

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: BELTSS

Regulation/Package Title: _____

Rule Number(s): 4751-1-12

Date: 5-19-15

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☒ Rescinded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 4751-1-12 Suspension or Revocation of License

- Language made gender neutral and consistent with language used in other rules;
- Language streamlined and clarified to assist individuals with understanding the rule;

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- Creates requirement for licensees to notify the Board of felony convictions and/or misdemeanor convictions arising out of the practice of nursing home administration;
- Requires licensees to cooperate with Board investigations.

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

4751.04, 4751.10

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.

4751-1-12 implements CFR 431.711 “Compliance with 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 continue to do so through responsible and ethical practice.

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 4751-1-12 may be partially measured by the number and severity of complaints received by the Board in regards to the practice of its licensees, as well as any action taken against licensees by the Board.

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.

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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 April 9, 2015 through May 8, 2015 and May 19 2015 to the present 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 feedback from Ginger Schuerger-Davison, RN, LNHA; and the Academy of Senior Health Sciences. (See attached.) 4751-1-12 was modified in response to Schuerger-Davison's and the Academy's comments. Written responses were sent to each party. (See attached).

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.

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 website where the updated rules will be posted. Postcards will be mailed to licensees to inform them of the changes.

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 4751-1-12 regulates licensed nursing home administrators. Ohio currently has approximately 2000 licensed nursing home administrators

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

Rule 4751-1-12 poses a potential adverse effect for licensees who violate the rule and could potentially receive a sanction from the Board.

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 4751-1-12 ranges from license suspension to revocation, which would result in the loss of wages for the period of time the license was suspended or revoked, ranging from \$50,000 to \$100,000 per year.

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

The Board is not maintaining or creating any unreasonable burdens upon licensees or the business community. Rules regarding temporary licenses and suspension or revocation of license are required by the CFR as explained in question number 3. The Board feels that an updated license suspension or revocation rule is necessary to protect both the profession and the public. Rule 4751-1-14 ensures that licensees are familiar with Ohio’s laws and rules relative to Board regulations and facility licensure regulations.

Regulatory Flexibility

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

No. This rule applies to individuals and not small businesses.

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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?

The Board will determine the penalty, if appropriate, for all violations and offenders on a case-by-case basis and will consider all relevant information presented.

18. 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 individuals and/or facilities may have.

Section 119.032 of the Revised Code requires the Board of Executives of Long-Term Services and Supports (BELTSS) to review the rules of Chapter 4751 of the Ohio Administrative Code no later than the rules' assigned review dates. The rules regulate BELTSS. BELTSS is proposing to modify OAC 4751-1-11, 4751-1-12, 4751-1-14, and 4751-1-17. Any person may direct written comments or requests for information concerning BELTSS' rule proposals to Deborah Velez, Executive Director of BELTSS, by writing to dveley@age.ohio.gov.

4751-1-11 Temporary license

- (A) Upon request of the operator of a nursing home, a temporary license may be issued by the board for a period not to exceed one hundred eighty days to an individual temporarily filling the position of a nursing home administrator vacated by reason of death, illness or such other cause as the board may deem sufficient to justify the issuance of such temporary license.
- (B) An individual applying to the board for temporary licensure shall be required to furnish satisfactory evidence; namely, that the ~~applicant~~ individual:
 - (1) Has graduated from an accredited college and holds a Bachelor's degree;
 - (2) Is at least eighteen years of age;
 - (3) Is of good moral character;
 - (4) Is suitable and fit to be licensed as a temporary nursing home administrator as evidenced by:
 - (a) Presence of good health and freedom from communicable disease;
 - (b) Absence of any physical or mental impairment that would be likely to interfere with the performance of the duties of a temporary nursing home administrator;
 - (c) Ability to understand and communicate general and technical information necessary to the temporary administration and operation of a nursing home;
 - (d) Ability to assume responsibilities for the temporary administration of a nursing home as evidenced by prior activities and prior service satisfactory to the board;
 - (e) Ability to relate the physical, psychological, spiritual, emotional and social needs of the ~~patients~~ persons served to the temporary administration of a nursing home, and to create a climate necessary to meet the needs of the ~~patients~~ persons served.

- (C) An applicant for temporary licensure shall submit with his the application a certified check or money order for the fee as provided for in rule 4751-1-16 of the Administrative Code.
- (D) No portion of the one hundred eighty day period allowed for a temporary license will be recognized as fulfilling any part of any internship requirement which is a condition precedent to admission to examination for licensure as a nursing home administrator.
- (E) A temporary license may be revoked for any violation contained in section 4751.10 of the Revised Code, and these rules.
- (F) The board may delegate its authority to review the applications for temporary licensure to its executive secretary in order that temporary licenses may be issued in emergency and hardship cases.

