**State of Maine: Notice of Agency Rulemaking – April 20, 2022**

**PROPOSALS**

AGENCY: **02-416**: Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Board of Social Worker Licensure**

CHAPTER NUMBERS AND TITLES:

***Repeal and Replace***:

**Ch. 10**: Definitions

**Ch. 11**: Advisory Rulings

**Ch. 12**: Licensure by Endorsement (*formerly* Application for Licensure)

**Ch. 13**: Licensure

**Ch. 14**: Continuing Professional Education

**Ch. 15**: Scope of Practice

**Ch. 16**: Code of Ethics and Grounds for Discipline (*formerly* Enforcement and Disciplinary Procedures)

**Ch. 17**: Record Retention Requirements

***New***:

**Ch. 18**: Telehealth

TYPE OF RULES: Routine Technical

PROPOSED RULE NUMBERS: **2022-P048** *thru* **P056**

**BRIEF SUMMARY**: The principal reasons for this proposed rulemaking are to: (1) update the board’s current rules, (2) propose rules to implement a pathway for licensure by endorsement pursuant to Public Law 2021 ch. 167, *An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions*, and (3) propose rules to implement Public Law 2021 ch. 291, *An Act Regarding Telehealth Regulations*.

**DETAILED SUMMARY:** For a copy of the proposed rulemaking, please email the contact person for this filing or visit: <https://www.maine.gov/pfr/professionallicensing/professions/state-board-social-worker-licensure>.

**Ch. 10, Definitions**: The rulemaking proposes to clarify terms used to describe educational and experience requirements for licensure, to update the term “sexual misconduct” to include violations that occur during electronic communication, and to update the definition of “organic mental illness” to reflect the term as used in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*.

**Ch. 11, Advisory Rulings:** The rulemaking proposes minor, technical formatting amendments.

**Ch. 12, Licensure by Endorsement:** The rulemaking proposes to repeal and replace ch. 12, currently titled “Application for Licensure”, relocating relevant provisions to ch. 13 and replacing the rule with a newly created ch. 12, titled *Licensure by Endorsement*. This chapter describes the pathway for Maine licensure for applicants with an active license in a U.S. jurisdiction that maintains licensing requirements that are substantially similar to Maine’s requirements. This rule implements LD 149 (PL 2021 ch. 167), *An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions*.

**Ch. 13, Licensure:** The rulemaking proposes amendments to this chapter by incorporating sections relocated from the former ch. 12, *Application for Licensure*, removing submission of letters of professional recommendation from the requirements for initial licensure, clarifying which licensed professionals are qualified to provide consultation hours, amending the rule to reflect that consultation hours may be completed in person, through video or audio-only technology, or any combination thereof, and may be individual or in a group of not more than 8 members; and clarifies that “social work employment” as the term is used in rule must consist entirely of work that is compensated financially.

**Ch. 14, Continuing Professional Education:** The rulemaking proposes amendments to this chapter by incorporating a new statutory requirement pursuant to 32 MRS §7060 to complete course work in family or intimate partner violence, clarifying the retention rule for documentation of continuing education activities, and making amendments to the scope of acceptable continuing professional education activities, specifically delineating the number of hours that may be earned through sessions in which immediate interaction with the instructor is/is not available, and hours that may be earned through teaching, writing and/or independent study.

**Ch. 15, Scope of Practice:** The rulemaking proposes minor, technical amendments to clarify the terminology used to describe the different categories of licenses described therein.

**Ch. 16, Code of Ethics and Grounds for Discipline:** The rulemaking proposes to amend ch. 16, currently titled *Enforcement and Disciplinary Procedures*, by amending the title to *Code of Ethics and Grounds for Discipline*. The proposed amendments would omit the procedures for imposing discipline and conduct of adjudicatory hearings that are contained elsewhere in Maine law, namely in Title 10 §8003 and Title 5 ch. 375. The proposed amendments clarify what activities considered “misconduct,” incorporate by reference the *Code of Ethics* adopted by the National Association of Social Workers (NASW), approved by the 1996 NASW Delegate Assembly and revised by the NASW Delegate Assembly in 2020, © 2021, and amends what conduct is considered “sexual misconduct.”

**Ch. 17, Record Retention Requirements:** The rulemaking proposes minor, technical formatting amendments to this chapter.

**Ch. 18, Telehealth:** The rulemaking proposes a new rule, ch. 18, *Telehealth*, to implement the provisions of PL 2021 ch. 291 (32 MRS §§ 7071 *et seq.*) by establishing standards of practice and appropriate restrictions for when licensees use telehealth to provide services to clients.

**PUBLIC HEARING**: N/A. *Pursuant to 5 MRS §8052(1) and §8053(3)(B), a hearing may be requested by five (5) interested persons by submitting a request in writing to contact person for this filing.*

COMMENT DEADLINE: Friday, May 27, 2022, at 5:00 p.m.

