



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

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VOLUME XXXIX, Number 18, May 2, 2019

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NOTE: POSSIBLE RULE EXTENSION

If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective.

2. COMMITTEE (JLCAR)

CONTINUED MEETING: **Friday, May 3, 2019 9:00 a.m.**
Rooms 306/308, Legislative Office Building

REGULAR MEETING: **Friday, May 17, 2019 9:00 a.m.**
Rooms 306/308, Legislative Office Building

JLCAR MEETING DATES AND RELATED FILING DEADLINES MAY-JUNE, 2019

The JLCAR has voted to hold its regularly scheduled meetings for May through June, 2019 on the third Friday of the month as listed below, except as noted. The minimum 14-day “deadline” prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules* for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Fridays to address items postponed from the prior regular meetings.

Regular Meeting Filing Deadline*	Regular Meeting Date	Continued Meeting Date
--	April 26 (4 th Friday)	May 3
May 3	May 17	June 7
June 7	June 21	June 28

***NOTE:** The filing deadlines relate to JLCAR meetings pursuant to RSA 541-A. However, if a proposed interim rule is filed with a rulemaking notice for publication in the *Rulemaking Register*, be aware that Thursdays—not Fridays—remain the filing deadline under the *Drafting and Procedure Manual for Administrative Rules* to have the rulemaking notice published the following week. Therefore, filing the notice together with the proposed interim rule no later than the Thursday **before** the 14-day statutory deadline would assure that both the 14-day deadline for filing the rule and the deadline for publication in the *Rulemaking Register* would be met. See description in §3.3 of Chapter 3 of the *Drafting and Procedure Manual for Administrative Rules*.

Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2019-70	Sep 700	Board of Septic System Evaluators Approval of Pre-Licensing Education and Fieldwork.	1
2019-71	Nur 900	Board of Nursing Alternative Recovery Monitoring Program.	3
2019-72	Ph 2200	Pharmacy Board Investigations.	6
2019-73	Ph 2400	Pharmacy Board Pharmacist Initiation and Dispensing of Hormonal Contraceptives.	9
2019-74	Ph 2100	Pharmacy Board Inspections.	11

**JLCAR MEETING DATES AND RELATED FILING DEADLINES
JULY-DECEMBER, 2019**

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2019 on the third Thursday of the month as listed below. The minimum 14-day “deadline” prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
July 3 (Wednesday)	July 18	August 1
August 1	August 15	September 5
September 5	September 19	October 3
October 3	October 17	November 7
November 7	November 21	December 5
December 5	December 19	None

Notice Number 2019-70Rule Number Sep 700

1. Agency Name & Address:

**NH Board of Septic System Evaluators
c/o Office of Professional
Licensure & Certification
121 South Fruit Street
Concord, NH 03301**

2. RSA Authority: RSA 310-A:207, I(h)3. Federal Authority: n/a

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Approval of Pre-Licensing Education and Fieldwork**

6. (a) Summary of what the rule says and of any proposed amendments:

The intended action is to adopt Chapter Sep 700, which sets forth the procedures for Board approval of pre-licensing education and fieldwork programs. Proposed Sep 701.01 sets forth the basic requirements for approval of providers of pre-licensing education and fieldwork programs. Proposed Sep 701.02 sets forth the course requirements for pre-licensing classroom and filed-work providers. Proposed Sep 701.03 sets forth the procedures which providers must follow in order to obtain approval from the Board.

