



DEPARTMENT OF

**Professional &  
Financial Regulation**

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF PROF. AND OCC. REGULATION

## *Report of the Commissioner of Professional and Financial Regulation*

**To the**

**Joint Standing Committee on  
Innovation, Development, Economic Advancement  
and Business**

**Resolve, Directing the Commissioner of Professional and  
Financial Regulation To Create a Working Group To Study  
Barriers to Credentialing**

**Submitted Pursuant to Resolve 2019, c. 79**

**March 3, 2020**

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## **Executive Summary**

Resolve 2019, c. 79 directs the Commissioner of the Department of Professional and Financial Regulation to form a Working Group to Study Barriers to Credentialing to assess barriers to professional licensure for a) skilled individuals with foreign credentials; and b) licensees of other states who apply for Maine licensure. The objective of this report is to identify those barriers and recommend ways to enable foreign-credentialed and foreign-skilled individuals and out-of-state license holders to become part of Maine's workforce and economy.

The Commissioner believes that this report provides a timely opportunity to engage in the public policy discussion on whether Maine's licensing structure presents barriers to workforce expansion. Governor Mills' recently released ten-year economic development plan identifies that growing Maine's workforce is essential to the health and strength of Maine's economy. The report calls for attracting 75,000 people to Maine's talent pool and specifically notes the essential role of in-migration to address current and future workforce shortages. Given the workforce demands noted in the economic development plan, the Commissioner urges state policy makers to embrace opportunities to modernize professional licensing laws to reflect Maine's changing demographics and workforce needs.

The Working Group identified a number of barriers for the foreign credentialed and trained, noting that the most significant challenge is the lack of English language proficiency. There was strong consensus on the need for expanded English language learning opportunities, including sector-specific language programs important for career advancement and licensure. Other barriers range from the need to simplify in language in licensing statutes and related communications to developing alternative pathways for those who may wish to use their skills at a lower level while earning the credentials or experience necessary to earn a Maine license.

The Working Group noted that Maine has a patchwork of out-of-state license portability provisions which is a product of history, national standards, and other influences and recommends a comprehensive review to identify opportunities to simplify the process. While workforce expansion is the desired goal, some states' licensing standards may be less rigorous than Maine's, so further study is recommended to assess implications, including public safety concerns.

This report identifies some actions that can be taken to simplify Maine's licensing processes for the foreign-credentialed and skilled and for out-of-state license holders. While considering reducing or removing barriers to licensure, it is important to be careful not to dilute or lower the proficiency standards themselves. Striking the right balance between protecting consumers and promoting workforce expansion and economic growth is ultimately a public policy decision for state policy makers.

## Resolve 2019, c. 79

### Resolve, Directing the Commissioner of Professional and Financial Regulation to Create a Working Group to Study Barriers to Credentialing

#### I. Introduction

Resolve 2019, c. 79 directs the Commissioner of the Department of Professional and Financial Regulation (“Commissioner”) to form a Working Group to Study Barriers to Credentialing (the “Working Group”) to assess barriers to professional licensure for a) skilled individuals with foreign credentials; and b) licensees of other states who apply for Maine licensure. The Resolve, a list of the Working Group members and meeting dates are attached as Appendix A.

The Resolve is one of several initiatives focused on expanding Maine’s workforce by identifying barriers that may impede New Mainers’ ability to enter the workforce. The Departments of Education, Labor, and Human Services have established similar working groups to study issues of concern to the immigrant community including housing, transportation, healthcare and employment placement.

The Commissioner believes that this report provides a timely opportunity to engage in the public policy discussion on whether Maine’s licensing structure presents barriers to workforce expansion. Governor Mills’ recently released ten-year economic development plan identifies that growing Maine’s workforce is essential to the health and strength of Maine’s economy. The report calls for attracting 75,000 people to Maine’s talent pool and specifically notes the essential role of in-migration to address current and future workforce shortages.<sup>1</sup> Given the workforce demands noted in the economic development plan, the Commissioner urges state policy makers to embrace opportunities to modernize professional licensing laws to reflect Maine’s changing demographics and workforce needs.

The Working Group’s scope is limited to the professional licensing entities administered by the Office of Professional and Occupational Regulation (OPOR.) A list of those licensing entities is attached as Appendix B. The study does not include licensing boards affiliated with the Department. Affiliated boards have independent regulatory authority for decision-making as well as administrative and management authority for internal processes and finances. They include the Boards of Licensure in Medicine, Osteopathic Licensure, Dental Practice, Nursing, Optometry and Professional Engineering.

OPOR is an umbrella state agency within the Department of Professional and Financial Regulation comprised of 36 licensing boards and licensing programs. OPOR and its licensing

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<sup>1</sup> “The first challenge is that Maine is among the least diverse and oldest states in the nation. More people are expected to retire than to enter the labor force in the coming decade. In the absence of greater in-migration to the state, Maine’s labor force faces a challenge of long-term decline. What are the consequences? Economists Michael LeVert and Catherine Reilly modeled the consequences of no in-migration for the Greater Portland region in 2034. They projected that in the absence of outside in-migration, the labor force would drop by 10% — and as a consequence, so would income, employment, and tax revenues. The same is true for the state as a whole.” *Maine Economic Development Strategy 2020-2029*. (p. 7)

boards and programs are established by the Legislature for the sole purpose of protecting the public by licensing qualified individuals in professional areas overseen by the agency and by imposing discipline on licensed individuals and entities to prevent harm to the public. OPOR has a full-time staff of 55 administrators, investigators and support staff and provides administrative and management structure for its licensure programs. The licensing boards within OPOR are comprised of professional and public members appointed by the Governor and others pursuant to statute. They exercise legislatively granted decision-making authority to impose discipline on licensees, when warranted, and rulemaking authority to implement legislative changes.

This report should be considered a preliminary effort to identify and address barriers to professional and occupational licensure in Maine. In developing this report, it was noted that there is still much more research to be done than was possible during the time frame of the Working Group and without the hiring of consultants and other experts to undertake a more thorough and critical evaluation. While the report acknowledges this limitation, it nonetheless offers important observations and recommendations.

## **II. Regulation of Professions and Occupations in Maine**

*“The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose.”* 10 MRS § 8008.

