendments to Ch. 120 allow Maine to conform to the 2017 NEC, NFPA 70.

This rule amendment also adopts revisions to article 210.8(8) of the NEC which requires additional ground fault circuit-interrupter ("GFCI") protection equipment to be installed for a minority of newly constructed and renovated non-residential occupancies. The installation of GFCI protection equipment has proven to reduce the number of injuries and deaths due to electric shock, electrocution and fire.

Basis statement:

The proposed amendments to Ch. 120 adopt the *2017 National Electrical Code* ("NEC"), National Fire Protection Association ("NFPA") 70, and replace the 2014 NEC. The amendments also change various provisions of the 2017 NEC as considered desirable by the Board for application in Maine. The exceptions to the *National Electrical Code* made in this chapter do not adversely affect the public safety.

Fiscal impact of rule:

Within the scope of the entire 2017 NEC, there are changes that both increase and decrease the costs. Adopting article 210.8(B) will increase the cost to install GFCI equipment in newly constructed or newly renovated nonresidential occupancies in the specific locations listed in Article 210.8(B). The average cost to install the GFCI equipment in the specific locations affected would be \$740.00.

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Agency name: Department of Professional and Financial Regulation,
Maine Board of Dental Practice
Umbrella-Unit: **02-313**
Statutory authority: 32 MRS §§ 18324, 18379
Chapter number/title: **Ch. 14**, Rules for Use of Sedation and General Anesthesia
Filing number: **2017-128**
Effective date: 8/27/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This effort is a complete repeal and replace of the current rule for the specific purposes as follows:

- Eliminates site permits.
- Eliminates temporary permits.
- Eliminates a board-required inspection prior to issuing permits.
- Eliminates the anesthesia committee.
- Identifies a new permit type to be issued to qualifying dentists such that they can provide itinerant dental sedation and/or general anesthesia services.
- Identifies the dentist's responsibilities when either providing the sedation services or when utilizing a sedation provider (e.g. patient monitoring, equipment, drugs, documentation, certifications, and personnel requirements).
- Requires dentist applicants to self-certify compliance with the sedation rule upon application to the Board.
- Requires 14 day notification to the Board prior to providing services as sedation provider licensed by the Board.
- Permit issued by the Board to transition to a two year permit to align with the dentist licensure cycle.

Fiscal impact of rule:
N/A

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Agency name: Department of Professional and Financial Regulation,
Board of Licensure in Medicine

Umbrella-Unit: **02-373**

Statutory authority: 32 MRS §§ 3266, 3269, 3271, 3276-3278, 3280-A, 3300-D;
10 MRS §§ 8003(5)(C), 8003-E, 8011(4)

Chapter number/title: **Ch. 1**, Rules Regarding Physicians

Filing number: **2017-200**

Effective date: 12/23/2017

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the requirements and processes for physician licensure and re-licensure, including reducing the time for processing license applications by delegating decision-making to staff; improving public protection by establishing continuing clinical competency requirements and requiring physicians to notify the Board regarding certain events such as criminal arrests or licensure actions taken by other state medical boards; amending the continuing medical education (CME) required for re-licensure to 40 hours of Category I CME by eliminating the existing requirement of an additional 60 hours of Category II CME; and establishing the duties of the Secretary of the Board.

Basis statement:

This is an update to an existing rule regarding physicians. The Board first published the rule for public comment on June 14, 2017. The Board did not receive requests for a public hearing on the proposed rule, and the comment period for the rule closed on July 14, 2017. On August 8, 2017, the Board reviewed the comments received regarding the proposed rule, and voted to make several substantive changes to it. The proposed rule with substantive changes was re-published for public comment on August 30, 2017. The Board did not receive requests for a public hearing on the re-published rule, and the comment period closed on September 29, 2017. The Board received 1 comment regarding the re-published rule.

As originally proposed, the new rule: created an Emeritus License for physicians who have retired from the active practice of medicine and who do not render medical services or prescribe medication; reorganizes the existing rule; created a requirement that all applicants for an active medical license (regardless of type) must have practiced clinical medicine for at least 3 of the 12 months immediately preceding the application; required physician applicants to complete the process of verifying their core credentials through the Federation Credentials Verification Service; eliminated the 60 hours of category 2 continuing medical education currently required to renew a license in active status; established notification requirements for physicians (e.g. change of contact information); established a process by which the Board and/or staff may issue citations to physicians for failing to comply with the notification requirements; and established the duties of the Secretary of the Board. The rule as originally proposed was organized into the following 14 sections:

Section 1 defined terms used throughout the rule.

Section 2 reaffirmed the principle that a physician must hold an active license in Maine in order to practice medicine in Maine.

Section 3 established the requirements for licensure of allopathic physicians in Maine.