6. (b) Brief description of the groups affected:

This proposal affects those licensed as septic system evaluators, as well as any individuals or organizations that provide pre-licensing education and fieldwork for applicants for licensure from this Board.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute
Sep 701.01	RSA 310-A:207, I(h); RSA 310-A:210, I(a)
Sep 701.02	RSA 310-A:207, I(h); RSA 310-A:210, I(a)
Sep 701.03	RSA 310-A:207, I(h); RSA 310-A:210, I(a)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Thomas Broderick**Title: **Attorney III**Address: **121 S. Fruit Street
Concord, NH 03301**Phone #: **(603) 271-3103**Fax#: **(603) 271-0597**E-mail: **Thomas.Broderick@oplcr.nh.gov**TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

NN 2019-70 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **May 29, 2019 at the conclusion of the public hearing.**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **May 29, 2019 at 9:30 a.m.**

Place: **Office of Professional Licensure & Certification, 121 S. Fruit St.,
Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:038, dated March 22, 2019

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable as these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

To the extent citizens and independently owned businesses must comply with the pre-licensing education and **fieldwork** program requirements, they will incur additional indeterminable costs. Independently owned businesses that offer such programs will realize additional indeterminable revenues. Citizens of the state may benefit from having uniform standards that all providers of pre-licensing and fieldwork programs must follow.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

See 3. above.

C. To independently owned businesses:

See 3. above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

These rules do not violate Part I, Article 28-a of the New Hampshire Constitution. These rules do not mandate or assign this program to any political subdivision in any way.

Notice Number 2019-71Rule Number Nur 900

1. Agency Name & Address:

NH Board of Nursing
c/o Office of Professional
Licensure & Certification
121 S. Fruit Street
Concord, NH 03301

2. RSA Authority: RSA 326-B:36-a, VI(c)3. Federal Authority: n/a

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: Alternative Recovery Monitoring Program

6. (a) Summary of what the rule says and of any proposed amendments:

The intended action is to adopt chapter Nur 900, relative to the alternative recovery monitoring program. The Board is statutorily required to adopt these rules no later than July 1, 2019. See RSA 326-B:36-a. In particular, the intended action will adopt the following rules:

- Nur 901.01, relative to the purpose and scope of the rules regarding the Alternative Recovery Monitoring Program;
- Nur 901.02, relative to the definitions for Part Nur 901;
- Nur 901.03, relative to Responsibilities of the Alternative Recovery Monitoring Program;
- Nur 901.04, relative to Eligibility Criteria for licensees to be admitted to the program;
- Nur 901.05, relative to Screening and Assessment criteria;
- Nur 901.06, relative to Contracts between the licensee and the Alternative Recovery Monitoring Program;
- Nur 901.07, relative to Practice Requirements and Limitations for licensees participating in the Alternative Recovery Monitoring Program;
- Nur 901.08, relative to Program Notification Requirements, specifying the notification requirements for a licensee participating in the Alternative Recovery Monitoring Program;
- Nur 901.09, relative to Return to Work, specifying the steps and requirements for a licensee participating in the Alternative Recovery Monitoring Program to return to work;
- Nur 901.10, relative to Program Completion, specifying when a licensee participating in the Alternative Recovery Monitoring Program is deemed to have completed the program; and
- Nur 901.11, relative to Termination from the Program, listing various reasons a licensee's participation in the Alternative Recovery Monitoring Program may be terminated.

6. (b) Brief description of the groups affected:

Licensees who either voluntarily enroll in the Alternative Recovery Monitoring Program, or are ordered by the Board to do so, will be affected by these rules.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute
Nur 900	RSA 326-B:36-a; RSA 326-B:37, II(o)

NN 2019-71 Continued

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Tom Broderick** Title: **Attorney III**
Address: **121 S. Fruit Street** Phone #: **(603) 271-3103**
Concord, NH 03301 Fax#: **(603) 271-0597**
E-mail: **Thomas.Broderick@oplcr.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **May 23, 2019 at the conclusion of the public hearing.**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **May 23, 2019 at 8:00 a.m.**

Place: **Office of Professional Licensure & Certification, 121 S. Fruit St.,
Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:062, dated April 16, 2019

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable as these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed rules implement the Alternative Recovery Monitoring Program, pursuant to RSA 326-B:36-a, VI(c). The rules have no associated fees for licensees to participate in the program, which is funded pursuant to RSA 326-B:36-a, VI(b). However, licensed participants may be subject to additional unknown costs as required by the provider, such as in-patient substance abuse treatment, as a condition for staying in the program. Costs will vary based on the type of additional steps deemed necessary. Some of these costs may be covered by a licensed participant's health insurance. To the extent that an independently owned business may cover the additional cost incurred on behalf of any licensed employees, such business may pay these charges.