State regulation of professions and occupations serves the important public purpose of ensuring that the public is served by competent and honest practitioners. It is based on minimum standards of proficiency in regulated professions. State licensing principles are inherently exclusionary in that they prevent anyone who cannot satisfy minimum requirements from obtaining a license.

It is a matter of public policy whether to change the state’s approach to licensure to reflect changing demographics and workforce needs. Pursuant to the Resolve, the objective of this report is to identify barriers to licensure that exist within Maine’s licensing framework and recommend ways to enable foreign-credentialed and foreign-skilled individuals and out-of-state license holders to become part of Maine’s workforce and economy.

Occupational licensing has grown significantly over the years requiring an ever increasing number of American workers to need a license to do their work.<sup>2</sup> As of 2018, nearly 30 percent of American jobs require a license, up from less than five percent in the 1950s.<sup>3</sup> Licensing requirements vary by state and were inspired by a range of concerns including public safety, consumer protection, and other policy goals.

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<sup>2</sup> The State of Occupational Licensing: Research, State Policies and Trends; NCSL. (p. 1)

<sup>3</sup> FTC Staff Report: Policy Perspectives: Options to Enhance Occupational Licensing Portability. (p. iv)

In September 2018, the Federal Trade Commission held a nationwide roundtable to discuss ways in which states could consider reducing barriers created by state by state occupational regulation. According to a 2018 FTC Policy Staff Report,

“For some professions, occupational licensing is necessary to protect the public against legitimate health and safety concerns. But in many situations, the expansion of occupational licensing threatens economic liberty. Unnecessary or overbroad restrictions erect significant barriers and impose costs that harm American workers, employers, consumers, and our economy as a whole, with no measurable benefits to consumers or society....

In our increasingly mobile and interconnected society, state-by-state occupational licensing can pose significant hurdles for individuals who are licensed in one state but want to market their services across state lines or move to another state. The need to obtain a license in more than one state can reduce interstate mobility and practice and may even lead licensees to abandon an occupation when moving to another state. These effects fall disproportionately on licensees who are required to move frequently, such as military spouses. The challenges of multistate licensure are also particularly acute for professionals who are more likely to provide services across state lines, such as telehealth or accounting services. The deleterious effects of state-by-state licensing are not borne only by those who wish to provide services in a new state. This thicket of individual state licensing regulations can reduce access to critical services or increase their prices to ordinary consumers.”<sup>4</sup>

### **Licensing Terminology**

- **Licensure** is a *non-voluntary* process by which an agency of *government* regulates a profession. It grants permission to an individual to engage in an occupation if it finds that the applicant has attained the requisite degree of competency required to ensure the public health, safety, and welfare will be reasonably protected. Licensing is always based on the action of a legislative body. Once a licensing law has been passed it becomes illegal for anyone to engage in that occupation unless he or she has a license. The health care professions are typically licensed at the state and/or local level, but not usually at the federal level. Licensing is the most burdensome and the costliest form of state regulation of professions and occupations.
- **Certification** is the voluntary process of publicly attesting that a specified quality or standard has been achieved or exceeded. Professional certification is a *voluntary* process by which a *private, non-governmental* professional organization grants recognition to an individual who has met certain qualifications. These certification granting organizations are usually outgrowths of professional associations which create certifying agencies to identify and acknowledge those who have met a standard. It is a credential which attests that the individual has demonstrated a certain level of mastery of a specific body of knowledge and skills within the relevant field of practice.

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<sup>4</sup> FTC Staff Report: Policy Perspectives: Options to Enhance Occupational Licensing Portability. (pp. iv – 1)

Certification should not be confused with either licensing or accreditation. While each involves some type of evaluation and the awarding of some type of credential, they are quite different from one another and the terms should not be used interchangeably.

A key contrast between licensure and certification is that under a licensing law, practitioners of the licensed occupation must obtain a license in order to practice. Individuals without the required license may not practice the profession or occupation – and if they do, they are subject to fines or other penalties for the unlicensed practice of the profession or occupation. On the other hand, certification is *voluntary*. One does not have to be certified in order to practice (assuming a license is not also required.) An individual takes a certification exam because he or she wants to enjoy the benefits of certification. However, to use the title and initials copyrighted and associated with the professional certification, one must be certified.

- Accreditation is a *non-governmental* process that evaluates *institutions, agencies, and educational programs*, (i.e., institutions that grant certificates or diplomas) while certification and licensing involve individual practitioners. Accreditation is defined as the process whereby an agency or association grants public recognition to a school, institute, college, university, or specialized program of study for having met certain established qualifications or standards as determined through initial and periodic evaluations that usually involve submitting a self-evaluation report, site inspection by a team of experts, and evaluation by an independent board or commission.
- Credential is an attestation of qualification, competence, or authority issued to an individual by a third party with a relevant authority to do so. Credentials often refer to academic or educational qualifications, such as degrees or diplomas. Credentials can also refer to occupational qualifications, such as professional certificates or work experience.

### **III. Barriers to State Licensing for Foreign-Licensed and Foreign-Skilled Applicants**

#### **A. Background & Definitions**

The Working Group noted that there are two groups of individuals from other countries that face different challenges in their attempts to work toward state licensure that can delay their entry into Maine’s workforce.

1. Foreign-credentialled or foreign-licensed: This group includes individuals who have undergraduate or advanced degrees and/or hold professional licenses issued by a country outside the United States. In this report, they are referred to as “foreign-credentialled or foreign-licensed” individuals.
2. Foreign-skilled: This group includes individuals coming into the US without undergraduate degrees or professional licenses but with work experience and skill sets. They are referred to as “foreign-skilled” individuals.

## B. Barriers & Opportunities

### 1. Limited English Language Proficiency

#### a) Barrier:

The most significant barrier is the lack of English language proficiency. The expansion of English language learning is the most effective way to help New Mainers enter the workforce at a level consistent with their past education and training. English language learning opportunities need to include sector-specific English language options which are necessary for career advancement and licensure. At present there are not many sector-specific English language classes.

#### b) Opportunity:

Provide funding to expand English language learning in a variety of settings including adult education, community college, and other public education settings. While English language learning is not a function of DPFR or OPOR, we want to stress its importance to the success of foreign license applicants.