Section 4 established the credential verification process for allopathic physicians seeking licensure in Maine.

Section 5 established the license application process.

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Section 6 identified the specific types of medical licenses and the prerequisites for each.

Section 7 established the process for converting an inactive status license or administrative license to an active license.

Section 8 established the requirements for renewal, reinstatement and withdrawal of a license or registration.

Section 9 established fees.

Section 10 established the continuing medical education requirements.

Section 11 establishes physician notification requirements.

Section 12 established a process of issuing citations for physicians who violate the notification requirements.

Section 13 established that a violation of the Ch. 1 rule constitutes unprofessional conduct and grounds to discipline a physician's license.

Section 14 established the duties of the Secretary of the Board.

As indicated above, following review of public comments, the Board voted to make several substantive changes to the proposed rule, which included creating an additional section (Section 9 "Continuing Clinical Competency Requirements"). The substantive changes to the proposed rule included:

1. Exempting applicants for and/or registrants with an Interstate Telemedicine Consultation Registration from having to take the Maine Jurisprudence Examination;
2. Exempting certain applicants for licensure from having to complete the FCVS Credentials Verification process prior to the issuance of the license;
3. Removing the requirement that applicants for licensure demonstrate active clinical practice for at least 3 of the 12 months immediately preceding the application, and instead requiring them to demonstrate current clinical competence as required by the rule; and
4. Adding a new Section 9, which reads as follows:

SECTION 9. CONTINUING CLINICAL COMPETENCY REQUIREMENTS

1. Requirements

A. General

If an applicant has not engaged in the active practice of clinical medicine during the 24 months immediately preceding the filing of the application, the Board may determine on a case by case basis in its discretion whether the applicant has adequately demonstrated continued competency to practice clinical medicine.

B. Demonstrating Current Competency

The Board may require an applicant to submit to any competency assessment(s) or evaluation(s) conducted by a program approved by the Board. If the assessment/evaluation identifies gaps or deficiencies, the applicant must complete an educational/remedial program to address them. The Board retains the discretion regarding the method of determining continued competency based upon the applicant's specific circumstances. The methodology may include but is not limited to successful passage of examination(s), completion of additional training, and successful completion of a formal re-entry to practice program approved by the Board.

- C.** If the Board determines that an applicant requires a period of supervised practice and/or the completion of an educational or training program, the Board may at its discretion issue the applicant a probationary license pursuant to a consent agreement or issue an applicant a temporary license in conjunction with a return to practice plan.

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D. All expenses resulting from the assessment and/or any training requirements are the sole responsibility of the applicant and not of the Board.

The foregoing changes resulted in a slight re-organization of the rule into the following 15 sections:

Section 1 defines terms used throughout the rule.

Section 2 reaffirms the principle that a physician must hold an active license in Maine in order to practice medicine in Maine.

Section 3 establishes the requirements for licensure of allopathic physicians in Maine.

Section 4 establishes the credential verification process for allopathic physicians seeking licensure in Maine.

Section 5 establishes the license application process.

Section 6 identifies the specific types of medical licenses and the prerequisites for each.

Section 7 establishes the process for converting an inactive status license or administrative license to an active license.

Section 8 establishes the requirements for renewal, reinstatement and withdrawal of a license or registration.

Section 9 establishes criteria for demonstrating current clinical competence.

Section 10 establishes fees.

Section 11 establishes the continuing medical education requirements.

Section 12 establishes physician notification requirements.

Section 13 establishes a process of issuing citations for physicians who violate the notification requirements.

Section 14 establishes that a violation of the Ch. 1 rule constitutes unprofessional conduct and grounds to discipline a physician's license.

Section 15 establishes the duties of the Secretary of the Board.

Fiscal impact of rule:

Minimal.

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Agency name: Department of Professional and Financial Regulation,
Maine State Board of Nursing
Umbrella-Unit: **02-380**
Statutory authority: 32 MRS §§ 2102(2-A), 2153-A(1)
Chapter number/title: **Ch. 8**, Regulations Relating to Advanced Practice Registered Nursing
Filing number: **2017-082**
Effective date: 5/29/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Clarifies the nurse midwife scope of practice and adds the continuing education requirement for advanced practice registered nurses who prescribe opioids.

Basis statement:

The amendment to Ch. 8, *Regulations Relating to Advanced Practice Registered Nursing*, was undertaken at the request of the Certified Nurse Midwives to further clarify scope of practice for nurse midwives and to update the certification body information. Other sections of the rule were reorganized and the rule adds a provision for continuing education on the prescription of opioid medication, as required by 32 MRS §2210(4). Most substantive changes, however, were tailored to address the requests made by the Certified Nurse Midwives.

Fiscal impact of rule:

None.