



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Board of Nursing

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Regulation/Package Title (a general description of the rules' substantive content):

Technical Change Rules

Rule Number(s): 4723-1-03, 4723-2-05, 4723-4-06, 4723-6-04, 4723-6-05, 4723-6-06, 4723-14-03, 4723-25-08, 4723-26-01 and 4723-26-13.

Date of Submission for CSI Review: August 24, 2020

Public Comment Period End Date: September 8, 2020

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ 9 rules (FYR? No)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The Board proposes to amend rules 4723-1-03, 4723-4-06, 4723-6-04, 4723-6-05, 4723-6-06, 4723-14-03, 4723-25-08, 4723-26-01 and 4723-26-13, and adopt rule 4723-2-05, in order to make technical corrections (correct typographical errors, update references, delete obsolete or redundant language) or respond to legislative changes.

Amendments

Rule 4723-1-03: Updated form references for forms/applications located on the Board's website.

Rule 4-06 (A), (B): Corrected cross reference, should be to 4723.03(E), not "C".

Rules 4723-6-04, 4723-6-05, 4723-6-06: There are no changes in the rule bodies; the titles of the rules are revised to reflect changes made by HB 119, 132nd GA.

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Rule 14-03: Paragraph (F) is revised to delete language regarding proof of CE. Paragraph (J) is revised to clarify that continuing education in victims of sexual assault qualifies for the 24 hours of CE required for license renewal.

Rule 25-08: HB 188, 131st GA, changed the RN/LPN license renewal period to end October 31 rather than August 31. The rule is revised so that the NEGP funding cycle reflects this change as NEGP funds are tied to RN/LPN fee receipts.

Rules 26-01(I) and 26-13(A) and (B) are revised to clarify that instruction may be on-line rather than in the classroom. This change was requested at the November 2019 Nursing Board meeting by an interested party, Mercy College of Ohio.

New Rule 4723-2-05

SB 7, 133rd GA (ORC 4743.041), implemented a new type of temporary license for military members and spouses. This legislation was effective April 28, 2020 and required agencies to adopt rules to implement the licensing process. Proposed Rule 4723-2-05 would clarify the requirements established in Section 4743.041, ORC as applicable to temporary military licenses issued by the Nursing Board.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Ohio Revised Code (ORC) Section 4723.06, 4723.07
ORC 4743.041 (Rule 4723-2-05)
ORC 4723.28 (Rule 4723-4-06)
ORC 4723.35 (Rules 4723-6-04, 4723-6-05, 4723-6-06)
ORC 4723.24, 4723.26 (Rule 4723-14-03)
ORC 4723.063 (Rule 4723-25-08)
ORC 4723.81, 4723.83, 4723.84, 4723.87, 4723.88 (Rules 4723-26-01 and 26-13)

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
*If yes, please briefly explain the source and substance of the federal requirement.***

The answer is no to both questions as to all the rules in this package.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The question is not applicable to this package.

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6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The public purpose for the rule package is to actively safeguard the health of the public through the effective regulation of nursing education and practice.

ORC Section 4723.06 requires the Board of Nursing to approve continuing education courses; and establish a program for substance use disorder in accordance with ORC Section 4723.35.

ORC Section 4723.07 requires the Board of Nursing to adopt rules including standards for continuing education; and other rules necessary to enforce ORC Chapter 4723.

ORC 4743.41 requires the Nursing Board to adopt rules to implement temporary military licenses.

ORC 4723.063 requires the Nursing Board to establish and administer the nurse education grant program and adopt rules necessary to operate the program.

ORC 4723.88 requires the Nursing Board to adopt rules to administer and enforce ORC 4723.81 to 4723.87 including standards for community health worker training programs.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success will be measured by having clear rules written in plain language, by licensee compliance with the rules, and minimal questions from licensees and the public regarding the requirements of the rules.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

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Rule 14-03: Paragraph (J) is revised to clarify that continuing education in victims of sexual assault qualifies for the 24 hours of CE required for license renewal. CE in this topic is one of the strategies developed to assist nurses in better identifying and treating patients who may be sexual assault victims. This strategy is one identified in conjunction with the Nursing Board's work with the Governor's Strauss Working Group (Ohio Department of Public Safety).

Rules 26-01(I) and 26-13(A) and (B) are revised to clarify that instruction may be on-line rather than in the classroom. This change was requested at the November 2019 Nursing Board meeting by an interested party, Mercy College of Ohio.

