CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:

BOARD OF EXECUTIVES OF LONG-TERM SERVICES AND SUPPORTS (BELTSS)

Regulation/Package Title:

5-YEAR REVIEW + TIMELY RENEWAL OF LICENSE

Rule Numbers:

4751-1-04, 4751-1-05, 4751-1-06, 4751-1-07, 4751-1-08.1, 4751-1-10, 4751-1-10.1, 4751-1-14, 4751-1-16

Date:

December 30, 2013 (Revised on January 6, 2014)

Rule Types:

New:
4751-1-04, 4751-1-10.1

5-Year Review:
4751-1-04, 4751-1-05, 4751-1-06, 4751-1-07, 4751-1-08.1, 4751-1-10, 4751-1-14, 4751-1-16

Amended:
4751-1-05, 4751-1-06, 4751-1-07, 4751-1-08.1, 4751-1-10, 4751-1-14, 4751-1-16

Rescinded:
4751-1-04 (see "New")

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.

These rules are being filed as part of the requirement to review each rule of the Ohio Administrative Code every five years. The following rules have been reviewed by the Board and any appropriate Committee. The Board has provided a summary of the changes in the table below.

Additionally, the Board is proposing new rule 4751-1-10.1 of the Administrative Code to provide clarification to licensees regarding timely submission of renewal information and penalties for failure to follow the rule. The rule has been reviewed by the Board. The Board has summarized the content of the rule in the table below.

RULE	TITLE	AMENDMENTS + NEW LANGUAGE
4751-1-04	Board meetings	Compared to the current rule, the proposed new rule would: • Organize topics under sub-headings. • Remove the requirement for interested parties to prove a self-addressed, stamped envelope to obtain information. • Add "(2011 edition)" to comply with the incorporation by reference requirements in section 121.75 of the Revised Code. • Comply with Chapter 5 of the Rule Drafting Manual.[1]
4751-1-05	Pre-examination requirements; conditions precedent to application for admission to examination.	The proposed amended rule would: • Incorporate person-centered language.[2] • Update language to reflect current examination practice regarding revised timelines for determining that applicants have abandoned their applications. • Comply with Chapter 5 of the Rule Drafting Manual.
4751-1-06	Subjects for examination.	The proposed amended rule would: • Use person-centered language. • Comply with Chapter 5 of the Rule Drafting Manual.
4751-4-07	Examination and passing grade.	The proposed amended rule would: • Update language to reflect current examination practice regarding revised requirements for applicants who failed the exam to retake the exam and not just retake sections of the exam. • Revise language for consistency and clarity by consistently using "applicant" (not "candidate"). • Comply with Chapter 5 of the Rule Drafting Manual.
4751-1-08.1	Training agency approval.	The proposed amended rule would: • Allow the Board to audit courses and to deny approval for courses that do not meet the criteria defined in rule 4751-1-06 of the Administrative Code. • Attach BELTSS Form E-1 (Ref., 2013) to the rule to comply with the incorporation-by-reference requirements in section 121.73 of the Revised Code. • Revise language for consistency and clarity. • Comply with Chapter 5 of the Rule Drafting Manual.

[1] The Board is complying with the requirements of the Ohio Legislative Service Commission's "Rule Drafting Manual," including the following sections of the manual: (1) §5.2, especially citing the Ohio Revised Code and Ohio Administrative Code, (2) §5.3 on capitalization, (3) §5.8.2 on gender-neutral language, (4) §5.8.3 on "shall" *vs.*, "must," and (5) §5.8.6 on active-voice language [*e.g.*, "shall" *vs.*, "shall be"].
[2] Using person-centered language involves labeling those formerly referred to as "patients" as "persons."

RULE	TITLE	AMENDMENTS + NEW LANGUAGE
4751-1-10	Licenses and registration.	The proposed amended rule would: • Increase the amount of time the Board will delay invalidating a license for failure to renew a certificate of registration from 6 months to 1 year. • Update the original license fee to comply with the changes made to §4751.06 by HB95 (125th G.A.) • Update reference to §2301.373 for HB471 (123rd G.A.) and HB59 (130th G.A.) • Revise language for consistency and clarity by always using "expiration date" (not "renewal date") and always using "individual" (not "person") when referring to the licensee. • Comply with Chapter 5 of the Rule Drafting Manual.
4751-1-10.1	Timely renewal of certificate of registration.	The proposed new rule would: • Clarify the penalties for untimely renewal. • Reference a readily-available form (BELTSS Form RA2013 (Rev., 2013)) to comply with the incorporation-by-reference requirements in section 121.75 of the Revised Code.
4751-1-14	Recognition of out-of-state license	The proposed amended rule would: • Revise language for consistency and clarity. • Comply with Chapter 5 of the Rule Drafting Manual.
4751-1-16	Fees.	The proposed amended rule would: • Update two fees to comply with HB95 (125th GA) for the original license fee in §4751.06 and HB1 (128th G.A.) for the annual registration fee in §4751.07. • Comply with Chapter 5 of the Rule Drafting Manual.