Licensees who participate in the program either voluntarily or as a condition of maintaining licensure will benefit from the ability to maintain such licensure and receive assistance with impairment issues that endanger their personal health and career.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

See 3. Above. No cost to political subdivisions.

C. To independently owned businesses:

See 3. Above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

These rules do not violate Part I, Article 28-a of the New Hampshire Constitution. These rules do not mandate or assign this program to any political subdivision in any way.

Notice Number	<u>2019-72</u>	Rule Number	<u>Ph 2200</u>
1. Agency Name & Address: Board of Pharmacy c/o Office of Professional Licensure & Certification 121 S. Fruit Street Concord, NH 03301		2. RSA Authority:	<u>RSA 541-A:16, I(b) intro.</u>
		3. Federal Authority:	<u>n/a</u>
		4. Type of Action:	
		Adoption	<u>X</u>
		Amendment	<u> </u>
		Repeal	<u> </u>
		Readoption	<u> </u>
		Readoption w/amendment	<u> </u>

5. Short Title: **Investigations**

6. (a) Summary of what the rule says and of any proposed amendments:

The intended action is to adopt rules to govern the Board of Pharmacy's investigation procedures under RSA 318:8-a for inspection and regulation of certain users of prescription drugs, RSA 318:14-a on drug compounding, RSA 318:30 on complaints relative to misconduct by licensees and others, and RSA 318:42 on dealing in or possessing prescription drugs.

6. (b) Brief description of the groups affected:

This proposal will affect all those licensed by the Board of Pharmacy, as well as physicians, nurse practitioners, physician assistants, naturopaths, podiatrists, optometrists, dentists, and veterinarians with prescriptive authority.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute
Ph 2201.01	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2202.01	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2202.02	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2203.01	RSA 318:30; RSA 318-B:24; RSA 318:47-h; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2204.01	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2205.01	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2205.02	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2205.03	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2206.01	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2206.02	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2206.03	RSA 318:30; RSA 318-B:24; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2207.01	RSA 318:30; RSA 318-B:24; RSA 318:29; RSA 318-B:26; RSA 318-B:36; RSA 318:8-a; RSA 318:14-a; RSA 318:42
Ph 2207.02	RSA 318:30; RSA 318-B:24; RSA 318:29; RSA 318-B:26; RSA 318-B:36; RSA 318:8-a; RSA 318:14-a; RSA 318:42

NN 2019-72 Continued

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Tom Broderick** Title: **Attorney III**
Address: **121 S. Fruit Street** Phone #: **(603) 271-3103**
Concord, NH 03301 Fax#: **(603) 271-0597**
E-mail: **Thomas.Broderick@oplcr.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **May 28, 2019 at the conclusion of the public hearing.**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **May 28, 2019 at 9:00 a.m.**

Place: **Office of Professional Licensure & Certification, 121 S. Fruit St.,
Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:067, dated April 19, 2019

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable as these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

There is no cost to proposed Ph 2201-Ph 2206.

Proposed Ph 2207.01 and Ph 2207.02 contain administrative fines and subjective criteria to be considered by the board in levying these fines, after notice and an opportunity for a hearing, that are substantively similar to existing Ph 710.01 and Ph 710.02. The only difference in cost is contained in proposed 2207.02(c), which provides that "minor violation fines shall be subject to a fine of \$25 for each offense with a maximum of \$250 **per Ph 710.01 and 710.02.**" Note: Ph 710.01 and Ph 710.02 do not contain this provision. This fine may be more or less than what any licensee may pay under the current subjective fine structure, so the cost or benefit of this new fine is indeterminable.