On June 1, 2020, the Board posted notification on its website, with a copy of proposed rule language, to interested parties requesting feedback or comments by June 30. Interested parties included law firms/attorneys who have represented licensees in administrative hearings before the Board of Nursing; the Ohio Nurses Association (ONA), the Ohio Association of Advanced Practice Nurses (OAAPN), the Licensed Practical Nursing Association of Ohio, the Ohio Council of Deans and Directors of Baccalaureate and Higher Degree Nursing Programs (OCDD), the Ohio Organization of Practical Nurse Educators (OOPNE), the Ohio Council for Associate Degree Nursing Education Administrators (OCADNEA), the Council for Ohio Health Care Advocacy (COCHA), other associations, health care system representatives, state entities (e.g, State Medical Board, Pharmacy Board), and other stakeholders.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Rules 4723-14-03 and 4723-26-01, 26-13 are revised as an outcome of input from interested parties. No other input was received.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No specific scientific data was used to develop the rules listed in this package. The Board utilizes the expertise of practitioners and specialists appointed to advisory groups and committees in the development of administrative rules, including: The Advisory Committee on Advanced Practice Registered Nursing, the Advisory Group on Continuing Education, the Advisory Group on Dialysis, Advisory Group on Nursing Education, and the Committee on Prescriptive Governance. The Board also convenes Practice Committees on focused issues that invite data and research for review and recommendation, from specialists in both the private and public sectors.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

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No alternatives were considered because minimum licensing, education and practice standards are the essential foundation for competent nursing and community health worker practice, patient safety, and public protection, and these standards are consistent with prevailing nursing and community health worker practice and evidence-based nursing research.

13. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The proposed rules set out the required activities but do not specify the means of performing the required activities.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Nursing Board is the only agency authorized to regulate licensure processes for licenses issued under Chapter 4723., ORC, the alternative program for substance use disorder under ORC 4723.35, the nurse education grant program, continuing education standards for nurses, and community health worker training programs.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Meetings with interested parties and Board advisory groups/committees help ensure that rules are applied consistently and predictably for the regulated community. The rules will be posted on the Nursing Board's website, and information concerning the rules will be included in information material e-mailed to attorneys, licensees, health care systems, continuing education providers, community health worker training programs, associations, health care system representatives, and other state regulatory boards, and information will also be disseminated via social media. Nursing Board staff members provide answers to practice and licensing questions, via designated email addresses and by telephone. The Board will provide educational materials as needed through FAQs and a quarterly newsletter (*Momentum*).

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:
a. Identify the scope of the impacted business community; and

*Individuals applying to obtain temporary military licenses

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*Community health worker technician training programs

*Individuals licensed/certified by ORC Chapter 4723. who are required to obtain continuing education

*Individuals who apply to or participate in the alternative program for substance use disorder

*Applicants for or recipients of nurse education grant program funds

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

Rule 4723-2-05 establishes a process for temporary military licenses. License applications for Chapter 4723., ORC license types are completed online through the Ohio eLicense system and require disclosure of information. There is no fee for the temporary military license.

Violation of Rule 4723-4-06 may result in disciplinary action according to ORC 4723.28, including license reprimand, restriction, revocation or fines of up to \$500.00 per violation.

Rule 4723-6-04, 05, and -06 require compliance with alternative program for substance use disorder requirements, the violation of which may result in disciplinary action under ORC 4723.28, including license reprimand, restriction, revocation of fines of up to \$500.00 per violation.

Rule 4723-14-03 continuing education may require expenditures for courses in variable amounts.

Rule 4723-25-08 revisions may require grantees to expend time to plan for new grant cycles.

Rule 4723-26-13 revisions may require an expenditure of time if training programs wish to use online teaching methods.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a

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“representative business.” Please include the source for your information/estimated impact.

See Item 16.b., above.

There is a cost inherent in engaging in the business of being a Board approved community health worker program. The costs are variable and determined by individual business operations.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The rules in this package are minimally revised in order correct typographical errors, update cross references, and implement legislative changes. The impact of the rules, if adverse, is minimally so. Continuing education is essential to the ability of nurses to engage in safe nursing practice. The requirements necessary to participate in the alternative program for substance use disorder are intended to protect the public while allowing providers to engage in recovery programs without public disciplinary action. Online education opportunities for community health worker training programs may take time to establish but are not mandatory and allow more flexibility. The change in the nurse education grant program funding cycle will not impact grantees, as funding is already contingent on the agency’s receipt of license renewal fees. New Rule 4723-2-05 requires an online application. The information sought in online applications for licensing is necessary to ensure that applicants meet minimum statutory qualifications, and that application standards are applied in a fair and legally consistent manner.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Existing rules, designed for public protection and safe patient care, must be consistently applied, so the regulations do not provide exemptions or alternative means of compliance.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Waivers of fines and penalties for paperwork violations and first time offenders may be considered consistent with ORC Sections 119.14 and 4723.061 which do not require the Board to act on minor violations of the Nurse Practice Act or the rules adopted under it,

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if applicants or individuals licensed under Chapter 4723 of the Revised Code commit violations and following review the Board determines that issuing a warning to the alleged offender adequately protects the public.

20. What resources are available to assist small businesses with compliance of the regulation?

The Board employs staff dedicated to assist the public and small businesses by responding to any questions or concerns about the implementation of the rules. Board advisory groups and committees, composed of continuing education approvers, providers, educators, practitioners, and licensees also may respond to questions from small businesses. The Board provides Interpretive Guidelines related to specific practice standards in order to assist the practitioner and employer. Nursing Board license staff members provide answers to licensing questions, including any questions related to the new temporary military license, via email and by telephone. The Nursing Board provides continuing educational materials as needed through FAQs posted on its website, and through a quarterly newsletter (*Momentum*). All relevant forms and information for community health worker training programs are available on the Board's website.