



STATE OF MAINE
BOARD OF NURSING
158 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0158

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April 30, 2021

Senator Joseph Baldacci, Senate Chair
Representative Ann Matlack, House Chair
Joint Standing Committee on State and Local Government
100 State House Station
Augusta, ME 04333-0100

RE: LD 835 “An Act To Allow Citizens To Petition Government Agencies to Repeal or Modify Occupational Regulations”

Dear Senator Baldacci, Representative Matlack, and Members of the Committee:

The State Board of Nursing (“BON”) licenses and regulates licensed practical nurses, registered professional nurses and advanced practice registered nurses in Maine. The Board is composed of 9 members – 5 actively practicing registered nurses, 1 actively practicing advanced practice registered nurse, 1 actively practicing licensed practical nurse and 2 public members. The Board’s mission is to protect the public by ensuring its licensees are, professional, ethical and competent.

The BON offers the following comments in opposition to LD 835:

Currently, the BON has 10 separate rules that address the most important aspects of its mission to protect the public. The majority of these rules were promulgated at the direction of the Legislature. The BON has endeavored to enact – whenever possible – joint rules with other licensing boards regarding the same subject area. In addition, review and updates to BON rules are typically based upon new or emerging issues or changes to national nursing standards. The Board consistently convenes task force committees to address emerging issues or changes to national nursing standards and includes stakeholders on those committees.

The BON’s rules include:

1. A rule related to nurse licensure
2. A rule related to disciplinary action and violations of law
3. A rule related to training programs and delegation by registered professional nurses of selected nursing tasks to certified nursing assistants
4. A rule regarding coordination and oversight of patient care services by unlicensed assistive health care personnel
5. A rule regarding prec licensure nursing education programs



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6. A rule related to advanced practice registered nursing
7. Advisory rulings
8. A rule regarding Intravenous therapy administration
9. A joint rule regarding office based opioid treatment
10. A joint rule regarding the use of controlled substances to treat pain

Each of these rules was promulgated pursuant to the Maine Administrative Procedure Act, which requires publication, receipt of public comments, response to public comments, and review for form and legality.

Existing Maine law, 5 M.R.S. § 8052, already requires State agencies to consider the impact of a rule and to issue a written basis statement and response to comments received regarding any proposed rule. Specific paragraphs of the law state:

4. Relevant information considered. The agency shall consider all relevant information available to it, including, but not limited to, economic, environmental, fiscal and social impact analyses and statements and arguments filed, before adopting any rule.

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments. The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

Existing Maine law, 5 M.R.S. § 8055, already permits an individual to petition a State agency to adopt or modify a rule and requires a State agency to initiate rulemaking upon receipt of a petition submitted by 150 or more registered voters of the State.

Existing Maine law, 5 M.R.S. § 8058, already allows an individual to challenge any State agency rule by filing an action in the Superior Court that alleges the rule exceeds the agency's authority, is arbitrary, capricious, an abuse of discretion or not in accordance with law.

Existing Maine law, 3 M.R.S. Chapter 35 ("State Government Evaluation Act" [GEA]), already provides for a system of periodic review of agencies of State Government. The BON submitted a report pursuant to the GEA in November 2019, which is available at:

<http://legislature.maine.gov/doc/3476>.

Thank you for the opportunity to provide these comments regarding LD 835. I would be happy to answer any questions at the work session.

Sincerely,



Kim Esquibel, PhD, MSN, RN
Executive Director