A. To State general or State special funds:

The board licenses 3 state pharmacies: at the Department of Corrections, New Hampshire Hospital and the State Veteran's Home. Fines may be assessed and collected from these agencies, with a potential de minimis general fund impact. Additional fine revenue will be deposited into the Office of Professional Licensure and Certification Fund pursuant to RSA 310-A:1-e, I(b).

B. To State citizens and political subdivisions:

See 3. Above.

C. To independently owned businesses:

See 3. Above.

NN 2019-72 Continued

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

These rules do not violate Part I, Article 28-a of the New Hampshire Constitution. These rules do not mandate or assign this program to any political subdivision in any way.

Notice Number 2019-73

Rule Number Ph 2400

1. Agency Name & Address:

**Board of Pharmacy
c/o Office of Professional
Licensure & Certification
121 S. Fruit Street
Concord, NH 03301**

2. RSA Authority: RSA 318:47-I, IV

3. Federal Authority: _____

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Pharmacist Initiation and Dispensing of Hormonal Contraceptives**

6. (a) Summary of what the rule says and of any proposed amendments:

The intended action is to adopt as new rules Chapter Ph 2400, relating to pharmacists dispensing hormonal contraceptives. The intended action will implement the rulemaking authority set forth in RSA 318:47-I, VI. Proposed chapter Ph 2400 will set forth: the requirements for pharmacists to be certified to dispense hormonal contraceptives, the procedures for application for and renewal of the certification, the procedures for practice and standards of practice that all pharmacists certified in dispensing hormonal contraceptives must follow, and a provision regarding immunity for pharmacists that follow the terms of standing orders that may contain a defect.

6. (b) Brief description of the groups affected:

RSA 318:47-I, II states that “licensed pharmacists following standing orders may dispense hormonal contraceptives to persons in this state without a prior prescription.” These rules are written to implement this statute. Thus, licensees of the Board of Pharmacy are affected because if they follow the standing order of a physician, they may dispense hormonal contraceptives pursuant to these rules. The public is affected in that members of the public will have increased access to hormonal contraceptives.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute
Ph 2400	RSA 318:47-I

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Tom Broderick**

Title: **Attorney III**

Address: **121 S. Fruit Street
Concord, NH 03301**

Phone #: **(603) 271-3103**

Fax#: **(603) 271-0597**

E-mail: **Thomas.Broderick@oplcr.nh.gov**

TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

NN 2019-73 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **May 28, 2019 at the conclusion of the public hearing.**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **May 28, 2019 at 9:00 a.m.**

Place: **Office of Professional Licensure & Certification, 121 S. Fruit St.,
Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:064, dated April 16, 2019

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable as these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

Those licensees seeking to engage in the initiation of hormonal contraceptive therapy will be charged a fee of \$25 for an initial application pursuant to proposed Ph 2404.01(b)(1). As this is a new rule, the Board does not know how many licensees will be applying, therefore the revenue from this fee is indeterminable.

Licensees may also incur indeterminable incidental costs relative to participating in the program, such as having at least \$1,000,000 of professional liability insurance (Proposed Ph 2403.01(d)), establishing a separate room with 4 walls (Proposed Ph 2403.01(e)), and maintaining records (Proposed 2405.03). Businesses that employ licensees that choose to participate in this program may incur the costs of compliance with these requirements. Citizens may benefit from having such service available without needing a prior prescription.

A. To State general or State special funds:

No cost to state general funds. The additional fee revenue will be deposited into the Office of Professional Licensure and Certification Fund pursuant to RSA 310-A:1-e, I(b).

B. To State citizens and political subdivisions:

See 3. Above. No cost to political subdivisions.

C. To independently owned businesses:

See 3. Above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

These rules do not violate Part I, Article 28-a of the New Hampshire Constitution. These rules do not mandate or assign this program to any political subdivision in any way.