HISTORY: Replaces rule 4751-1-11; Eff 10-1-74; 10-16-83
Rule promulgated under: RC Chapter 119.

4751-1-12 Suspension, revocation, and disciplinary action

For the purposes of this rule, an individual licensee who accepts the privilege of practicing nursing home administration in this state is subject to the supervision of the board.

- (A) The license or registration, or both, or the temporary license of any person practicing or offering to practice nursing home administration, shall be revoked or suspended by the board of executives of long-term services and supports (BELTSS) if such licensee or temporary licensee:
 - a. Is unfit or incompetent by reason of negligence, habits, or other causes;
 - b. Has willfully or repeatedly violated any of the provisions of Chapter 4751. of the Revised Code or the regulations adopted thereunder; or willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the nursing home in which he is the administrator;
 - c. Is guilty of fraud or deceit in the practice of nursing home administration or in admission to such practice;
 - d. Has been convicted in a court of competent jurisdiction, either within or without this state, of a felony.
- (B) The license or certificate of registration, or both, or the temporary license of any individual practicing or offering to practice nursing home administration may be revoked or suspended by the board of executives of long-term services and supports (BELTSS), or the board may impose a civil penalty, cost, or any other sanction authorized by the Chapter if such licensee or temporary licensee:
 - (1) Is unfit or incompetent by reason of negligence, habits, or other causes.

Summary of Comments on We herewith attest and verify these Minutes of the meeting

Page: 4

Number: 1 Author: Virginia Subject: Sticky Note Date: 5/5/2015 10:11:47 AM

Is this statement being added? it doesn't seem necessary in addition to the new language in paragraph A

Number: 2 Author: Virginia Subject: Sticky Note Date: 5/5/2015 2:08:36 PM

i know this language comes from existing paragraph B, but would there be any chance of modernizing it? it's still in paragraph B as well. Paragraphs A and B are quite repetitious other than the addition in paragraph B of the ability to impose a civil penalty.

why was A1 left as is, but B1 changed?

B3 is a new addition

B5 starts the same as A4 with additional language added. should they read similarly or can these two paragraphs be combined?

- (2) Has purposely, knowingly, recklessly, and/or negligently violated any of the provisions of chapter 4751. of the Ohio Revised Code or the rules adopted thereunder; or purposely, knowingly, recklessly, and/or negligently acted in a manner inconsistent with the health and safety of the persons served in the nursing home in which the individual is the administrator; or
- (3) Has demonstrated by his or her actions, incompetence, untrustworthiness, dishonest practices or irresponsibility in the practice of nursing home administration; or
- (4) Is guilty of fraud or deceit in the practice of nursing home administration or in admission to such practice; or
- (5) Has been convicted in a court of competent jurisdiction, either within or without this state, of a felony and/or has failed to inform the board, in writing, within ten days of a conviction in a court of competent jurisdiction, either within or without this state, of a felony; or
- (6) Has been convicted of a misdemeanor in a court of competent jurisdiction, either within or without this state, within the course and scope of the practice of nursing home administration and/or has failed to inform the board, in writing, within ten days of a conviction of a misdemeanor in a court of competent jurisdiction, either within or without this state, within the course and scope of the practice of nursing home administration;
- (7) Has had a license or certification of registration denied, revoked or suspended, or has voluntarily surrendered a license or certificate of registration for any reason other than a failure to renew, in Ohio or another state or jurisdiction;
- (8) Has failed to appear before the board or its designee after being notified in writing by the board, unless a reasonable extension has been requested in writing and granted by the board or its designee;
- (9) Has failed to inform the board, in writing, within ten days of a change in business or personal address;
- (10) Has violated any of the provisions of Chapter 4751.09 of the Revised Code or the regulations adopted thereunder;

(11) Has failed to renew the annual certificate of registration in a timely manner as defined in 4751-1-10.1.

