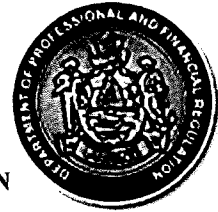




Janet T. Mills
Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL &
FINANCIAL REGULATION
OFFICE OF PROFESSIONAL AND OCCUPATIONAL REGULATION



Joan F. Cohen
Commissioner

**TESTIMONY OF
PENNY VAILLANCOURT, DEPUTY COMMISSIONER**

NEITHER FOR NOR AGAINST L.D. 1128

“An Act to Modernize the Formulary for Naturopathic Doctors”

Sponsored by Representative Cassie Lynn Julia

**BEFORE THE JOINT STANDING COMMITTEE ON
HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES**

Public Hearing: April 3, 2025, 1:00 p.m.

Good afternoon, Senator Bailey, Representative Mathieson, and Members of the Committee. My name is Penny Vaillancourt, Deputy Commissioner of the Department of Professional and Financial Regulation and I am here on behalf of the Office of Professional and Occupational Regulation (“OPOR”) testifying neither for nor against L.D. 1128.

This bill seeks to expand the scope of practice of a naturopathic doctor to include testosterone, which is a Scheduled III controlled substance and expands the formulary to allow the board to consider synthetically produced substances and their salts having identical or substantially identical molecular structure to a plant or animal substance to be naturally occurring plant or animal substances. OPOR is not taking a position on the bill but notes the following for your consideration.

We believe that the proposal triggers a Sunrise Review pursuant to Title 32 Chapter 1-A (2). A Sunrise Review is triggered when a bill proposes licensing a previously unregulated profession or when there is a *substantial expansion* of regulation of a regulated professional. There will be a corresponding fiscal note to reflect costs associated with special contracting services for a study.

If the committee were to move forward on the bill as drafted, then OPOR offers the following considerations. The bill:

- Eliminates from the medicines and therapies scope of practice the word “natural” from “natural antibiotics.” “Natural antibiotics” means antimicrobial, antifungal and antiprotozoal agents that are naturally occurring substances or are manufactured substances that are substantially identical to those naturally occurring substances. By eliminating the word “natural” it suggests that non-natural antibiotics and topical medicines may be prescribed by naturopathic doctors.
- Allows a naturopathic doctor to order diagnostic imaging.
- Removes the prohibition against a naturopathic doctor prescribing psychotropic medications.

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- Changes the composition of the Board's "formulary subcommittee" to be eliminate the pharmacy board member position – which reflects the change in the composition of the board pursuant to Public Law 2015, c. 502 §6. While PL 2015, c. 502 changed the composition of the board it did not also amend the composition of the formulary subcommittee which continues to reference the non-existent pharmacy board member.
- Proposes a formulary subcommittee composed of two naturopathic doctors appointed by the board; one licensed allopathic or osteopathic physician, appointed jointly by the Boards of Licensure in Medicine and Osteopathic Licensure; one licensed pharmacist appointed by the Board of Pharmacy; and a person who has an advanced degree in pharmacology or pharmacognosy.

While it makes sense to update the makeup of the subcommittee, we have the following concerns:

- Page 2, beginning on line 39 the bill uses the word "adoption". As drafted, it appears as though the *subcommittee* "adopts" the formulary. The bill should be clarified that the subcommittee can recommend changes but that only the Board is authorized by law to adopt rules.
- The physician appointment by BOLIM and Osteo should clarify that the appointment is from within the board membership not from any licensee. If the intent is to allow an appointment at large then it would be more appropriate to have the associations make the appointment.
- The bill proposes two pharmacist members on the subcommittee, one of whom is appointed by the members of the subcommittee. It is unclear why there needs to be two pharmacist members and why one would be chosen by the subcommittee - which could lead to bias.
- The subcommittee members' participation should be based on an annual selection as opposed to a 3-year appointment and succession. based on how board members are appointed by the Governor to serve on a board.
- The subcommittee should be permitted to select their own chair and not limit the chair to only one of the naturopathic doctor subcommittee members.
- Proposes a time frame for updating the formulary and adopting rules that is not practical. The bill requires that the formulary subcommittee and the Board of CHCP to update the naturopathic doctor's formulary and adopt the updated rule no later than January 1, 2026. Considering the time to establish the formulary subcommittee, the time necessary to research and development an updated set of rules, board review and acceptance of a draft rule proposal, rulemaking in accordance with the Maine Administrative Procedures Act and compliance with major substantive rulemaking procedures adopting a revised set of rules by January 1, 2026, is implausible. A more realistic timeline might be by June 30, 2027.
- Requires the formulary subcommittee to update the formulary at least every 2 years, which is an unachievable goal given the amount of time needed to review, propose rule changes and adopt rules. One rule-making event can take anywhere from twelve to eighteen months or longer. To require that a board update rules every 2 years will likely create a perpetual motion of being in rulemaking and not realistic and suggests that the minute a rule is adopted that the subcommittee and the board immediately go into another round of rulemaking.
- Changes the formulary rulemaking from major substantive to routine technical effective January 1, 2028, and given the nature of the expansion as proposed, it is appropriate for the rulemaking to remain as substantive.

Thank you for the opportunity to comment. I would be happy to answer any questions now or at work session.