

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Nursing Board Youth Sports Concussion Rule: Proposed OAC Rule 4723-8-11

Rule Number(s): OAC Rule 4723-8-11

Date: May 29, 2015

Rule Types: 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.

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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 is proposing a new rule to incorporate youth concussion assessment and clearance guidelines recommended by the Ohio Youth Sports Concussion & Head Injury Return to Play Guidelines Committee (Committee). The rule sets forth the minimum education requirements necessary for a certified registered nurse practitioner or clinical nurse specialist to assess and clear a youth athlete for return to practice or competition.

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

Ohio Revised Code (ORC) Section 4723.07

ORC Section 3313.539(E)(4)

ORC Section 3707.511(E)(4)

ORC Section 3707.521(E)

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 practice for licensees who assess and clear a youth athlete for return to practice or competition. ORC Sections 3313.539(E)(4), 3707.511(E)(4), and 3707.521(E), direct the Ohio Board of Nursing to adopt rules in order that, effective September 17, 2015, minimal education requirements are established for its licensees to conduct “assessments and clearances” as specified in the statutes. ORC Section 3707.521(E) indicates that if an agency seeks to have its licensees authorized to assess and clear youth athletes, the agency “establish standards that are equal to or stronger than the guidelines developed by the committee.”

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.

The Ohio Youth Sports Concussion & Head Injury Return to Play Guidelines Committee (Committee) through the Ohio Department of Health requested the Ohio Board of Nursing to provide testimony at its December 18, 2014 meeting. In accordance with Ohio's new youth sports concussion law including provisions established in Ohio Revised Code (ORC) Section 3707.521 (effective September 17, 2014), the Committee was charged with developing guidelines regarding concussions and head injuries sustained by youth participating in interscholastic and youth sports organization sporting events. The Committee's guidelines outlined the (1) diagnosis and treatment of concussions; (2) the conditions under which an athlete may be granted clearance to return to practice or competition; and (3) the minimum education requirements necessary to qualify a physician or licensed health care professional to assess and clear an athlete for return to practice or competition.

The Board discussed the rules package at its public board meetings in April and May 2015. Board meeting dates and agendas are posted on the Board's website and interested parties are sent notice by e-mail prior to the meeting.

The Board held an interested party's meeting with various stakeholders on May 27, 2015. Participants included representatives of the Ohio Nurses Association and the Ohio Association of Advanced Practice Nurses. Notice and invitation to the meeting was sent by e-mail on April 10, 2015 and again on May 21, 2015 to approximately 45 persons representing various stakeholders to the board.

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

The Ohio Youth Sports Concussion & Head Injury Return to Play Guidelines Committee (Committee) through the Ohio Department of Health published a Final Guidelines Report in March 2015 following receipt and review of extensive testimony by experts who routinely treat youth sports concussions and head injuries. ORC Sections 3313.539(E)(4), 3707.511(E)(4), and 3707.521(E), direct the Ohio Board of Nursing to adopt rules in order

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that, effective September 17, 2015, minimal education requirements are established for its licensees to conduct “assessments and clearances” as specified in the statutes. ORC Section 3707.521(E) indicates that if an agency seeks to have its licensees authorized to assess and clear youth athletes, the agency “establish standards that are equal to or stronger than the guidelines developed by the committee.”

The Board received no further input from outside stakeholders proposing to modify the Committee’s recommendations.

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?

The Committee was made up of professional licensees with expertise in treating youth sports concussions and head injuries. The Committee heard extensive testimony while developing guidelines. The Committee relied upon and directed licensees to meet the “Zurich Guidelines” which is the “Consensus Statement on concussion in sport: the 4th International Conference on Concussion in Sport held in Zurich, November 2012.” The Nursing Board is incorporating the Zurich Guidelines by reference in the proposed rule.

Through the Advisory Groups, the Board relied on the expertise of education providers, program administrators, nurses, and others based on their current practice experience and familiarity with current data in their areas of expertise.

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 alternative regulations because the statutory mandate required compliance with the specific and detailed minimum standards determined by the March 2015 Final Guidelines Report of the Ohio Youth Sports Concussion & Head Injury Return-To-Play Guidelines Committee.

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 did not consider performance-based regulations because the statutory mandate required compliance with the specific and detailed minimum standards determined by the March 2015 Final Guidelines Report of the Ohio Youth Sports Concussion & Head Injury Return-To-Play Guidelines Committee.

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

The rule proposed is new and based upon recent statute. The statute narrowly defined the process in implementing the new rule. Staff reviewed the rule with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, the specific and detailed minimum standards determined by the March 2015 Final Guidelines Report of the Ohio Youth Sports Concussion & Head Injury Return-To-Play Guidelines Committee and further meetings with interested parties 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.

The statutory mandate required compliance with the specific and detailed minimum standards determined by the March 2015 Final Guidelines Report of the Ohio Youth Sports Concussion & Head Injury Return-To-Play Guidelines Committee. Meetings with interested parties helped ensure that these rules are applied consistently and predictably for the regulated community. The Board plans to monitor the progress with respect to the rule and report back to these groups any concerns. In addition, the Board will implement the regulations while using its website, newsletter, and social media to update and inform licensees, continuing education providers, nursing education and training programs, 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;

Individuals licensed by ORC Chapter 4723, most specifically Certified Registered Nurse Practitioners and Clinical Nurse Specialists. In addition, education and training programs and providers, health care employers and entities, licensees subject to discipline and their legal counsel.

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

Individuals are required to have a license and meet various conditions for licensure to provide youth concussion assessment and clearance. The rule requires that the licensee who assesses and clears youth pursuant to the conditions of the rule obtain an additional two hours of continuing nursing education in the detection of concussions,

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its clinical features, assessment techniques, and the principles of safe return to play protocols consistent with the Zurich Guidelines.

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.

Any adverse impact may be associated with two additional hours of continuing nursing education that would be required. This impact may be offset to the individual licensee through employer reimbursement for professional continuing education.

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

The Ohio legislature determined that the establishment of minimum education requirements necessary to qualify a certified registered nurse practitioner or clinical nurse specialist to assess and clear a youth athlete for return to practice or competition is necessary for licensees to meet educational standards and ensure public safety.

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.