It is important to note that individuals seeking licensure need contextualized profession-based English language learning, materials and test prep courses that are specific to their field. These programs can be quite expensive. The legislature could consider providing pilot funding for contextual/profession-based ESL. New York, Michigan and California have sponsored pilot programs. More information about this type of initiative is available at:

<https://immigrationforum.org/article/upskilling-new-americans-innovative-english-training-for-career-advancement/>

### 2. OPOR Communications: Website, Licensing Statutes & Rules, Terminology

#### a) Barrier:

The Working Group identified OPOR's licensing statutes, rules and website as a barrier to foreign-credentialed and foreign-skilled applicants who seek to understand licensing information.

The OPOR website includes descriptions of the licensing process for each licensed profession. The information is detailed and difficult to navigate even for individuals whose first language is English. State regulation of professions and occupations itself is a barrier to those seeking a state license. Terminology used in many licensing statutes and rules is difficult to comprehend even for applicants that speak English fluently.

#### b) Opportunity:

Improve communications with a focus on ease of navigation and simplicity of language. All communications need to be consistent with each board's national standards.

- i. Website: The Working Group believes that OPOR's website should be revised to reflect a clear focus on licensing information from the perspective of the user rather than the regulator.

- ii. Licensing Guides: Licensing guides inform applicants about the steps necessary for licensure. The staff of Portland’s New Mainers Resource Center has developed several useful licensing guides. The Working Group would like OPOR to develop similar licensing guides for its regulated communities. Guides should be in simple English, provide understandable step-by-step instructions and explanations of terminology as well as suggestions for “alternative pathways” that may be more achievable than a state license. (See page 9 for explanation of alternative pathways.)
- iii. Include information on OPOR’s website and other OPOR communications about the Foreign Credentialing and Skills Recognition Revolving Loan Program through the Finance Authority of Maine which provides loans for up to \$700 to help pay for certain costs associated with the process of becoming work-ready while waiting for issuance of a work permit by federal immigration authorities.

### 3. Examination Language Barriers

#### a) Barrier:

Most licensing exams are owned and administered by a national entity, of which licensing boards are members. Maine has no control over these licensing exams or national entities that own them. Individual states can advocate for exam language translations, but individual states cannot, on their own, translate exams, permit the use of translation dictionaries or other translation tools.

The Commissioner is frustrated that she cannot demand that the national organizations provide translated exams or translation tools. OPOR administrators are in frequent contact with these national organizations to advocate for translations as new languages are identified. There is, however, a growing nationwide focus on integrating international applicants into state licensing processes which hopefully will result in exams offered in many additional languages.

Some Maine licensing exams are already offered in languages other than English. Currently, Barbering and Cosmetology exams are offered in Vietnamese, Korean and Spanish. The National Interstate Council of Boards of Cosmetology has indicated that in 2020, Maine written exams will be offered in Chinese, Japanese, Russian, German, Tagalog, Hindi, Mon-Khmer (Cambodian), Arabic, Persian and Laotian in addition to English. Acupuncture licensing exams are offered in Chinese and Korean; veterinarian licensing exams are offered in English and French; Alcohol and Drug Counselor licensing exams are offered in English and French; and the Massage Therapy licensing exam is offered in English and Spanish.

In certain limited circumstances depending on the licensure type, an applicant may request and receive additional time to complete an exam. For example, non-English speaking foreign applicants are provided extra time to complete Professional Counselor, Marriage and Family Therapy and Social Worker licensing exams.

While providing translated exams is a desired goal, it is important to consider the challenges to translation such as:

- Developing exams pursuant to psychometric standards which ensure the quality and fairness of each question. Any translation would need to undergo a similar rigorous evaluation.
- Vetting translators for competence and understanding of license-specific technical terms.
- Ensuring that translators only translate exam questions and do not assist with answers.
- Because of the expense of creating an exam, very few states develop their own licensing exams. In addition to the expense, state-developed exams make reciprocity with other states challenging.

b) Opportunity:

- i. OPOR administrators should continue to advocate with national exam providers to:
  - (a) Offer exams in a range of languages dominant in Maine and to provide translation services as needed.<sup>5</sup>
  - (b) Make available acceptable word-to-word dictionaries as an aid for testing. (Note that individual test takers may not be able to complete an exam within the allotted time while self-translating.)
  - (c) Offer additional time for people for whom English is not their primary language.
- ii. Encourage Maine board members to serve on federations of regulatory boards to help impact licensing requirements.

4. Credential Evaluation for Foreign Licensure Applicants

a) Barrier:

- i. The evaluation of foreign credentials is critical to determine whether an applicant meets the minimum state licensing requirements of an occupation or profession. OPOR staff do not have the capacity to evaluate

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<sup>5</sup> “Maine has very unique limited English proficient populations, particularly among our foreign skill or trained. To the extent possible, Maine should advocate to include translation of its limited English proficient populations, not just any languages... [W]e have to have realistic expectations and it is not feasible to expect exams to be translated in Lingala (from Democratic Republic of Congo and where most of our asylum seekers come from) but we certainly could request it in our top five spoken languages ...French, Somali, Spanish, Arabic and Portuguese.” Comment from Working group member Julia Trujillo Luengo, Office of Economic Opportunity, Portland.

foreign credentials, nor does it control the selection of the credentialing organization or its evaluator.

- ii. The credential evaluation process is expensive. Applicants for licensure may not have adequate resources to pay for it.
- iii. Applicants may not have official credentials to submit to the evaluation organization depending on the circumstances under which they left their home country. Many credential evaluation services require official documentation to be submitted directly from the issuing educational institution or organization in a foreign jurisdiction. OPOR does not control the processes of credential evaluation organizations.

b) Opportunity:

- i. Although most credentialing organizations require official documentation, a few may not. The National Association of Credential Evaluation Services (NACES) and its members may provide greater flexibility.
- ii. While OPOR cannot waive or impact the documentation requirements of these evaluators, OPOR is willing to advocate for flexibility.