The Board appreciates feedback on any and all rules.

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

Section 4751.04 of the Revised Code gives the Board general authority to adopt rules.

Section 4751.07 of the Revised Code gives the Board specific authority to adopt rule 4751-1-10.1 of the Administrative Code.

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.

None of the rules implement a federal requirement.

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

None of the rules implement a federal requirement.

Section 4751.07 of the Revised Code specifies the responsibilities of the Board in regards to renewal of certificates of registration. Rule 4751-1-10.1 would help clarify the renewal requirements.

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 regulations are needed to help the Board carry out its mission in an effective and efficient manner. The Board licenses nursing home administrators who are responsible for the planning, organizing, directing and managing the operation of a nursing home. The Board ensures that applicants for licensure meet the requirements established in Chapter 4751 of the Revised Code and maintain qualifications through appropriate continuing education for each license renewal.

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

Some of the rules are Board process rules that will be monitored by the Board throughout the year via the reporting of activities by the Executive Director.

Rule 4751-1-04 of the Administrative Code removes a potential barrier for interested parties to receive information, and may be monitored by the number of requests received via email and/or telephone.

Rule 4751-1-10 of the Administrative Code clarifies a portion of the renewal process and may be measured by a reduction in the number of applicant questions regarding that part of the process.

Because proposed new rule 4751-1-10.1 of the Administrative Code clarifies the requirements for renewing certificates of registration, the board would eventually expect to see a reduction in the number of questions from licensees and the number of late renewals received.

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.

From October 21, 2013 to November 15, 2013, the Board posted draft copies of the rules on the Board's website for a public-comment period. All three of the primary provider associations (LeadingAge, The Ohio Health Care Association, and The Academy of Senior Health Sciences) placed a notice in their newsletters (emailed to all members) including a link to the draft rules on the Board's web site. An announcement was also made at the OHCA's Fall/Winter Conference. Currently, no-one is registered with the Board to receive notice of meetings/rule revision.

On January 6, 2014, the Board posted draft copies of the rules and this BIA on the Board's website for a second public-comment period.

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

For rule 4751-1-04 of the Administrative Code, the Board is proposing to amend the rule based upon feedback received from the Common-Sense Initiative Office.

For rule 4751-1-08.1 of the Administrative Code, the Board received input from The Academy of Senior Health Sciences. The Board's Continuing Education Committee, the Board's Assistant Attorney General, and the Board itself reviewed the comments and, then, implemented some of the suggested changes. (See attached.)

The Board did not receive any input on any of the remaining rules of this rule package including proposed new rule 4751-1-10.1 of the Administrative Code.

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?

This question does not apply to these proposed rules.

However, the Board is proposing rule 4751-1-10.1 of the Administrative Code due to a number of late and/or incomplete renewal applications that it received over the span of several quarterly renewal periods. The late and/or incomplete applications appear to be from the licensees' misunderstanding of the rules and the penalties for late renewal.

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?

There were no alternative regulations considered as the rules are driven by statute.

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.***

No. The rules were developed in accordance with ORC guidelines.

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

The JCARR standard for invalidation has been an ongoing deterrent to duplication. Legal staff, the Board, and Board Committees (where appropriate) have reviewed rules to assure there is no duplication of an 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.

BELTSS will once again seek the assistance of the three primary provider associations (as described in question number 7) to help distribute the updated rules to its members and drive traffic to the BELTSS website, where the updated rules will be posted. Continuing education providers will be notified by the Board and directed to the postings on the website.

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;

Rule 4751-1-04 of the Administrative Code regulates the Board regarding its board meetings. It does not regulate any Ohio business.

Rule 4751-1-08.1 of the Administrative Code regulates training agencies that the Board approves to be continuing-education providers. Approximately 79 continuing-education providers are actively working with the Board.

Rules 4751-1-05, 41751-1-06, 4751-1-07, 4751-1-10, 4751-1-10.1, 4751-1-14, 4751-1-16 of the Administrative Code regulate people who (1) want to engage in the line of business

known as nursing home administration in the state of Ohio and (2) people who are presently licensed nursing home administrators in Ohio. Ohio has approximately 1900 actively-licensed nursing home administrators.

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

Rule 4751-1-04 of the Administrative Code creates no adverse impact.

