

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Nursing Board rule updates and technical changes: OAC Chapters 4723-1; 4723-5; 4723-7; 4723-14; and 4723-16

Rule Number(s): 4723-1-03 and 4723-1-10; 4723-5-01; 4723-7-09 and 4723-7-10; 4723-14-03; and 4723-16-12

Date: August 21, 2015

Rule Types: New, Amended

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 proposes to amend or file new rules for Ohio Administrative Code (OAC) Chapters 4723-1, Board Organization and Records; 4723-5, Nursing Education Program; 4723-7, Examination and Licensure; 4723-14, Continuing Education; and 4723-16, Hearings.

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

Ohio Revised Code (ORC) Section 4723.06

ORC Section 4723.07

ORC Section 4723.26 (Chapter 4723-7 and 4723-14, 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. Amendments in this rule package are proposed for technical corrections due to legislation, to correct errors, or to update form reference effective dates. Chapter 4723-7 and Chapter 4723-14 are revised based on HB 320, 130<sup>th</sup> General Assembly, which authorizes Volunteer Certificates. Chapter 4723-14 is also revised to include Human Trafficking continuing education following passage of HB 262, 129<sup>th</sup> General Assembly.

**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 Board discussed the rules package at its public Board meetings in April, May and July 2015. Board meeting dates are posted on the Board website and public notice for each Board meeting is provided. In addition, agenda materials, including the proposed rule changes, are posted on the Board website.

The Board held an interested party meeting with various stakeholders on May 27, 2015. Participants included representatives of the Ohio Nurses Association (ONA) and the Ohio Association of Advanced Practice Nurses (OAAPN). 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.

The Board Advisory Group on Nursing Education met at the Board office on June 11, 2015 and discussed the proposed change to Rule 4723-5-01. Advisory Group meetings are scheduled in advance, posted on the Board website, and open to the public.

The Board Advisory Group on Continuing Education met on July 2, 2015, and discussed the proposed change to Rule 4723-14-03.

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

A licensee offered input on proposed new rule 4723-7-10(E) recommending that a criminal records check requirement be added as a requirement for a volunteer certificate. Section 4723.26(D)(2), ORC, requires a criminal records check if the applicant has been retired for at least ten years. In comparison, note that Section 4723.24(D)(3), ORC, requires a criminal records check for licensees who have been lapsed/inactive for at least five years who seek to reinstate their nursing license. It appears that the legislature deliberately regulated this area and selected the ten-year timeframe for Volunteer's Certificates. For renewal, Section 4723.26(F)(2), ORC requires that the individual comply with Section 4723.24. Language is added in Rule 4723-7-10(E) cross-referencing the criminal records check requirement in Section 4723.24(D)(3), ORC, for those who have been lapsed/inactive for at least five years. The Board agreed by general consensus to keep the requirement consistent with current requirements in the Revised 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?**

The Nursing Board utilizes observation and measurement of factual information organized for analysis and used to reason or make decisions from a variety of sources, including journal articles, studies, enforcement statistics and analysis.

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The Board referred certain rules to their Advisory Groups made up of stakeholders in specific areas of nursing based on their knowledge and familiarity with data impacting particular rules. Through the Advisory Groups, the Board relied on the expertise of education providers, program administrators, nurses, dialysis technicians, employers 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 other regulatory alternatives in this rule package in part because the rule revisions are being updated due to statutory requirements or are being proposed for technical, legal, clarification 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 did not propose performance-based regulations in this rule-package due to considerations of maintaining established processes and standards to achieve its public protection mandate.

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

Staff reviewed the rules 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 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, 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 obtain and renew their licenses. If licensees violate the law, they may be subject to discipline, including fines of up to \$500 per violation.

HB 320 (130<sup>th</sup> General Assembly) required that Volunteer Certificate holders obtain education or continuing education (CE) and granted the Board authority to set additional CE standards by rule. The required hours set forth in proposed Rule 4723-14-03 are consistent with the legislative mandate, the nature of the practice, and the CE number of hours required for all nurses licensed by the Board. There is no fee for the Volunteer's certification.

**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 cost of licensure and certification as well as fining authority is established by statute.

HB 320 (130<sup>th</sup> General Assembly) required that Volunteer Certificate holders obtain education or continuing education (CE) and granted the Board authority to set additional CE standards by rule. Twenty-four hours of CE is required to obtain the Volunteer's Certificate and every two years for renewal. This number is consistent with the minimal requirement for all nursing licensees.

Cost of compliance with maintaining CE varies by the cost of the individual program, but the cost could be considered minimal. CE for nurses may be free, or may have a cost, generally ranging between \$10-\$200, depending on the CE the licensee chooses to access. For example, one company offers unlimited CE for about \$50 a year.

Consistent with current requirements in the Revised Code, the Board added language in Rule 4723-7-10(E) cross-referencing the criminal records check requirement in Section 4723.24(D)(3), ORC, for those who have been lapsed/inactive for at least five years. There is a minimal cost to obtain the background check on what should be a one-time basis.

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

Defining professional CE for nurses who provide patient care as a volunteer nurse ensures public safety and is consistent with CE requirements for all nurses who maintain an active license to practice. It is consistent with the authority granted in HB 320 of the 130<sup>th</sup> General Assembly.

Defining professional CE requirements with respect to Human Trafficking issues ensures public safety and increases awareness of this major issue. It is consistent with the authority granted and direction provided in HB 262 of the 129<sup>th</sup> General Assembly.

**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.

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