CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Rule review due to changes made by legislative amendments or for technical or non-substantive reasons for OAC Chapters 4723-5, 4723-7, 4723-8, 4723-9, 4723-14, 4723-17, 4723-23, 4723-25, 4723-26, and 4723-27

Rule Number(s): 4723-5-04, 4723-5-06, 4723-5-08, and 4723-5-12; 4723-7-02 through 4723-7-09; 4723-8-01 through 4723-8-08 and 4723-8-10; 4723-9-05 through 4723-9-07, and 4723-9-09; 4723-14-01, 4723-14-03, 4723-14-05, 4723-14-07, 4723-14-10, and 4723-14-12; 4723-17-03; 4723-23-01 through 4723-23-06, 4723-23-08 through 4723-23-11, and 4723-23-14; 4723-25-02, 4723-25-05, 4723-25-06, and 4723-25-11; 4723-26-01, 4723-26-02, 4723-26-04, 4723-26-10 through 4723-26-12; 4723-27-02, 4723-27-04 through 4723-27-10.

Date: August 23, 2013

Rule Type: all (listed below)

New	5-Year Review
Amended	Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Regulatory Intent

1. **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, rescind or adopt new rules in Ohio Administrative Code (OAC) Chapters 4723-5, Nursing Education Programs; 4723-7, Examination and Licensure; 4723-8, Advanced Practice Registered Nurse Certification and Practice; 4723-9, Prescriptive Authority; 4723-14, Continuing Nursing Education; 4723-17, Intravenous Therapy Procedures; 4723-23, Dialysis Technicians; 4723-25, Nurse Education Grant Program; 4723-26, Community Health Workers; 4723-27, Medication Administration by Certified Medication Aides.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   Ohio Revised Code (ORC) Section 4723.07

   Ohio Revised Code (ORC) Section 4723.06

   ORC Section 4723.063 (Chapter 4723-25, OAC)

   ORC Section 4723.50 (Chapter 4723-9, OAC)

   ORC Section 4723.69 (Chapter 4723-27, OAC)

   ORC Section 4723.79 (Chapter 4723-23, OAC)

   ORC Section 4723.88 (Chapter 4723-26, OAC)

3. **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 applied to all the rules in this package.

4. **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 rule package.

5. **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 provide public protection and promote safe nursing practice. The rules are being updated due to legislative amendments enacted by H.B. 303, S.B. 83, H.B. 59, and H.B. 490 (129th GA), or for technical or non-substantive reasons. In addition, changes based on the Governor's Executive Order 2013-05K are included. Governor Kasich's Executive Order 2013-05K requires all boards and commissions to review and revise policies and procedures to take into account relevant military education

and training, skills training, and service when determining equivalency for purposes of issuing certifications and licenses, and to identify and report by December 31, 2013, legal barriers to the revision of policies and procedures to further streamline the issuance of licenses and certificates based on relevant military training and skills.

6. **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.

Development of the Regulation

7. **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.

   On May 20, 2013, the Board requested the Committee on Prescriptive Governance to review the prescriptive authority rule in Chapter 4723-9, OAC.

   On May 22, 2013, the Board provided interested parties, including the Ohio Nurses Association, the Ohio Association of Advanced Practice Nurses, the Council for Ohio Health Care Advocacy, representatives of Ohio health care systems and nursing education programs, and other interested individuals with draft rule language, and requested comments

   On May 28, 2013, the Board held an interested party meeting to review the proposed rules. Representatives from the Ohio Association of Advanced Practice Nurses, the Ohio Nurses Association, the Council for Ohio Health Care Advocacy and other individual licensees reviewed and commented on the rules at the meeting.

   On June 13, 2013, the Board Advisory Group on Nursing Education met and discussed rule revisions in Chapter 4723-5, OAC. This included proposing to add language to education and training program rules that require programs to establish policies for review of military education and training based on the Governor's Executive Order 2013-05K.

   On June 14, 2013, Board staff met with approximately eighty faculty and program administrators of nursing education programs and discussed rule revisions in Chapter 4723-5, OAC. This included proposing to add language to education and training program rules that require programs to establish policies for review of military education and training based on the Governor's Executive Order 2013-05K.