5. Unavailability of Documentation of Applicant Education, Work Experience and Examination

a) Barrier:

Some foreign applicants have left their countries of origin under duress to escape war, religious or political persecution and other crises. Under these circumstances, applicants may not be able to produce official documents reflecting their education, work experience or foreign licensure.

b) Opportunity:

- i. Competency based evaluation: The Working Group discussed alternative methods of evaluating skill level in the absence of documentation including developing a “competency based” approach that would allow an applicant to take a skill or knowledge examination.
- ii. Discretion & Flexibility:
  - (a) Allow the Director to waive documentation requirements when it is determined that an applicant’s country of origin is a nation in conflict preventing availability of documentation, if permitted by the national organization.
  - (b) Allow the Director to issue a “provisional license” with a limited scope and duration until the applicant meets licensing requirements.
  - (c) The Working Group discussed authorizing licensing entities to exercise discretion or flexibility regarding the requirement that official transcripts be sent directly to the licensing entity from the educational institution. Michigan and Colorado have passed

legislation for cosmetology and barbering occupations that allows the department to waive documentation requirements where the department determines that applicant's country of origin is a nation in conflict preventing availability of documentation. It is important to consider that a waiver of documentation may not be appropriate for all professions and occupations.

iii. Challenges to consider include:

- (a) Licensing costs for individualized competency-based evaluation
- (b) Whether national standards would permit competency-based evaluation
- (c) Whether eliminating documentation for certain license categories poses any public safety risk

6. Licensing Standards

a) Barrier:

Most of the professional and occupational boards are required to follow the standards developed by their national organization. As state licensure programs have developed, groups of state boards regulating the same profession have grouped together as federations to standardize license requirements and licensing examinations on a national basis. For these professions and occupations, there is little to no ability to adjust or eliminate license requirements.

b) Opportunity:

Grant the Director of OPOR the flexibility to waive certain licensing requirements. The waiver authority should be accompanied by routine technical rulemaking authority to establish criteria for granting a waiver.

7. Limited Availability of Alternative Pathways

a) Barrier:

There are currently limited opportunities for alternative pathways to licensure.

An alternative pathway is an opportunity for someone who does not qualify for licensure in their field to obtain an entry-level license while developing English language competency or other skills necessary to qualify for a higher-level state license. The Working Group stressed the importance of finding opportunities to allow foreign-trained or skilled applicants to use their knowledge and experience in Maine, even at a lower level than their training or education might otherwise allow them to practice. Examples of alternative pathways include:

- i. "Entry-Level" or "Trainee" Licenses: Some professions' licensing statutes already include entry-level licenses as an alternative pathway to employment. For example, an applicant without an educational degree may qualify for an alcohol and drug counselor aide license without

experience or examination. An aide in this field would, however, be required to be employed by a service agency, identify a supervisor and work in an apprenticeship format with the service agency. Also, an individual with electrical or plumbing experience in another country may obtain a “helper” license and be employed by a journeyman or master electrician or plumber. After accumulating the required number of supervised work hours, the helper may qualify to take the journeyman examination prior to licensure as a journeyman. There are several other trainee licenses that can be obtained in the licensed trade occupations without prior experience.

- ii. Certificate Programs: Certification is a process by which a private organization recognizes individuals for meeting certain criteria established by that organization. Individuals are recognized for advanced knowledge and skills. For example, a certification program in medical assisting or medical billing and coding may be of interest to individuals with work experience in a health occupation. Many certificate programs are available in Maine in a wide variety of employment areas.

b) Opportunity:

- i. Provide OPOR licensing boards with authority to establish limited duration, limited scope “provisional” licenses for foreign-educated applicants to allow the applicant time to meet all license requirements.
- ii. Allow the Director of OPOR authority to grant provisional or temporary licenses to foreign-trained or foreign-educated applicants.

8. Definition of “Jurisdiction”

a) Barrier:

The definition of “jurisdiction” is inconsistent throughout the licensing statutes. Although many OPOR licensing statutes currently include provisions that apply to foreign-trained and educated applicants, some do not.

Opportunity:

Establish a consistent definition of “jurisdiction” in Title 10 that includes “other countries” in addition to other states and U.S. territories.

9. License Fees

a) Barrier:

License fees may act as a barrier to foreign applicants. The work of OPOR is supported by the dedicated revenue from licensing fees. OPOR license fees cannot be eliminated without impacting the ability of the agency to do its work effectively and efficiently.

The Commissioner recently concluded a comprehensive study of fees that determined that OPOR licensing fees could be reduced. Effective December 25, 2019, license fees for many OPOR licensing programs were reduced through agency rulemaking pursuant to the Maine Administrative Procedure Act.

b) Opportunity:

Continue to review license fees periodically. Authorize Director to waive license and examination fees, when appropriate. The waiver authority should be accompanied by routine technical rulemaking authority to establish criteria for granting a waiver.

#### **IV. Reducing Barriers to Maine Licensure for Out-of-State License Holders:**

##### **A. Background:**

The second directive to the Working Group was to study barriers to professional licensure that affect out-of-state license holders who apply for Maine licenses. The Legislature is concerned that the process is time-consuming and onerous for experienced practitioners who may wish to relocate to Maine. By removing or reducing barriers for out-of-state license holders, it is hoped that Maine can attract and retain experienced practitioners, particularly in high demand professions. Review of research publications and action steps taken by other states indicate that Maine is not alone in considering whether to attract licensed professionals by considering measures to accept other states' licensing standards.

Maine has a patchwork of out-of-state license portability provisions which is a product of history, national standards, or other influences. In order to be strategic and intentional the Commissioner believes we should undertake a comprehensive review of existing licensing statutes and their out-of-state licensing provisions and develop recommendations to simplify the process for out-of-state license holders to obtain a Maine license. Many states, including Maine, use a “substantial equivalency” test to determine whether out of state license applicants qualify for a license. Since licensure requirements vary state to state and program to program, the concept of “substantial equivalency” is complex and warrants further study.

It is a public policy question for state policy makers to decide whether accepting other states' licensing standards presents a public safety issue for Maine citizens. An additional public policy question is whether Maine license holders are disadvantaged if we accept out-of-state licenses from states whose standards are less rigorous or who do not recognize Maine licenses.

##### **B. Options for License Portability: Interstate License Compacts, License Recognition, License Reciprocity**

License portability is the ability to take an individual's qualifications for a license in one state and apply them for licensure in another state. There are several methods of achieving license portability which are described below<sup>6</sup>.

OPOR licensing boards already have existing statutory authority in Title 10<sup>7</sup> to adopt any of the portability methods listed below by rule. However, licensing statutes adopted by

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<sup>6</sup> Please see Appendix C for examples of portability provisions in Maine law.