(C) The following shall be deemed prima facie examples of those activities which demonstrate that an individual is unfit or incompetent by reason of negligence, habits, or other causes to serve as a nursing home administrator:

- (1) Failure to make good faith attempts, via methods of administrative management, to assure that the nursing home in which the individual is the administrator conforms with the provisions of pertinent statutes, codes, rules and regulations of the licensing or supervising authority or agency, federal, state or local, having jurisdiction over the operation and licensing of nursing homes;
- (2) Dependency upon or addiction to the use of alcoholic beverages or drugs regulated by the local, state and Federal Narcotics Law;
- (3) Failure to conform to the requirement imposed by rule 3701-17-08(A) of the Ohio Administrative code.
- (4) Failure to be responsible for planning, organizing, directing, and managing the operation of a nursing facility in such manner to insure the safety, health and welfare of the persons served in any facility under the administrator's supervision;
- (5) Physical inability to serve as a nursing home administrator as evidenced by the statement of two licensed physicians;
- (6) Mental incompetency declared by a decree of any court;
- (7) Willfully permitting unauthorized disclosure of information relating to an individual in a nursing home under the individual's administration;
- (8) Lawful revocation or suspension by the duly constituted authorities of another state of any nursing home administrator's license which may have been issued said licensee by another state;
- (9) Failure to cooperate in any investigation concerning allegations to the administrator's or another licensee's or registrant's license or registration;
- (10) Failure to adhere to any conditions set forth in a board approved adjudication order or consent agreement;

(D) Licensed nursing home administrators governed by Chapter 4751 of the Ohio Revised Code, and by these rules, shall be disciplined in accordance with Chapters 4751 and 119 of the Ohio Revised Code.

Memorandum

To: Ginger Schuerger-Davison, RNBC, LNHA
CC: Sydney King
From: Deborah Velez
Date: 5/19/2015
Re: Public Comment

Thank you for taking the time to comment on the Board's proposed rules, specifically 4751-1-12.

The Board's response is as follows:

- We are using the opening language as a statement of purpose for the Board.
- Some of the language to which you are referring is in the Ohio Revised Code. We have, however, modified the section to reduce redundancy.
- We changed "a" to "any" in section (B)(7) to reflect the Boards' intention that it be notified of revocation or surrender of a license of any type.

The Board looks forward to the ongoing modernization of the Board to ensure that Administrators are properly trained to provide higher standards of care for Ohio's citizens. Once again, thank you for your input.

The Academy of Senior Health Sciences Inc.

To: Deb Veley, Executive Director
Board of Executives of Long Term Services and Supports
From: Christopher Murray, CEO
Re: Comments on proposed BELTSS rules
Date: May 06, 2015

This letter serves as The Academy of Senior Health Sciences' comments on the proposed BELTSS rules. Specifically, The Academy has concerns over the addition of the language "the board may impose a civil penalty, cost, or any other sanction authorized by the Chapter" found in 4751-1-12 Division (B). The statutory authority for BELTSS to impose fines or penalties does not exist. In fact, R.C. Section 4751.04 explicitly states the "Powers and duties of board" and fails to mention the board's ability to issue fees or fines. (A)(7) indicates a clear lack of authority as the Board is directed to "Pay all license fees and registration fees collected" into a fund. If the General Assembly gave them authority to impose monetary penalties to BELTSS, the General Assembly would have directed where those penalties were to be deposited. Furthermore, we cannot find "other sanctions" in the rules the board may implement. This may provide alternatives to the civil monetary penalties and should be spelled out in the rules.

The Academy also has concerns over the language in Division (B)(3) of the same section: "Has demonstrated by his or her actions, incompetence, untrustworthiness, dishonest practices or irresponsibility in the practice of nursing home administration." Given that the other parts of Division (B) and (C) cover various lists of administrator qualities and actions that warrant an adverse action by the board, we see no reason for the much broader and subjective language found in (B)(3). If there are specific actions that the board is concerned about, they should be further described in the rules. This would be similar to Division (C) which expands on Division (B)(1). Otherwise, the vague language found in the proposed rules can lead to abuse by those in power.

Thank you for considering these comments and we look forward to working with you on these issues through the rule making process.

No inference should be taken that the failure to mention issues in this submission is a waiver of any right to assert the proposed rules are not in conformity with the law including provisions of the United States and Ohio Constitutions.

Memorandum

To: Chris Murray, CEO, The Academy of Senior Health Sciences
CC: Sydney King
From: Deborah Veley
Date: 5/19/2015
Re: Public Comment

Thank you for taking the time to comment on the Board's proposed rules, specifically 4751-1-12.

The Board's response is as follows:

- The Board has decided to seek a legislative change to address other potential sanctions and has modified the language in (B).
- The Board disagrees that it must list with specificity each potential violation. To do so would be impossible; therefore, the Board has not modified the language in division (B)(3).

The Board looks forward to the ongoing modernization of the Board to ensure that Administrators are properly trained to provide higher standards of care for Ohio's citizens. Once again, thank you for your input.