   On June 18, 2013, the Board Advisory Group on Dialysis met to discuss rule revisions in Chapter 4723-23, OAC. This included changes based on the Governor's Executive Order 2013-05K and changes necessitated by H.B. 303.

On June 21, 2013, the Board's Advisory Group on Continuing Education met to discuss rule revisions in Chapter 4723-14, OAC, consistent with recent and significant criteria changes made by the American Nurses Credentialing Center (ANCC).

Draft rules including language requiring education and training programs to establish policies for the review and consideration of military education and training, were emailed on August 6 and 7, 2013 to interested parties, including nursing education programs, and training programs for dialysis technicians, community health workers, and medication aides. The email invited comment and explained that the Board would review the new draft language at its next Board meeting on September 19 and 20, 2013.

Proposed rule language that prohibits a nurse from accessing patient information for any purpose other than patient care was emailed to interested parties on August 8, 2013. The email invited comment and explained that the Board would review the new draft language at its next Board meeting on September 19 and 20, 2013.

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

At the May 28, 2013 interested party meeting, the draft regulations were reviewed with stakeholders and they had no comments on this rule package as the changes are primarily based on H.B. 303, and other recently passed legislation. Because the stakeholders were involved throughout the legislative process and provided significant input at that time, and because the changes were mandated by the statutory changes, and other revisions were technical by nature, there were no further comments.

The Committee on Prescriptive Governance met on May 20, 2013, and recommended that language be added to Rule 4723-9-09, OAC, clarifying that certificate to prescribe holders shall not self-prescribe a controlled substance. The Board added the language as recommended.

On June 13, 2013, the Board Advisory Group on Nursing Education met. On June 14, 2013, Board staff met with approximately eighty faculty and program administrators of nursing education programs. At both meetings, Board staff discussed proposed rule revisions in Chapter 4723-5, OAC, consistent with Governor's Executive Order 2013-05K regarding military personnel. The rules will require education and training programs to establish policies for review of military education and training and also require programs to award the student credit for military education or skills training substantially similar to the curriculum established in rule. There was agreement with this proposal.

The Board Advisory Group on Dialysis met on June 18, 2013 and agreed with changes in Chapter 4723-23, OAC, as necessitated by H.B. 303, and recommended additional revisions as follows: (1) Use the words "employed to perform" dialysis care in Rule 4723-23-03, OAC,

to mirror the language in Section 4723.75, ORC; and (2) Add language in Rule 4723-23-03, OAC, to clarify that the word "immediately" means not more than sixty days prior to the date the individual submits an application for a dialysis technician certificate to the Board. The Board agreed with both revisions as recommended.

The Board Advisory Group on Continuing Education met on June 21, 2013 and recommended that basic life support, cardiopulmonary resuscitation, and agency specific orientation or in-service programs be accepted as meeting the continuing education requirements of Chapter 4723-14, OAC. This reflects the recommendations of the American Nurses Credentialing Center. The Board agreed with this revision.

A practitioner in the community recommended adding language in Rule 4723-17-03, OAC, to allow a licensed practical nurse to turn off a patient controlled analgesia pump if a complication arises, similar to stopping an infusion of blood. The Board agreed with this recommendation.

The draft rules requiring education and training programs to establish policies for the review and consideration of military education and training was revised from the original draft presented to the Board at their public meeting in June 2013. Those revisions were distributed to stakeholders and interested parties by email on August 6 and 7, 2013. The Board received stakeholder and interested party feedback regarding the rule proposal, most of which has been in support of the proposed language. Program administrators of nursing education programs expressed that the language is "clear, concise and consistent" with the intent of the Executive Order. Four commenters requested clarification about the proposed language. The Board provided clarifying information and has not received any concerns in response. Two individuals, neither of who own or work in a nursing education program affected by the rule, oppose the requirement. The Board will review and consider their opposing comments at the September Board meeting.

No comments have been received regarding the proposed rule language emailed to interested parties on August 8, 2013 that would prohibit a nurse from accessing patient information for any purpose other than patient care.