Rule 4751-1-08.1 of the Administrative Code establishes the criteria for a training agency (*e.g.*, educational institution) that want to become a Board-approved continuing-education provider. The adverse impact upon the training agency is the administrative cost of applying to the Board to become an approved provider. This involves completing BELTSS Form E-1 (Rev, 2013). The rule does not require training agencies to pay a fee to become a Board-approved continuing-education provider.

The adverse impacts created by rules 4751-1-05, 41751-1-06, 4751-1-07, 4751-1-10, 4751-1-10.1, 4751-1-14, 4751-1-16 of the Administrative Code do not directly impact Ohio businesses. Instead, they directly impact people who (1) want to engage in the line of business known as nursing home administration in the state of Ohio and (2) people who are presently licensed nursing home administrators in Ohio.

For such people, the adverse impacts are:

- **Licensure:** Section 4751.09 of the Revised Code prohibits any person from practicing as a nursing home administrator in Ohio without a license from BELTSS.

- **Examination:** Section 4751.06 of the Revised Code, and rule 4751-1-06 of the Administrative Code, require applicants for licensure to pass an examination.

- **Renewal:** All licensees are registered with the Board. Section 4751.07 of the Revised Code, and rules 4751-1-10 and 4751-1-10.1 of the Administrative Code, require the licensees to renew their certificates of registration annually. This involves continuing education, fees, and completing BELTSS Form RA2013 (Rev., 2013).

- **Continuing-Education Penalty Hours:** The Board addresses additional annual hours of continuing education (*i.e.*, "penalty hours") for out-of-compliance nursing home administrators in rules 4751-1-10 and 4751-1-10.1 of the Administrative Code.

- **Loss of Registration:** The Board addresses loss of registration for failure to adequately renew registration in rules 4751-1-10 and 4751-1-10.1 of the Administrative Code. In the proposed new rules, the Board is proposing to increase the amount of time it allows out-of-compliance nursing home administrators to retain their license if they have not adequately renewed their certificate of registration. The board is proposing to increase the amount of time it gives the administrators from 6 months to 1 year.

The rules in this package do not make requirements of the nursing homes themselves.

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.

The adverse impact of rule 4751-1-08.1 of the Administrative Code is the administrative time it takes for a training agency to apply to the Board, which would vary from agency to agency. The rule does not require a fee for training agencies to apply to become continuing-agency providers.

The adverse impacts created by rules 4751-1-05, 4751-1-06, 4751-1-07, 4751-1-10, 4751-1-10.1, 4751-1-14, 4751-1-16 of the Administrative Code are primarily the fee amounts associated with licensure, examination, and renewal of certificates of registration. Sections 4751.05, 4751.06, 4751.07, and 4751.08 of the Revised Code authorize the Board to require specific fee amounts. The Board has done so in rule 4751-1-16 of the Revised Code.

In addition to the fees that the Revised Code establishes, the Board requires a $50 fee for any person who voluntarily participates in the Administrator-in-Training Program. The Board's authority to require this fee comes from its general authority under section 4751.04 of the Administrative Code. The fee is associated with rule 4751-1-09 of the Administrative Code, which is not part of this rule package.

The fees are the same for every person who applies to become, or already is, a licensed nursing home administrator.

In addition to fees, rules 4751-1-05, 4751-1-06, 4751-1-07, 4751-1-10, 4751-1-10.1, 4751-1-14, 4751-1-16 of the Administrative Code require passing an examination to become licensed, completing at least 20 hours of continuing-education coursework each year (some of which involve free classes), renewing a certificate of registration each year (which involves completing BELTSS Form RA2013 (Rev., 2013)), and possible continuing-education penalty hours or loss of licensure for failure to annually renew certificates of registration.

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

The Board is not requiring any new burdens, nor maintaining any unreasonable burdens, upon training agencies. The requirement to provide records to the Board that prove the training agency is qualified to provide continuing education is a reasonable safeguard for the Board to ensure that Ohio's nursing home administrators receive adequate continuing education. The rules do not require the training agencies to pay any fees.

The Board is not requiring any new burdens to become, or to remain, a licensed nursing home administrator. All the fees, but one, are required by the Ohio Revised Code. The Board has no authority to increase or decrease the statutorily-mandated fee amounts that it lists in rule 4751-1-16 of the Administrative Code.

The only non-statutorily-mandated is the fee associated with the Administrator-in-Training Program. Only a person who wants to participate in the program must pay the fee.

Regulatory Flexibility

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

This is not applicable for the amended or new rules which apply to individuals, not small businesses.

Training agencies must comply with rule 4751-1-08.1 of the Administrative Code regardless of their size.

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?

Not applicable to these modifications.

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

The Board has already been working with licensees on a case-by-case basis, as well as providing education to licensees on the website and with educational materials inside licensees' renewal packets.

The Board staff is available during normal business hours (and after hours by appointment), email, and telephone to answer any questions that providers and/or individuals may have.