Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 §§ 4348(8), 4349(5)
Chapter number/title:	**Ch. 210** *(New)*, Standards for Pharmacy Benefits Managers
Filing number:	**2021-037**
Effective date:	2/14/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule is to implement LD 1504, "An Act To Protect Consumers from Unfair Practices Related to Pharmacy Benefits Management," enacted as PL 2019 ch. 469. This legislation specifically authorizes routine technical rules concerning network adequacy and fiduciary duties that a prescription benefit manager owes to carriers that it contracts with.

Basis statement:

In this rulemaking, Superintendent of Insurance Eric Cioppa adopts 02-031 CMR Chapter 210, "Standards for Pharmacy Benefits Managers." Pursuant to a July 29, 2020 Notice of Rulemaking, Superintendent Cioppa held a public hearing on August 20, 2020, and the public comment period was open until August 31, 2020 at 4:30 p.m. The primary purpose of the proposed rule is to implement 24-A MRS ch. 56-C (§§ 4347 through 4350-E), enacted by PL 2019 ch. 469 (LD 1504, "An Act To Protect Consumers from Unfair Practices Related to Pharmacy Benefits Management.") This legislation specifically authorizes routine technical rules concerning pharmacy benefits manager (PBM) licensure and network adequacy.

The Superintendent adopts the rule with miscellaneous, non-substantive editorial corrections, such as conforming terminology between the rule and the statute. The Superintendent also adopts the specific changes discussed below in response to comments made during the public comment period. These changes are technical in nature and do not materially change the substance of the proposed rule.

Fiscal impact of rule:

No fiscal impact on state government.

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Agency name:	Department of Professional and Financial Regulation, **Bureau of Insurance**
Umbrella-Unit:	**02-031**
Statutory authority:	24-A MRS §212; 29-A §1601(10)
Chapter number/title:	**Ch. 391**, Motor Vehicle Insurance Identification Cards
Filing number:	**2021-258**
Effective date:	12/21/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule is to implement a new provision at 29-A MRS §1601(10), in the General Financial Responsibility subchapter, requiring that motor vehicle insurance identification cards list any person excluded from coverage under a personal motor vehicle insurance policy.

Basis statement:

Superintendent of Insurance Eric Cioppa hereby amends ch. 391, "Motor Vehicle Insurance Identification Cards." This amendment updates the existing rule to conform with Public Law 2021 ch. 200, "An Act To Include Excluded Individuals on Insurance Cards." That law revises 29-A MRS §1601 and requires that motor vehicle insurance identification cards list those drivers, if any, who are specifically excluded from coverage under the policy. Because 24-A MRS §2412(7) requires the Superintendent to adopt rules that prescribe the form of insurance identification cards, an amendment to ch. 391 is necessary.

Fiscal impact of rule:

No fiscal impact on state government.

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Agency name:	Department of Professional and Financial Regulation, **Bureau of Insurance**
Umbrella-Unit:	**02-031**
Statutory authority:	24-A MRS §§ 212, 2793
Chapter number/title:	**Ch. 851** *(New)*, Clear Choice Designs for Individual and Small Group Health Plans
Filing number:	**2021-124**
Effective date:	6/8/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule is to develop health plan cost share designs for individual and small group health plans as set out in 24-A MRS §2793.

Basis statement:

The primary purpose of the proposed rule is to develop standardized health plan cost-sharing designs as set out in 24-A MRS §2793. At this time, section 2793 applies to both the individual and small group markets. However, the Legislature will be considering whether to apply Clear Choice designs exclusively to the individual market until the individual and small group markets are pooled under 24-A MRS §2792, in light of the decision to defer implementation of the pooled market until 2023.