CONTACT PERSON FOR THIS FILING: Kristina M. Halvorsen, PFR-OPOR, 35 State House Station, Augusta, ME 04333. Telephone: (207) 624-8420. TTY: Maine relay 711. Email: Kristina.M.Halvorsen@Maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 7001-A, 7030(2), 7030(5), 7053, 7053-A, 7057, 7059, 7060, 7071-7075; 5 MRS §§ 8051, 9001(4); 10 MRS §8003-H.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/state-board-social-worker-licensure>.

OPOR RULEMAKING LIAISON: Kristin.Racine@Maine.gov.

**ADOPTIONS**

AGENCY: **09-137 –Department of Inland Fisheries and Wildlife (IFW)**

CHAPTER NUMBER AND TITLE: **Ch. 16**, Hunting: **16.09**, Bear Hunting: **5.**, Bear Bag and Possession Limit

ADOPTED RULE NUMBER: **2022-053**

CONCISE SUMMARY: In accordance with Public Law ch. 100, the Department has amended ch. 16 rules to establish limits on the number of bear a person may hunt and possess in a season as follows: the bag limit on bears taken by hunting is one bear per year. A person may not hunt bear after that person has killed or registered a bear by hunting during that calendar year. A person may not possess more than 2 bears in any calendar year, except a person may keep more than two legally obtained bear in that person’s home or as otherwise provided in law. To ensure consistency with 12 MRS, the rule also clarifies that the bear hunting season ends no later than November 30th. For a complete copy of these new rules, please contact the agency contact person.

EFFECTIVE DATE: April 18, 2022

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Becky Orff, Inland Fisheries, 353 Water Street - 41 State House Station, Augusta, Maine 04333. Telephone: (207) 287-5202. Email: Becky.Orff@Maine.gov.

IFW WEBSITE: <https://www.maine.gov/ifw/>.

AGENCY: **09-137 –Department of Inland Fisheries and Wildlife (IFW)**

CHAPTER NUMBER AND TITLE: **Ch. 17**, Trapping: **17.06**, Seasons and Specific Information for Trapping of Furbearing Animals: **1.**, Bear Trapping

ADOPTED RULE NUMBER: **2022-054**

CONCISE SUMMARY: In accordance with Public Law ch. 100, the Department has amended ch. 17 rules to establish limits on the number of bears a person may trap and possess in a season as follows: the bag limit on bears taken by trapping is one bear per year. A person may not trap bear after that person has killed or registered a bear by trapping during that calendar year. A person may not possess more than 2 bears in any calendar year, except a person may keep more than two legally obtained bear in that person’s home or as otherwise provided in law. For a complete copy of the rule, please contact the agency contact person.

EFFECTIVE DATE: April 18, 2022

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Becky Orff, Inland Fisheries, 353 Water Street - 41 State House Station, Augusta, Maine 04333. Telephone: (207) 287-5202. Email: Becky.Orff@Maine.gov.

IFW WEBSITE: <https://www.maine.gov/ifw/>.

AGENCY: **18-125** - Department of Administrative and Financial Services (DAFS), **Maine Revenue Services – MRS (Taxation)**

CHAPTER NUMBER AND TITLE: **Ch. 801**, Apportionment

ADOPTED RULE NUMBER: **2022-055**

CONCISE SUMMARY: MRS amends Rule 801 (“Apportionment”) to reflect recent legislative changes related to factor presence nexus thresholds that apply to tax years beginning on or after January 1, 2022, to provide a definition for affiliated group, and to make certain technical changes.

EFFECTIVE DATE: April 20, 2022

MRS CONTACT PERSON / RULEMAKING LIAISON: Alex Weber, Office of General Counsel, Maine Revenue Services, 24 State House Station, Augusta, ME 04333-0024. Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov.

MRS WEBSITE: <https://www.maine.gov/revenue/>.

AGENCY: **18-125** - Department of Administrative and Financial Services (DAFS), **Maine Revenue Services – MRS (Taxation)**

CHAPTER NUMBER AND TITLE: **Ch. 810**, Maine Unitary Business Taxable Income, Combined Reports and Tax Returns

ADOPTED RULE NUMBER: **2022-056**

CONCISE SUMMARY: MRS amends Rule 810 (“Maine Unitary Business Taxable Income, Combined Reports and Tax Returns”) to reflect recent legislative changes related to factor presence nexus thresholds that apply to tax years beginning on or after January 1, 2022, to clarify the apportionment of income tax credits among taxable corporations that are members of a unitary group, and to make certain technical changes.

EFFECTIVE DATE: April 20, 2022

MRS CONTACT PERSON / RULEMAKING LIAISON: Alex Weber, Office of General Counsel, Maine Revenue Services, 24 State House Station, Augusta, ME 04333-0024. Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov.

MRS WEBSITE: <https://www.maine.gov/revenue/>.