<sup>7</sup> Title 10 §§ 8003(2-A)(5)(F) and (G) provide as follows:

the Legislature over the past two decades do not include consistent processes across OPOP licensing boards for evaluating an out-of-state applicant's license history. Terminology used in the statutes includes "license by endorsement," "license by comity," "license by reciprocity," and "reciprocal licensing." These terms are used interchangeably but they imply different degrees of acceptance of another state's licensees as compared to Maine's license standards. Some statutes contain none of these terms depending on the profession or occupation. Upon request, the Commissioner can share a lengthy document containing each licensing board's out-of-state license recognition provisions.

License portability options include:

1. Interstate Licensing Compacts: Interstate compacts are voluntary contracts between two or more states. Compact states agree to accept, without change, the uniform guidelines, standards or procedures negotiated by the compact's founding organization. License requirements must be the same in each compact state. Although interstate compacts may offer uniformity, stability and predictability for licensure applicants, they may also require state boards to relinquish some state authority for discipline and rulemaking to the compact organization. In Maine, the Interstate Nurse Licensure Compact and the Interstate Medical Licensure Compact have both been adopted and are in effect. Nurses and physicians licensed through the compact may practice in other states in the compact without obtaining a license in each state.

The interstate compact model may not be workable for professions whose education, experience and examination license requirements vary widely from state to state.

2. License Recognition: License recognition means that a licensing board will issue a license for individuals actively licensed and in good standing in another state. The Board of Funeral Services and the Barbering and Cosmetology Licensing Program are among the Maine licensing boards that have adopted license recognition provisions. Those boards may require that out-of-state applicants pass a Maine jurisprudence exam to ensure that applicants have knowledge of relevant Maine laws. There are only two states that offer license recognition - Arizona and Pennsylvania. The rest of the states have a range of standards which may be more or less rigorous than Maine's.
3. License Reciprocity: The term "license reciprocity" typically refers to an agreement between two or more states to recognize other states' licensees.

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*(F) A bureau, office, board or commission may establish, by rule, procedures for licensees in another state to be licensed in this State by written agreement with another state, by entering into written licensing compacts with other states or by any other method of license recognition considered appropriate that ensures the health, safety and welfare of the public. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.*

*(G) Notwithstanding any other provision of law, any bureau, office, board or commission within or affiliated with the department may issue a temporary license for a period of 6 months and waive all licensing requirements, except for fees, to any applicant upon a showing of current, valid licensure in that profession in another state.*

Such agreements are based on consensus analysis that the two states' licensing requirements are substantially similar. License reciprocity allows candidates who hold an out-of-state license to earn a license in a receiving state, subject to meeting state-specific requirements. Currently, the Electricians' Examining Board (EEB) maintains reciprocity agreements with New Hampshire and Vermont for master electrician licenses. The EEB also maintains reciprocity agreements with New Hampshire, Vermont, North Dakota, Idaho, Oregon and Wyoming with respect to journeyman licensing. On the other hand, Massachusetts does not recognize Maine's electrician licenses on a reciprocal basis because Massachusetts believes their licensing standards are more rigorous than Maine's. Reciprocity may be viewed as inefficient today because of the time it takes to work out the terms of reciprocity agreements and because they don't always eliminate state specific requirements.

### **C. Barriers to Maine Licensure for Licensed Out-of-State Applicants:**

#### 1. Licensing Timeframes: "Pending to Active"

##### a) Barrier:

The Working Group expressed concern about the length of time between application submission and license issuance for out-of-state applicants. While OPOR agrees it is essential to process licenses as expeditiously as possible, it should be noted that application timeframes improved significantly from calendar year 2018 to calendar 2019 due to greater efficiency by OPOR staff. For more information please see Appendix D.

Processing time depends on many factors including the complexity of the application, whether required documents are submitted with the application or submitted later, whether required documents are delayed by another state's verification process, as well as factors only in an applicant's control. While OPOR can assess whether there are opportunities to make processing improvement, much of the delay is related to giving applicants sufficient time to compile needed documents and respond to questions raised once documents are filed.

Theoretically, applications from out-of-state license holders should take less time to review and approve since applicants have already submitted required materials to their home state's licensing board. However, even without the requirement to submit official documentation, an individual's license application can raise questions that need to be answered before a license can be approved.

##### b) Opportunity:

Continue to reduce the timeframe from "pending-to-active."

2. Licensing Information on OPOR Website for Out-of-State Applicants
  - a) Barrier:

The website is detailed and difficult to navigate even for individuals whose first language is English. (See Section I.B.2 for a more complete description of this barrier.)
  - b) Opportunity:

The Working group recommended that the OPOR website be improved and simplified as described in Section I.B.2. In addition, information specific to out-of-state license holders could be added.
3. License Fees
  - a) Barrier:

License fees may deter some potential out-of-state applicants. (See Section I.B.9 for a more complete description of this barrier.)
  - b) Opportunity:

As noted in Section I.B.9, the Commissioner has engaged in a comprehensive study of license fees and has reduced license fees and eliminated application fees for many professions and occupations. OPOR's current fee rule can be found at <https://www.maine.gov/sos/cec/rules/02/chaps02.htm> under 02 041 Office of Professional and Occupational Regulation, Ch. 10. Please note that license fees are dedicated revenue that support each individual licensing program.
4. Varying Standards for License Portability
  - a) Barrier:

As described in Section II.C above, there are various models for license portability. This patchwork of out-of-state license recognition is a product of history, national standards or other influences.
  - b) Opportunity:
    - i. Review existing license recognition provisions to determine reasonableness.
    - ii. Develop license recognition provisions in statute or rules where none exist.

## V. Summary of Working Group Recommendations

Striking the right balance between protecting consumers and promoting workforce expansion and economic growth is ultimately a public policy decision for state policy makers. However, while considering reducing or removing barriers to licensure, it is important to be careful not to dilute or lower the requisite standards of proficiency.