Notice Number 2019-74Rule Number Ph 2100

1. Agency Name & Address:

**Board of Pharmacy
c/o Office of Professional
Licensure & Certification
121 S. Fruit Street
Concord, NH 03301**

2. RSA Authority: RSA 318:5-a, IX

3. Federal Authority: _____

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Inspections**

6. (a) Summary of what the rule says and of any proposed amendments:

The intended action is to adopt rules to govern the Board of Pharmacy's inspections of licensees, as well as those listed in 6(b) below. These proposed rules are meant to implement the authority found in RSA 318:5-a, IX and respond to the Legislative Budget Office's 2015 performance audit, which can be found at [http://gencourt.state.nh.us/LBA/AuditReports/PerformanceReports/Pharmacy Inspections 2015.pdf](http://gencourt.state.nh.us/LBA/AuditReports/PerformanceReports/Pharmacy%20Inspections%202015.pdf). Proposed Chapter Ph 2100 will set forth: pre-inspection requirements, information on inspection frequency, rules on inspections depending on risk level, rules on self-inspections, inspection processes for practitioners, rules on inspection reports, and rules on violations and violation notices.

6. (b) Brief description of the groups affected:

This proposal will affect all those licensed by the Board of Pharmacy, as well as physicians, nurse practitioners, physician assistants, naturopaths, podiatrists, optometrists, dentists, and veterinarians with prescriptive authority.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute
Ph 2101.01	RSA 318:5-a, IX; RSA 541-A:16, I(b)
Ph 2102.01	RSA 318:5-a, IX; RSA 318:8-a; RSA 318:9-a; RSA 318-B:25; RSA 541-A:16, I(b)
Ph 2102.02	RSA 318:5-a, IX; RSA 318:8-a; RSA 318:9-a; RSA 318-B:25; RSA 541-A:16, I(b)
Ph 2103.01	RSA 318:5-a, IX; RSA 541-A:16, I(b)
Ph 2104.01	RSA 318:5-a, IX; RSA 541-A:16, I(b); RSA 318-B:25
Ph 2104.02	RSA 318:5-a, IX; RSA 318:8-a; RSA 318:9-a; RSA 318-B:25
Ph 2105.01	RSA 318:5-a, IX; RSA 541-A:16, I(b); RSA 318-B:25
Ph 2106.01	RSA 318:5-a, IX; RSA 541-A:16, I(b)
Ph 2106.02	RSA 318:5-a, IX; RSA 541-A:16, I(b)
Ph 2106.03	RSA 318:5-a, IX; RSA 541-A:16, I(b)
Ph 2108.01	RSA 318:5-a, IX; RSA 318-B:25; RSA 318:8-a; RSA 318:9-a; RSA 541-A:16, I(b)
Ph 2108.02	RSA 318:5-a, IX; RSA 318-B:25; RSA 541-A:16, I(b)
Ph 2109.01	RSA 318:5-a, IX; RSA 318-B:25; RSA 318:29; RSA 541-A:16, I(b)
Ph 2109.02	RSA 318:5-a, IX; RSA 318-B:25; RSA 318:29; RSA 541-A:16, I(b)
Ph 2109.03	RSA 318:5-a, IX; RSA 318-B:25; RSA 318:29; RSA 541-A:16, I(b)
Ph 2109.04	RSA 318:5-a, IX; RSA 318-B:25; RSA 318:29; RSA 541-A:16, I(b)
Ph 2109.05	RSA 318:5-a, IX; RSA 318-B:25; RSA 318:29; RSA 541-A:16, I(b)

NN 2019-74 Continued

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Tom Broderick** Title: **Attorney III**
Address: **121 S. Fruit Street** Phone #: **(603) 271-3103**
Concord, NH 03301 Fax#: **(603) 271-0597**
E-mail: **Thomas.Broderick@oplcr.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **May 28, 2019 at the conclusion of the public hearing**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **May 28, 2019 at 9:00 a.m.**

Place: **Office of Professional Licensure & Certification, 121 S. Fruit St.,
Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:066, dated April 19, 2019

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable as these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, No impact on state funds.

