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STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
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AUGUSTA, MAINE  
04333-0035

Anne L. Head  
Commissioner

## MEMORANDUM

To: Senator Chip Curry  
Representative Tiffany Roberts  
Members of the Joint Standing Committee on Innovation, Development, Economic  
Development Advancement and Business.  
c/o Rachel Olsen, OPLA Analyst

From: Anne Head, Director, DPFR Office of Professional and Occupational Regulation

Date: December 22, 2021

Re: Response to the IDEA Committee's Letter Dated June 7, 2021

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Thank you for the opportunity to share with you our progress on implementing [LD 149](#), *An Act To Facilitate Licensure for Credentialed Individuals from Other Jurisdictions*, which became effective on October 18, 2021. Implementation of LD 149 is one of OPOR's highest priorities.

### OPOR Structure

For general context, OPOR is structured and staffed as follows:

OPOR has 37 boards, commissions, and licensing entities. Those 37 boards and commissions are staffed by six (6) program managers who are each assigned between 6-9 programs and one staff attorney who supports the entire agency.

Program managers are responsible for board administrative functions for each of their assigned boards including license application processing, coordination of the complaint and discipline processes, staffing board meetings, responding to legislative initiatives and questions related to their boards, and coordinating rulemaking efforts. Here is a [link](#) to OPOR's rulemaking agenda for 2021-2022.

We consider LD 149 to be one of OPOR's highest priorities. You will note, however, it is one of numerous rulemaking efforts on OPOR's regulatory agenda. And, as briefly outlined above, rulemaking is just one of each program managers' many substantive responsibilities.

OFFICES LOCATED AT: 76 NORTHERN AVENUE, GARDINER, MAINE

## Implementation of LD 149

As Director of OPOR, I am personally meeting with each OPOR licensing entity to explain the policy goal and legislative intent behind this important new law. By December 31, 2021, I will have met with 17 boards and commissions. The remaining will be briefed in early 2022.

After reviewing the laws and rules of all licensing programs, twenty of those programs will need rulemaking to implement LD 149. Thirteen of those twenty are in the process of developing a rule for board consideration prior to the required APA rulemaking process.

The “licensure by endorsement” process represents a significant shift in many licensing boards’ fundamental approach to application review for holders of out-of-state licenses. Prior to the enactment of LD 149, most licensing entities were required by law and board rule to undertake a review and assessment of an *individual* applicant’s education and training documentation to determine whether the *applicant* met Maine requirements. Under LD 149, the focus is shifted to an assessment of whether an applicant’s *out of state license* is issued by a jurisdiction whose current licensing requirements are “substantially equivalent” to Maine’s licensing requirements.

Boards need to define in rule what constitutes “substantially equivalent.” In general, substantial equivalence includes the key components of licensing requirements such as education, training, and any supervision requirements.

Staff is undertaking an extensive research effort to review other state’s licensing requirements to help boards assess “substantial equivalent[cy].” This is a time intensive undertaking as there are 37 licensing entities and 50 states. Given the project’s scope, staff are narrowing their initial research to 10 states, including neighboring states and others identified as likely home states. We are grateful to be augmenting this effort with research assistance from two interns from University of Maine School of Law, who joined the research project in November. Given the breadth of this effort, we are considering whether additional resources are necessary to support our research.

We expect that this research will also serve another important policy goal of identifying whether any Maine boards are outliers in their licensing requirements. When we find that a licensing entity is an outlier, we bring that information to a board’s attention.

## Application Timelines and Pending Applications

The Committee asked OPOR to report on application processing timelines. OPOR applications are processed quickly and efficiently by most licensing programs. Here is a [link](#) to some emails we received from grateful applicants, a copy of which is also attached.

We are working on those areas in which we are aware of backlog. In the trade unit, we had significant staffing challenges over the summer which are causing some delays in

application processing. We were able to fill one permanent position and engaged temporary staff to back fill vacancies in that unit. During the past legislative session, we worked with the HCIFS Committee to address some delays processing licensing professional clinical counselors by creating two new positions to support that unit.

It is important to note that the same staff who are responsible for the licensing application processes are also responsible for substantive responsibilities including rulemaking, legislative coordination, board and complaint oversight, adjudicatory hearings and many other state agency functions as required by statute. We are grateful for their continued dedication to manage these varied and complicated functions.

We have included as an attachment a review of *pending* applications for one of our six units. This unit includes all of the behavioral health boards and some other health boards. As you will see from that attachment, of the 833 *pending* applications related to the nine boards in that unit, 793 (95%) could not be finally processed because they are awaiting action *by the applicants* and only 40 (5%) were awaiting initial review by staff.

### **833 Total Pending Applications in Unit 5 as of 12/6/21**

- 292 (35.05%) applicants submitted *incomplete applications* which cannot be processed - applicant is immediately notified that their application is incomplete.
- 501 (60.14%) applicants have been approved for their national exam. Board must wait for applicant to schedule the exam and receive scores from the national exam organization before application can be processed and license issued.
- 40 (4.8%) applications not yet reviewed by OPOR staff. Of the nine boards, four boards have unreviewed applications where the oldest unreviewed application ranges from 14-19 days. Five boards do not have any unreviewed applications.

### **Proposed Amendments**

We also want to draw the Committee's attention to what we believe was a drafting oversight in sections 3 and 4 of LD 149. Those sections allow waivers of documentation and fees. The intent of those sections, as noted at the public hearing and work sessions, was to provide an opportunity for the Office to grant *foreign educated and trained* individuals such waivers on a case by case basis *in situations of extreme hardship* (e.g. a refugee whose documentation was destroyed because their educational institution no longer exists or an asylum seeker who cannot let their former country know their current whereabouts.) As drafted, it is not clear that these waivers are only available to foreign educated and trained applicants in the narrow circumstances of demonstrated hardship.

If the Committee agrees, we propose that the committee consider the following amendment:

*Sec. 3. 10 MRSA §8003, sub-§2-A, ¶O is enacted to read:*

*O. To exercise discretionary authority, after consultation with the appropriate licensing board, commission or personnel administering a regulatory function of the office, to waive, on a case-by-case basis **in situations of demonstrated hardship**, documentation requirements for licensure submitted by applicants for licensure educated in or with relevant experience or licensure in foreign nations and foreign administrative divisions, as long as the waiver does not reduce the requisite standards of proficiency for the licensed profession or occupation. The Director of the Office of Professional and Occupational Regulation may adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A;*

*Sec. 4. 10 MRSA §8003, sub-§2-A, ¶P is enacted to read*

*P. To exercise discretionary authority, after consultation with the appropriate licensing board, commission or personnel administering a regulatory function of the office, to waive, **on a case-by-case basis in situations of demonstrated hardship**, examination fees and license fees set pursuant to paragraph D for applicants for licensure educated in or with relevant experience or licensure in other foreign nations and foreign administrative divisions. The Director of the Office of Professional and Occupational Regulation may adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A;*

Thank you for the opportunity to share this update. We would be happy to respond to any Committee questions.