### A. Foreign-Trained, Foreign-Educated and Foreign-Skilled License Applicants

#### 1. Recommended Legislative Committee Actions:

- a) Consider appropriation for expanded English language learning opportunities including the development of contextualized/profession-based English language learning, materials and test prep courses.
- b) Consider appropriation for engaging consultants to simplify and improve OPOR's communications and to develop licensing guides.
- c) Consider the following proposed statutory amendments:
  - i. Define "jurisdiction" in Title 10 to include U.S. states, U.S. territories and other countries.
  - ii. Grant authority to Director of OPOR to waive certain licensing requirements, including documentation requirements and license fees, provided any such waivers do not dilute or lower the requisite standards of proficiency. The waiver authority should be accompanied by technical rulemaking authority to establish criteria for granting a waiver.
  - iii. Provide Director of OPOR and OPOR licensing boards authority to establish limited duration, limited scope "provisional" licenses for foreign educated/trained/skilled applicants.

#### 2. Recommended OPOR Administrative Actions<sup>8</sup>:

(may need legislative appropriations or statutory changes)

- a) Engage consultants to reformat and reorganize OPOR websites to redesign the site for ease of navigation and simplicity of language. Focus on licensing information important to foreign-credentialed and skilled applicants.
- b) Engage consultants to develop licensing guides to provide understandable step-by-step instructions and explanations of terminology. These guides should include information about alternative pathways, if available, such as certificate programs.
- c) Require OPOR staff and board members to take Cultural Diversity Equity and Inclusion training.

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<sup>8</sup> At the direction of the Commissioner, OPOR licensing boards have already taken actions to address barriers. Please see Appendix E for examples of OPOR's proactive efforts.

- d) OPOR administrators should continue to advocate with national exam providers to:
  - i. Offer exams in a range of languages dominant in Maine and to provide translation services as needed.
  - ii. Make available acceptable word-to-word dictionaries as an aid for testing. (Note that individual test takers may not be able to complete an exam within the allotted time while self-translating.)
  - iii. Offer additional time for non-native English speakers

3. Recommended OPOR Licensing Boards Actions:

- a) Develop greater flexibility in rules to allow for alternatives when an applicant's documents are legitimately unavailable, if permitted by national standards.
- b) Encourage its members to serve on federations of regulatory boards to help impact licensing requirements.
- c) Explore the development of competency-based approaches to evaluating foreign applicant education and training.

Note that there are very few competency-based models in other states because:

- i. Significant financial resources are required to develop alternatives to standard examinations.
- ii. Licensing costs for individualized evaluations would be significant.
- iii. Eliminating documentation for certain license categories may pose public safety concerns.
- iv. National federations would need to be willing to accept a competency-based evaluation.

**B. Out-of-State License Holders**

1. Recommended Committee Action:

Support appropriation for studies to assess out-of-state license holder recognition methods.

2. Recommended OPOR Administrative Actions:

- a) Reorganize board websites to provide helpful information for out-of-state licensees applying for Maine licenses.
- b) Review each program's current licensing processes to ensure they offer a reasonable process for actively practicing out-of-state license applicants who do not have any current or past disciplinary actions, to obtain a Maine license.
- c) Continue to reduce the timeframe from "pending to active."

**VI. Consideration of LD 397, “Resolve, Directing the Commissioner of Professional and Financial Regulation To Conduct a Sunrise Review Regarding the Proposal To License Building Contractors, Insulation Installers and Energy Auditors”**

The Committee requested that the Commissioner consider LD 397, “Resolve, Directing the Commissioner of Professional and Financial Regulation To Conduct a Sunrise Review Regarding the Proposal To License Building Contractors, Insulation Installers and Energy Auditors” as part of this report. The Commissioner apologizes and regrets that it was not possible to conduct a sunrise review within the timeframe set for submission of this report and in the context of the two other sunrise reviews requested by the Committee this year.

In the event the Committee wishes to request such a sunrise review in the future, the Department will engage an appropriate consultant to conduct a review. A fiscal note for the cost of the study would be necessary. The Commissioner also recommends that the proponents include a well-developed legislative proposal for analysis. Without such a proposal, a sunrise review is not meaningful.

## **Appendix A: Resolve 2019, c. 79; Working Group Members; Meeting Dates**

### **Resolve, Directing the Commissioner of Professional and Financial Regulation To Create a Working Group To Study Barriers to Credentialing**

**Sec. 1 Commissioner of Professional and Financial Regulation to create a working group to study credentialing. Resolved:** That the Commissioner of Professional and Financial Regulation shall create a working group to study barriers to credentialing of:

1. Skilled individuals who have foreign credentials; and
2. Holders of professional and occupational licenses in other states.

The commissioner shall appoint to the working group no fewer than 8 and no more than 10 persons who represent licensing boards and professional organizations served by the licensing boards of professions in the State for which there is a need for and an opportunity to credential skilled individuals with foreign credentials and those with out-of-state licenses. The working group shall consider and develop recommendations for alternative pathways for skilled individuals with foreign credentials to be credentialed in the State and shall review options for license portability for out-of-state licensees.

**Sec. 2 Report. Resolved:** That, by January 15, 2020, the working group created pursuant to section 1 shall submit a report of the working group's progress along with any recommendations and suggested legislation to the Commissioner of Professional and Financial Regulation. The commissioner shall submit the report with any recommendations and suggested legislation to the Joint Standing Committee on Innovation, Development, Economic Advancement and Business by February 15, 2020. The committee may report out a bill relating to the subject matter of the report to the Second Regular Session of the 129th Legislature. In the event the working group or the commissioner requires additional time to complete the work, the Joint Standing Committee on Innovation, Development, Economic Advancement and Business may extend the reporting deadline.