Because Clear Choice will, in any event, be proceeding in the individual market in 2022, carriers need clarity as to what will be required. Therefore, rather than withdrawing this proposed rule until the Legislature has had the chance to act, the Superintendent is adopting the rule without making any changes at this time to provisions relating to the small group market. Those provisions will be addressed in a subsequent rulemaking, because we do not yet have statutory authority to defer the applicability of Clear Choice to the small group market until the pooled market is implemented.

Fiscal impact of rule:

No fiscal impact on state government.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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, 2517
Chapter number/title:	**Ch. 917**, Suitability in Annuity Transactions
Filing number:	**2021-128**
Effective date:	1/1/2022
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule, originally adopted in 2007, is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. The amendments adopt a best interest standard of conduct for producers and insurers and comply with Section 989J of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* by adopting standards that meet or exceed the minimum requirements of the NAIC model rule.

Basis statement:

In this rulemaking, Superintendent of Insurance Eric Cioppa adopts amendments to ch. 917, "Suitability in Annuity Transactions." Pursuant to a November 10, 2020 Notice of Rulemaking, Superintendent Cioppa held a public hearing on December 10, 2020. The public comment period was open until January 8, 2021 at 4:30 p.m.

The purpose of the proposed amendments is to adopt a best interest standard of conduct for producers and insurers and comply with Section 989J of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* by adopting standards that meet or exceed the minimum requirements of the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation.

The Superintendent adopts the rule with miscellaneous, non-substantive editorial corrections, such as conforming capitalization, misspellings, and misnumbered subsections or paragraphs. The Superintendent also adopts changes specifically in response to comments made during the public comment period. These changes are technical in nature and do not materially change the substance of the proposed rule.

Fiscal impact of rule:

No fiscal impact on state government.

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Rules Adopted January 1, 2021 to December 31, 2021
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Agency name:	Department of Professional and Financial Regulation, **Bureau of Insurance**
Umbrella-Unit:	**02-031**
Statutory authority:	24-A MRS §§ 212, 2736-C(2)(D), 2808-B(2)(D), 4319(4)
Chapter number/title:	**Ch. 942** *(New),* Rating Factors and Loss Ration Requirements for Health Plans
Filing number:	**2021-133**
Effective date:	6/28/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule is to establish standards for age rating and for compliance with medical loss ratio requirements for health plans consistent with the *Affordable Care Act.*

Basis statement:

Superintendent of Insurance Eric Cioppa hereby adopts ch. 942, "Rating Factors and Loss Ratio Requirements for Health Plans." This rule implements provisions of the Insurance Code added by PL 2019 ch. 5, *An Act To Protect Health Care Coverage for Maine Families*, incorporating various requirements of the federal *Affordable Care Act* (ACA) into Maine law. The rule adopts a uniform "age curve" *(i.e.,* a table of age rating factors) and clarifies that standards for family rating and loss ratio calculation are interpreted by the Superintendent under Maine law in the same manner as they have been interpreted under federal law through regulations promulgated by the Centers for Medicare and Medicaid Services (CMS).

Pursuant to a Notice of Rulemaking issued on December 10, 2020. Superintendent Cioppa held a public hearing on January 20, 2021, and the public comment period was open until February 5, 2021 at 4:30 p.m.

No written comments were received, and the only comment at the hearing was a question from Kristine Ossenfort, the Senior Government Relations Director at Anthem Blue Cross and Blue Shield of Maine. Anthem noted that the age curve appended to the rule is identical to the age curve currently required by CMS pursuant to the ACA, and questioned why it was necessary to codify it through rulemaking, which would make it more difficult to change the state age curve if the federal age curve were revised in the future.

Bureau staff explained that 24-A MRS §2736-C(2)(D) expressly requires the Superintendent to "adopt rules establishing a uniform age curve that is substantially similar to the age curve in effect on January 1, 2019 under the federal *Affordable Care Act.*" A similar rulemaking requirement for small group age rating is set forth at 24-A MRS §2808-B(2)(D). The rule was therefore adopted as proposed.

Fiscal impact of rule:

No fiscal impact on state government.