9. **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?**

Through the Advisory Groups, the Board relied on the expertise of continuing education approvers, continuing education providers, nurses, dialysis providers and administrators, nursing education program administrators and faculty, training program administrators and instructors, advanced practice registered nurses, physicians, pharmacists, and other state boards. In addition, representatives provided the current standards of continuing education from the American Nurses Credentialing Center that served as the basis for certain revisions in Chapter 4723-14.

10. **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?**

    The Board did not consider regulatory alternatives in this rule package because the rule revisions are being updated due to statutory changes made by H.B. 303, S.B. 83, H.B. 59 and H.B. 490 (129th GA), or for technical or non-substantive reasons.

11. **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 Board is recommending performance-based regulation in Rules 4723-5-12, 4723-7-09, 4723-8-08, 4723-9-07, 4723-23-05, 4723-26-12, and 4723-27-07, OAC. The proposed language requires nursing education programs, and dialysis, medication aide, and community health worker training programs to establish policies for review of military training and skills and award the credit for military education or skills substantially similar to the curriculum established in rule. This is based on Governor Kasich's Executive Order 2013-05K.

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

    While the Board initiated the rule review process to update rules due to recent legislative changes, the review was also conducted with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with interested parties and Board Advisory Groups helped ensure that these rules do not duplicate any existing Ohio regulation.

13. **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 help ensure that these rules are applied consistently and predictably for the regulated community. The Board plans to monitor the progress with respect to the rules and report back to these groups. In addition, the Board will continue to use its website, newsletter, and social media to update licensees, continuing education providers, other stakeholders, and the public in general.

Adverse Impact to Business

14. **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;**

    Licensees and education programs were impacted through the passage of H.B. 303, S.B. 83, H.B. 59 and H.B. 490 (129th GA); this rule package primarily reflects the recently

enacted statutory requirements. Two rule revisions not attributable to the legislative changes impact nursing education programs and various types of training programs.

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

In Rule 4723-5-06, the Board proposes to change the 30-day time frame for nursing education programs to submit materials to 45 days, prior to the meeting at which the Board considers approval status. The anticipated outcome is that education programs will adjust their timeframes for preparation and submission of materials.

Rules 4723-5-12, 4723-23-08, 4723-26-12, 4723-27-07, OAC, will require nursing education programs and various types of training programs to establish policies for review of military education and training, and also require education and training programs to award credit for military education or skills training that is substantially similar to the curriculum established in rule.

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

Changing the 30-day time frame to 45 days, for nursing education programs to submit materials prior to the meeting at which the Board considers approval status, may cause education programs to adjust their timeframes for preparation and submission of materials, but should not have an increased financial impact.

Education and training programs will be required to establish policies for review of military education and training and award the student credit for any military education or skills training that is substantially similar to the curriculum established in rule. This may increase administrative costs of the program or the admissions office to establish policies and review military training and skills if military personnel apply for the education or training program. It may decrease education program revenue depending on the number of academic hours awarded to a veteran based on his/her military training and skills.

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

Administrative rules must reflect statutory requirements and this rule package reflects changes made by H.B. 303, S.B. 83, H.B. 59 and H.B. 490 (129th GA). Rules must also be updated for technical or non-substantive reasons to provide clarity, to delete obsolete or redundant language and reflect "plain English."

Regarding Rule 4723-5-06, for the Board to make informed decisions, additional time is needed to thoroughly review education program materials; it was difficult to review and process the materials in the shorter time frame.

Executive Order 2013-05K directs board and commissions to review its administrative rules related to military personnel and licensing to assist veterans with the licensing process.

Regulatory Flexibility

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

Public safety requirements relative to the rules reviewed in this package require consistency in their application to all licensees and are not amenable to exemptions or alternative means of compliance for small businesses.

17. 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 Sections 119.14 and 4723.061, ORC, which do not require the Board to act on minor violations of the Nurse Practice Act or the rules adopted under it, if applicants or individuals licensed under Chapter 4723 of the Revised Code commit violations and following review the Board determines that issuing a notice or warning to the alleged offender adequately protects the public.

18. 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. The Board Advisory Groups also may respond to questions from small businesses. The Board continues to use its website, newsletter and social media to regularly update the public and licensees, including small businesses, to changes in requirements and to provide frequently asked questions.