AGENCY: **05-071 – Department of Education (DOE)**

CHAPTER NUMBER AND TITLE: **Ch. 40**, Rule for Medication Administration in Maine Schools

ADOPTED RULE NUMBER: **2022-057** *(Final adoption, major substantive)*

BRIEF SUMMARY: This rule provides directions to public and private schools approved pursuant to 20-A MRS §2902 in the administration of medication to students during the students' attendance in school programs. It is to assist school administrative units in implementing the provision of the medication statute [20-MRS §254(5)(A-D)J that provides direction for training of unlicensed school personnel in the administration of medication, requires that students be allowed to carry and self-administer prescribed emergency medications; specifically, asthma inhalers, epinephrine auto-injectors, or prescribed medications or devices for the management of diabetes with health care provider approval and school nurse assessment demonstrating competency. It provides direction for students to use sunscreen as well as provides guidelines for schools who intend to make naloxone available in the case of suspected opioid overdose.

The Department is adopting the current amendments to the rule to comply with statutory changes related to sunscreen and naloxone and improve practices of medication administration in schools statewide.

EFFECTIVE DATE: May 12, 2022

DOE CONTACT PERSON / RULEMAKING LIAISON: Jaci Holmes, Maine Department of Education, 23 State House Station, Augusta, Maine 04333. Telephone: (207) 215-3003. Email: Jaci.Holmes@Maine.gov.

DOE WEBSITE: <https://www.maine.gov/doe/home>.

AGENCY: **05-071 – Department of Education (DOE)**

CHAPTER NUMBER AND TITLE: **Ch. 132**, Learning Results: Parameters for Essential Instruction

ADOPTED RULE NUMBER: **2022-058** *(Final adoption, major substantive)*

BRIEF SUMMARY: As part of this revision, the Health Education & Physical Education, Visual & Performing Arts, and World Languages standards have been reformatted into the newly designed Maine Learning Results structure. This structure divides each content standards into three stages of development, childhood, pre-adolescence, and adolescence. Within these stages, we have also identified the associated grade levels, elementary, middle, high school. Additionally, we have standardized the language used so that the following three descriptors mean the same for each content area. These descriptors and their corresponding definitions are:

**Strand**: A body of knowledge in a content area identified by a simple title.

**Standard**: Enduring understandings and skills that students can apply and transfer to contexts that are new to the student.

**Performance Expectation**: Building blocks to the standard and measurable articulations of what the student understands and can do.

EFFECTIVE DATE: May 12, 2022

DOE CONTACT PERSON / RULEMAKING LIAISON: Jaci Holmes, Maine Department of Education, 23 State House Station, Augusta, Maine 04333. Telephone: (207) 215-3003. Email: Jaci.Holmes@Maine.gov.

DOE WEBSITE: <https://www.maine.gov/doe/home>.

AGENCY: **10-148** - Department of Health and Human Services (DHHS), **Office of Child and Family Services (OCFS)**

CHAPTER NUMBER AND TITLE: **Ch. 34** *(New)*, Child Care Provider (Child Care Facilities and Family Child Care Providers) Background Check Licensing Rule

ADOPTED RULE NUMBER: **2022-059** *(Final adoption, major substantive)*

CONCISE SUMMARY: The Department of Health and Human Services (the “Department”) finally adopts major substantive rule 10-148 CMR ch. 34, *Child Care Provider (Child Care Facilities and Family Child Care Providers) Background Check Licensing Rule*.

This is a major substantive rule pursuant to 22 .RS §8302-A(1),(2). On September 25, 2020, the Commissioner adopted a substantively identical rule on an emergency basis. However, pursuant to 5 MRS §8073, that emergency rule expired on September 24, 2021. In order to avoid a lapse in the legal application of the rule, the Department provisionally adopted ch. 34 on September 17, 2021 and proposed the rule with a legal applicability date of September 25, 2021. This major substantive rule has been reviewed and approved by the legislature (LD 1865 (130th Legis. 2021)) with an emergency resolve effective March 16, 2022. Resolves 2021 ch. 130.

The final rule makes no substantive changes to the rule provisionally adopted September 17, 2021. This rule adds requirements to pre-employment and pre-licensure comprehensive background checks for Child Care Providers to include:

* Mandatory fingerprinting with search of the Federal Bureau of Investigation (FBI) and State Bureau of Identification (SBI) as well as, the National Crime Information Center (NCIC) National Sex Offender Registry.
* Searching state criminal repositories, state child abuse and neglect registries/databases and state sex offender registries in each state where the individual has resided in the previous five years.
* Prescribing specific disqualifying offenses for determining whether an individual is deemed eligible or ineligible to work for or as a licensed child care provider.
* Requiring (1) all current and prospective staff members, (2) all adult household members in a family child care, and (3) any other individual whose activities involve the care or supervision of children or who has unsupervised access to children to receive a qualifying result pursuant to a comprehensive background check under the rule.

EFFECTIVE DATE: May 12, 2022

OCFS CONTACT PERSON: Janet Whitten, Program Manager, Office of Child and Family Services, Children’s Licensing and Investigation Services, 2 Anthony Avenue - 11 State House Station, Augusta, ME 04333-0011. Telephone: (207) 287-7068. TTY users call Maine relay 711. Email: Janet.Whitten@Maine.gov.

OCFS WEBSITE: <https://www.maine.gov/dhhs/ocfs>.

DHHS WEBSITE: <https://www.maine.gov/dhhs/>.

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