3. Cost and benefits of the proposed rule(s):

There is no cost associated with proposed Ph 2101-2108.

Proposed 2109.01 allows for a violation notice to be issued by a board inspector to a licensee after inspection for noncompliance with an administrative rule or federal, state, or local law related to the practice of pharmacy. Such violations will be assessed as follows:

1. Proposed Ph 2109.02 references form #ph 543 revised 11/1/2018, and lists minor violations individually with a minimum of a warning only and associated fines ranging from \$25 per violation to a maximum of \$250.
2. Proposed Ph 2109.3 references form #ph 532 revised 11/1/2018, and lists major violations with associated fines ranging from \$100 to \$5,000 per violation.
3. Proposed Ph 2109.04 subjects persons or entities to a warning letter and discipline for failure to correct a failure to properly submit information required pursuant to the Prescriptions Drug Monitoring Program.
4. Ph 2109.05 states that violations found during an inspection shall be subject to administrative fines pursuant to proposed Ph 2207.02, which is in a separate rulemaking request (FIS-067).

NN 2019-74 ContinuedExisting fine structure

Current administrative rule Ph 710.01 allows for the assessment of administrative fines or penalties under RSA 318:29, IV at the discretion of the board after notice and an opportunity for a hearing. Current administrative rule Ph 710.02 states the decision of the board to impose a fine and amount of such fine is dependent on several factors, including severity of harm to the public, number of violations and frequency of violations and numerous other factors to be considered by the board. Fines are listed within this section:

1. If no violation of the same type has occurred within 5 years preceding the board's notice to the respondent, the fine shall not exceed \$1,000 per violation per licensee and/or \$2,000 per violation upon the permit holder.
2. When a single violation of the same type has occurred in the last 5 years, the fine shall not exceed \$2,000 per violation per licensee and/or \$3,000 per violation upon the permit holder.
3. When more than one violation of the same type has occurred within the last 5 years the fine shall not exceed \$3,000 per violation per licensee and/or \$5,000 per violation upon the permit holder.
4. In the case of continuing violations, a separate fine shall be assessed for each day the violation continues, but the total amount of the fine is determined after consideration of several subjective factors, including promptness and cooperation.

Proposed fine structure

To the extent that current violations are subject to individual non-uniform board analysis and application of fines in varying amounts under existing Ph 710.01 and Ph 710.02, the application of a uniform non-discretionary fine schedule pursuant to Ph 2109.05 and proposed Ph 2207.02 may result in an indeterminable increase or decrease in overall costs associated with proposed Ph 2109.01, Ph 2109.02, 2109.03, compared to the existing authority. Proposed Ph 2109.02 also contains a designated fine for minor violations set at \$25 and alternatively allows for a warning for minor infractions, which would impose no additional cost and may benefit licensees without having to incur costs to appeal a fine or pay more for such minor infractions.

Proposed Ph 2109.04 may result in an indeterminable incremental compliance cost for failure to properly submit information to the PDMP.

A. To State general or State special funds:

The board licenses 3 state pharmacies: at the Department of Corrections, New Hampshire Hospital and the State Veteran's Home. Fines may be assessed and collected from these agencies, with a potential de minimis general fund impact. Additional fine revenue will be deposited into the Office of Professional Licensure and Certification Fund pursuant to RSA 310-A:1-e, I(b).

B. To State citizens and political subdivisions:

To the extent citizens who are licensees fail to comply with rules or laws and are inspected and subsequently fined for violations, they may incur additional costs or realize savings due to the new uniform fine schedules compared to the existing non-uniform process. No cost to political subdivisions.

C. To independently owned businesses:

To the extent independently owned businesses incur fines as the permit holder, they may incur additional costs or realize savings due to the new uniform fine schedules compared to the existing non-uniform process.

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11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

These rules do not violate Part I, Article 28-a of the New Hampshire Constitution. These rules do not mandate or assign this program to any political subdivision in any way.