#### **Working Group Members:**

Representative Denise Tepler

Representative Victoria Morales

Sally Sutton - New Mainers Resource Center, Director

Anita St. Onge - Portland Adult Education, Director

Linda Butler - LCSW, Chair, Board of Social Worker Licensure

Carrie Yardley, Esq. - Attorney

Auta Main - Department of Labor, Director of Veterans' Programs

Stephanie Fyfe - Department of Education, Certification Director

Kristina Halvorsen - OPOR Health Board Administrator

Geraldine Betts - OPOR Health Board Administrator

Ann Tucker - Greater Portland Health, Exec. Director

Julia Trujillo Luengo - Portland Office of Economic Opportunity, Director

Joan Cohen, Department of Professional and Financial Regulation, Deputy to the Commissioner

**Community advisors:**

Mufalo Chitam - Maine Immigrants' Rights Coalition, Director

Alain Nahimana - Immigrant Welcome Center, Portland, Exec. Director

**Consultants:** Julia Trujillo Luengo, Portland Office of Economic Opportunity

Michael Zimmer, World Education Service

**Facilitator:** Anne Head, Department of Professional and Financial Regulation

**Meeting Dates:** August 28, October 2, November 13, 2019, 2-4 pm at Gardiner Annex

## **Appendix B: OPOR Licensing Boards and Programs**

### Boards

Board of Accountancy  
Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers  
Board of Licensure of Auctioneers  
Board of Chiropractic Licensure  
Board of Complementary Health Care Providers  
Board of Licensing of Dietetic Practice  
Electricians' Examining Board  
Board of Licensure of Foresters  
State Board of Funeral Service  
State Board of Licensure for Geologists and Soil Scientists  
Board of Licensure for Professional Land Surveyors  
Manufactured Housing Board  
Nursing Home Administrators Licensing Board  
Board of Occupational Therapy Practice  
Maine Board of Pharmacy  
Board of Examiners of Physical Therapy  
Plumbers' Examining Board  
Board of Podiatric Medicine  
State Board of Examiners of Psychologists  
Radiologic Technology Board of Examiners  
Board of Real Estate Appraisers  
Board of Respiratory Care Practitioners  
State Board of Social Worker Licensure  
State Board of Alcohol and Drug Counselors  
State Board of Veterinary Medicine  
Real Estate Commission  
Board of Speech, Audiology and Hearing  
Maine Fuel Board

### Direct Administration Licensing Programs

Athletic Trainers  
Massage Therapists  
Interpreters for the Deaf and Hard of Hearing  
Charitable Solicitations  
Transient Sellers  
Barber and Cosmetology Licensing Program  
Boiler and Pressure Vessel Safety Program  
Elevator and Tramway Safety Program

January 2020

## Appendix C: OPOR Licensing Programs and License Portability (Examples)

Set forth below are specific examples of how each term is used in Maine law.

Licensure by Endorsement: The Board of Veterinary Medicine licensing statute contains a standard “license by endorsement” provision:

### **32 MRS § 4861 (Veterinarian license)**

**5. Licensure by endorsement.** *The board shall grant a license by endorsement to a veterinarian who:*

- A. Has submitted a complete application;*
- B. Has paid the examination and license fee as set under section 4863-A;*
- C. Holds a valid license issued by another state, United States territory, province of Canada or other jurisdiction;*
- D. (RP).]*
  - D-1. Has successfully passed an examination pursuant to subsection 1-A pertaining to the practice of veterinary medicine as determined by board rule. The board may require the applicant to submit to an examination covering the laws and rules pertaining to the practice of veterinary medicine in this State; and*
- E. Has actively practiced clinical veterinary medicine for 3,000 hours during the 3 years preceding application.*
- F. (RP).]*

*Notwithstanding this subsection, the board shall waive the requirement that a veterinarian pass an examination for veterinarians who have, during the 6 years preceding the application, actively practiced clinical veterinary medicine for at least 6,000 hours without disciplinary action relating to the practice of veterinary medicine by another state, United States territory or province of Canada.*

Endorsement provisions may require submission of documents from an out-of-state licensing authority to verify the applicant’s active license, disciplinary history and exam scores. In most cases, licensure by endorsement does afford an out-of-state applicant a streamlined licensing process. However, endorsement favors out-of-state licensees who are actively practicing their profession in another state at the time of application to a Maine board. Applicants who have not engaged in active practice prior to applying may be required to take a state-specific examination to prove their practice competency.

License Reciprocity: One of the few licensing statutes that includes license reciprocity is that of Electricians’ Examining Board which maintains reciprocity agreements with New Hampshire and Vermont for master electrician licenses and with New Hampshire, Vermont, Washington State, Wyoming, Oregon, North Dakota, and Idaho for journeymen licenses. Although this arrangement may seem straightforward, each state maintains different requirements within the reciprocal agreement and so the process is inefficient.

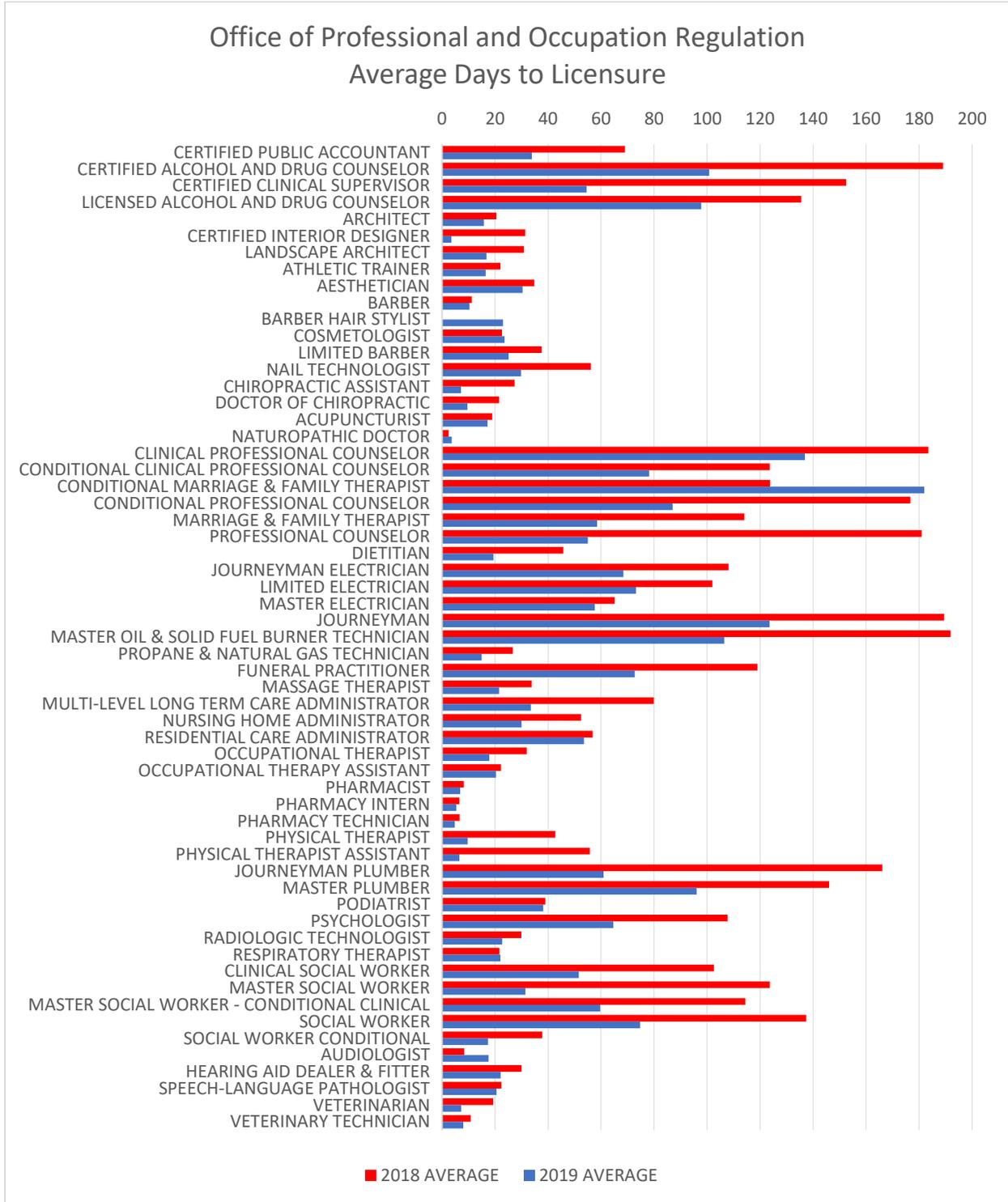
Reciprocal Licensing: Some statutes use the phrase “reciprocal licensing” but it simply means that the board will accept out of state applications using the same licensing process that is used to review applications from Maine applicants.

