CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: BELTSS

Regulation/Package Title: _____

Rule Number(s): 4751-1-02, 4751-1-03, 4751-1-08, 4751-1-09, 4751-1-13, 4751-1-05

Rescind 4751-1-02, 4751-1-03, 4751-1-08, 4751-1-09, and 4751-1-13. Adopt new versions of 4751-1-02, 4751-1-03, 4751-1-08, 4751-1-09, and 4751-1-13

Date: 12-19-14

Rule Type:

X New

X Amended (4751-1-05)

5-Year Review

X Rescinded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.

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.

   Rule Review 4751-1-02 Definitions

   - Language made gender-neutral and consistent with language used in other rules;
   - Change made to reflect current practice in accreditation

   Rule Review 4751-1-03 Board of Executives; officers and duties

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- Letter (H) removed as ORC 2301.373 was repealed

Rule Review 4751-1-08 Registration of institutions and training agencies; approval of courses of study and programs of instruction

- Language streamlined and clarified to assist institutions and training agencies with registration

Rule Review 4751-1-09 Administrator-in-training program; practical training and experience

- Language made gender-neutral and consistent with language used in other rules;
- Increased the amount of time applicants have to turn in applications prior to the board meetings;
- Clarified acceptable/unacceptable relationship status between AIT and preceptor;
- Clarified penalty for falsification or misrepresentation

Rule Review 4751-1-13 Continuing Education

- Streamlined language for clarification;
- Established ability of Board to set number of online continuing education credits per renewal instead of specifying a number in the rule;
- Allows granting of CEU credits for teaching classes in defined cases;
- Established ability of Board to temporarily waive continuing education credits in defined cases

Rule Amendment 4751-1-05 Pre-Examination Requirements; conditions precedent to application for admission to examination

- Clarified the amount of time an applicant has to complete the license process;
- Clarified the method by which an applicant can be permitted to take the exam for a fourth time

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

   4751.04, 4751.03, 4751.12, 4751.06, 4751.07

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.

   Rules 4751-1-09 (B) and 4751-1-05 (A) implement 42 CFR Chapter IV, 431.07 “Standards”

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

N/A

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, directing, and managing the operations 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.

   Rules 4751-1-08, 09, and 13 should result in increased customer satisfaction from both training agencies and administrators, as process improvements are being made. This will be measured by fewer questions, errors, and complaints.

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.

   Currently, no-one is registered with the Board to receive notice of meetings/rule revision.

   The Board posted draft copies of the rules on the Board's website from September 5, 2014 through September 30, 2014 for a public comment period. All three of the primary provider associations (LeadingAge, The Ohio Health Care Association, and the Academy of Senior Health Services) placed a notice in their newsletters (emailed to all members) including a link to the draft rules on the Board's website.

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

   The Board received comments from 4 stakeholders, all from the Ombudsman's office, concerned that the Board was allowing all CEUs to be earned online, and that the Board was allowing a committee to determine if a licensee would be allowed to waive all continuing education hours in certain cases. The Board provided a written response to the stakeholders, along with a copy of a proposed CEU Waiver form, as it believes the stakeholders did not understand what the Board was actually proposing. A copy of the form was also submitted

to the CSI office for review. The Board received no further comments from these or any other stakeholders.

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.

9. **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.

10. **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.

11. **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.

12. **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

13. **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 4751-1-03 regulates the Board itself. It does not regulate any Ohio Business.

       Rules 4751-1-02, 4751-1-08, and 4751-1-13 regulate training agencies that the Board approves to be continuing education providers. Approximately 79 continuing-education providers are actively working with the Board.

Rules 4751-1-02, 4751-1-05, and 4751-1-09 regulate people who want to become licensed nursing home administrators and the licensed nursing home administrators (preceptors) who help train them. There are approximately 80 administrators-in-training and preceptors active in Ohio at any given time.

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

Rules 4751-1-02 and 4751-1-03 of the Administrative Code create no adverse impact.

The adverse impact of Rules 4751-1-08 and 4751-1-13 is the administrative cost of applying to the Board to become an approved provider. The rules do not require the agencies to pay a fee to become a Board-approved continuing education provider. The adverse impact of rule 4751-1-09 affects people who want to become licensed nursing home administrators and the licensed nursing home administrators (preceptors) who help train them. There are approximately 80 administrators-in-training and preceptors active in Ohio at any given time. For such people, the adverse impacts are placing some limits on what constitutes an appropriate administrator-in-training program: who can serve as a preceptor, how many hours s/he must work in the facility, whether or not the trainee can have a financial interest in the training site, etc.

The adverse impact of rule 4751-1-05 only applies to individuals who have failed the state and/or national exam 3 times by imposing an additional training period before they are allowed to attempt the test(s) a final time.

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 Rules 4751-1-08 and 4751-1-13 is the agency's internal administrative cost of applying to the Board to become an approved provider. The rules do not require the agencies to pay a fee to become a Board-approved continuing education provider.

The adverse impact of 4751-1-09 is the $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 Revised

Code. It is estimated that the application will take approximately 15 minutes for an individual to complete. The pre-training assessment and subsequent training plan is estimated to take approximately 1 hour to complete. The daily log is estimated to take 10 minutes per day, and the monthly log is estimated to take approximately 10 minutes per month.

The adverse impact of 4751-1-05 is the time and potential cost of completing additional training, depending on whether or not an applicant can work/continue to work while completing the training. It is estimated that the application will take approximately 15 minutes for an individual to complete.

The adverse impact of 4751-1-13 is the time away from work and the cost of the educational programs. Most administrators receive paid time to attend continuing education courses, and many employers also pay for the continuing education courses. There are also several free continuing education opportunities available. The Board feels strongly that any adverse impact is outweighed by the need to keep administrators up-to-date in their field of practice in order to protect a vulnerable client population.

14. 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 or licensees. Additionally, 4751.04 of the Ohio Revised Code charges the Board, in part, to "develop, adopt, impose, and enforce regulations prescribing standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators are of good character and are otherwise suitable, and who, by training and experience, are qualified to serve as nursing home administrators"; and to " develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards". The assessments and reporting requirements are necessary to help ensure a quality training experience, compliance with the regulations, and help the AIT and preceptor identify and address strengths and weaknesses.

The Board is not requiring any new burdens to become or remain a licensed nursing home administrator. The proposed rules make obtaining continuing education easier for the licensed nursing home administrator by allowing credit for teaching courses, and giving the Board the authority to determine the appropriate number of self-study hours allowed and potentially increase them.

The Board wants to give applicants every opportunity to succeed and feels that after three failed attempts to pass the exam(s), additional training will help the applicant in gaining the knowledge required to pass the exam(s).

The Board feels strongly that any adverse impact is outweighed by the Board's responsibility to help produce strong administrators who have the ability to drive quality care and services for a diverse and vulnerable client population.

Regulatory Flexibility

15. 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 regardless of their size.

16. 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.

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

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. The Board has already been working with individuals and agencies on a case-by-case basis, as well as providing education to training agencies, licensees, and prospective licensees on its website.