

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Nursing Board Technical Revisions: OAC Chapters 4723-1, 4723-2, 4723-8, 4723-9 and 4723-14.

Rule Number(s): 4723-1-03; 4723-2-03; 4723-8-08; 4723-9-02, 4723-9-06; 4723-9-11; 4723-14-01; and 4723-14-03.

Date: August 24, 2016

Rule Types: 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117  
[CSIOhio@governor.ohio.gov](mailto: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.*

The Board proposes to amend individual rules within Ohio Administrative Code (OAC) Chapters 4723-1, Board Organization and Records; 4723-2, Licensing for Active Duty Military and Veterans; 4723-8, Advanced Practice Nurse Certification and Practice; 4723-9, Prescriptive Authority; and 4723-14, Continuing Education.

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

Ohio Revised Code (ORC) Section 4723.07  
ORC Section 5903.10 (OAC Chapter 4723-2)  
ORC Section 4723.50 (OAC Chapter 4723-9)  
ORC Section 4723.79 (OAC Chapter 4723-14)

**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 actively safeguard the health of the public through the effective regulation of nursing education and practice. The rules are being updated consistent with the need for update, other change or to provide further clarity, including for technical or non-substantive reasons. Recently enacted legislative amendments also required changes to rules.

Concerning the change to Rule 4723-1-03, the Joint Commission on Agency Rule Review (JCARR) has advised state agencies that it is construing the “incorporation by reference” statute, Section 121.73, ORC, to require that if a rule references a required “application” or “form”, the agency must submit a copy of that application/form with any rule filings, or post the application/form online and include a website address (i.e., a uniform residence locator or

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URL) in the rule language referencing where the application/form is located. In 2013, the Board decided to create a website address for all forms/applications, and reference this address in rule. JCARR indicated that if this method is used, the effective date of the form must be identified in the rule language, and if a rule is submitted that references a form for which the effective date has changed (i.e., the Board revises the form), the rule reflects the new effective date. This year, staff is proposing to amend Rule 4723-1-03 (under Board Records and Documents) to list forms or applications referenced in Chapter 4723; this way, when a form effective date change is made, one single rule can be revised rather than revising multiple rules across different chapters. In addition, this will benefit licensees and the public by having a one-stop location identifying required forms or applications.

Recently enacted legislative amendments also required changes to rules. HB 188, 131<sup>st</sup> GA, effective March 23, 2016, amended the RN, APRN, CTP and PN license expiration dates from September 1 to November 1, and this required changes to rules 4723-2-03, 4723-8-08, 4723-9-06, and 4723-14-01.

**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 2016. 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 multiple stakeholders on May 26, 2016. Participants and invitees included representatives of the Ohio Nurses Association (ONA), the Ohio Association of Advanced Practice Nurses (OAAPN), Council for Ohio Health Care Advocacy (COCHA), the Licensed Practical Nurse Association of Ohio (LPNAO), the Ohio Council of Deans and Directors of Baccalaureate and Higher Degree Nursing Programs (OCDD), the Ohio Organization of Practical Nurse Educators (OOPNE), and the Ohio Council for Associate Degree Nursing Education Administrators (OCADNEA). Notice and

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invitation to the meeting was sent by e-mail on April 27, 2016 to approximately 40 persons representing various stakeholders to the Board.

The Committee on Prescriptive Governance met at the Board office on May 16, 2016 and reviewed the proposed rules in OAC Chapter 4723-9. CPG meetings are scheduled by e-mail and are open to the public.

On June 14, 2016, Board staff met with Department of Administrative Services (DAS) staff to discuss how the Board could address through rule an issue that arose within the new state eLicense 3.0 system, related to APRN COA/CTP certification renewal and expiration as related to rules 4723-8-08 and 4723-9-06.

The Board's Advisory Group on Continuing Education met at the Board office on June 17, 2016, and recommended technical changes to two rules in OAC Chapter 4723-14.

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

At the July 2016 Board meeting, the Board reviewed written comments dated May 23, 2016, from a representative of OAAPN regarding language changes to rules in OAC 4723-9. The comments were previously reviewed at the May 2016 interested party meeting. Consistent with discussion at the interested party meeting, the Board accepted one change, but did not delete reference to necessary course work in the other due to the importance of the reference to education and public safety concerns.

On June 14, 2016, Board staff met with DAS staff to discuss how the Board could address through rule an issue that arose related to certification dates in rules 4723-8-08 and 4723-9-06. Historically, rule language for licensees, COA, and CTP holders has provided that if a license or certificate is first issued after March 1, the expiration date is the end of the subsequent renewal period. In other words, if a license is first issued after March 1, the individual is not required to renew that year. This is reflected in Rule 8-08 (COA) and 9-06 (CTP).

The rationale has been that someone should not have to incur a renewal fee when they have recently been issued a new license or certificate. DAS advised that with respect to COA and CTP holders that are newly issued, the eLicense 3.0 system needs to have the certificate expiration date match the RN expiration date. To resolve this problem, staff agreed to recommend a rule change so newly issued (July 1 or after) COA/CTP certificates will expire on November 1, and thus, will be subject to renewal, but the renewal fee will be waived. ORC Section 4723.08(A) states that the Board "may" impose renewal fees but does not state the Board "shall", thus, the Board has the authority to waive these fees. DAS has indicated that it will provide an online renewal application for these groups that does not include a fee payment requirement.

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At the July 2016 Board meeting, the Board reviewed and accepted amendments from the Board's Advisory Group on Continuing Education to OAC Rule 4723-14-01 consistent with new license renewal/expiration dates implemented by HB 188, 131<sup>st</sup> GA, effective March 23, 2016; and to correct a typographical error in rule 4723-14-03.

**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?**

Through the Advisory Groups, the Board relied on the expertise of education providers, program administrators, and nurses, based on their current practice experience and familiarity with current data from their areas of expertise, and others such as the Governor's Cabinet Opiate Action Team (related to changes recommended in OAC rule 4723-9-02).

**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 based on its duty to carry out its public protection mission, and in part because certain rule revisions require updating or amendment related to statutory requirements or for technical 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 setting 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, correcting typographical errors 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

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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. Licensees and applicants must also complete at least one hour of continuing education on Ohio law and rules as a required part of their licensure application and subsequent licensure.

### **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, education and training programs and providers, health care employers and entities, and certificate holders 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. Continuing education providers must be approved for their course work to count for licensee requirements. Advanced practice registered nurses who seek prescriptive authority are required to complete advanced pharmacology coursework.

##### **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.*

There is no anticipated adverse impact cost attached to these rules.

For the Chapter 4723-9 rules specifying certain opioid-related education course work, there could be minimal costs associated with adding references and content to similar course work already being taught. There is a cost inherent in engaging in the business of being a Board approved nursing education program or an approved and accredited continuing education provider. That cost is variable and determined by the extent of continuing education to which the approver or provider participates. Separate costs to obtain accreditation or engage in approving or providing education are not established

by the Board. There is no fee attached to Board approval and the application process and forms are minimal.

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

The regulatory intent justifies any impact on business in these rules because these rules are critical to setting consistent standards to further the Board's mission of 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. The Board is proposing to waive COA/CTP first-time renewal fees for those with newly issued certificates in Rules 4723-8-08 and 4723-9-06.

**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.