Licensure without Examination: This is a variation of license by endorsement found in the statute of the Board of Social Worker Licensure.

**32 MRS §7054-A. *Licensure without examination***

*A person holding a certificate of registration or license under the laws of another state, territory or possession of the United States, the District of Columbia or of any foreign country that is the equivalent of a license as a licensed clinical, licensed master or licensed social worker under this chapter who meets the requirements of this chapter, based upon verified evidence may, upon application, be licensed without further examination.*

**Appendix D: Licensing Statistics “Pending to Active” Comparison 2018 to 2019**



## Appendix E: Proactive Work by OPOR Licensing Boards

For the past several months, the Commissioner has been working with OPOR licensing administrators to address the challenges faced by New Mainers seeking licensure. As a result of those discussions and the state's interest in growing Maine's workforce, the following boards have already acted to reduce barriers:

Board of Chiropractic Licensure: Has amended its rules to automatically recognize an applicant who holds a valid license in another state with no discipline within three years of the date of the application. Amended rule below:

### **Licensure by Endorsement (amended rule in effect)**

- A. An applicant applying by endorsement providing evidence of a valid license having no practice discipline within 3 years prior to the date of the application shall be issued a license without further requirements, including any parts of the NBCE examination that were not required at the time of licensure in the other jurisdiction.
- B. If the applicant was subject to practice discipline within 3 years prior to the date of the application, the applicant must provide information as requested on the discipline imposed to be used in the determination of granting a license.

Board of Pharmacy: Has discussed eliminating the jurisprudence exam (Maine-specific exam on law and rules) for applicants. In lieu of the exam, the board could require an attestation by applicants that laws and rules have been studied.

Board of Examiners of Physical Therapy: proposes to repeal and replace §3114-B) and revise as noted below:

### **§3114-B. Endorsement; examination eligibility for out-of-state applicants and foreign applicants**

The board may issue a license to any applicant who presents proof of being licensed to practice by another state or other jurisdiction of the United States as long as no cause exists for denial of a license under section 3117-A. The board may grant a license to any applicant who presents proof of being licensed in another country that maintains professional standards considered by the board to be equivalent to or higher than those set forth in this chapter, as long as no cause exists for denial of a license under section 3117-A.

An applicant who does not hold a current license issued by another state or other jurisdiction of the United States or another country may qualify for examination if the applicant presents proof of having substantially met the education standards described in section 3114-A, section 1(B), so long as no cause exists for denial of a license under 3117-A. The board may require the applicant to demonstrate proficiency in written and spoken English.

Board of Veterinary Medicine: The board favors the following statutory amendments to reduce barriers to licensing as follows:

**32 MRS sec. \_\_\_\_\_**

**Endorsement; examination eligibility for out-of-state applicants and foreign applicants**

The board may issue a license to any applicant who presents proof of being licensed to practice by another state or other jurisdiction of the United States as long as no cause exists for denial of a license under section 4864. The board may grant a license to any applicant who presents proof of being licensed in another country that maintains professional standards considered by the board to be equivalent to or higher than those set forth in this chapter, as long as no cause exists for denial of a license under section 4864. Such an applicant must pay the fee as provided in section 4863-A.

An applicant who does not hold a current license issued by another state or other jurisdiction of the United States or another country may qualify for examination if the applicant presents proof of having substantially met the education standards described in section 4861 or 4861-A, so long as no cause exists for denial of a license under 4864. The board may require the applicant to demonstrate proficiency in written and spoken English.

Barbering and Cosmetology Licensing Program: The licensing statute for this program has already been amended to address out of state and foreign applicants:

**32 MRS §14231. Endorsement; examination eligibility for out-of-state and foreign applicants**

The director may issue a license to any applicant who presents proof of being licensed to practice by another state or other jurisdiction of the United States as long as no cause exists for denial of a license under section 14236-A.

The director may grant a license to any applicant who presents proof of being licensed in another country that maintains professional standards considered by the director to be equivalent to or higher than those set forth in this chapter, as long as no cause exists for denial of a license under section 14236-A. Such an applicant must pay the fee as provided in section 14238.

An applicant who does not hold a current license issued by another state or other jurisdiction of the United States or another country may qualify for examination if the applicant presents proof of having satisfactorily completed a course of instruction in a licensed school or approved experience as a trainee considered by the director to have standards equivalent to or higher than the standards for instruction or experience set forth by this chapter, as long as no cause exists for denial of a license under section 14236-A.