

**MEMORANDUM**

TO: Kaye Norton, Ohio Department of Health

FROM: Emily Kaylor, Regulatory Policy Advocate

DATE: December 28, 2016

RE: **CSI Review – Nurse Aide Training and Competency Evaluation Programs/Train-the-Trainer Programs (OAC 3701-18-01 through 3701-18-27)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 27 rules – 13 amended and 14 no-change – submitted by the Ohio Department of Health (ODH) pertaining to nurse aide training. The rule package was submitted for its statutorily-required five-year review on August 25, 2016 with the comment period for the rules closing on September 24. Six comments were received during this time. A revised BIA was submitted by ODH on October 20 to correct the rule explanations. Because of the comments received, ODH opened a second comment period for a revised version of Ohio Administrative Code (OAC) 3701-18-12. This comment period closed November 30 with no comments received.

The rules encompass definitions; requirements such as approval, re-approval, facilities, recordkeeping, curriculum, and personnel for nurse aide training programs and train-the trainer (TTT) programs; and regulations for the state-administered test. Amendments are proposed to 13 of the rules to remove unnecessary or duplicative language, clarify requirements, add veteran's preference in accordance with legislative changes, update electronic systems for applications, improve curriculum, and edit testing standards.

For early stakeholder outreach, ODH convened a curriculum review committee composed of stakeholders and practitioners that reviewed both the Nurse Aide Training and Competency Evaluation Programs (NATCEP) and TTT curriculums. Additionally, stakeholders were notified of two meetings to discuss the rules where they provided much input on the amendments to the rules, particularly related to the nurse aide training curriculum.

These rules impact approximately 464 NATCEPs and 20 TTT programs. There are a variety of equipment and personnel costs associated with these rules, including purchasing or leasing real estate, time associated with administrative requirements like recordkeeping and reporting, and application and testing fees. The fees associated with these rules range from \$24 for the exam to \$600 required for the initial application to be a TTT program. Equipment is estimated in the BIA as costing anywhere from \$0 to \$5,000 depending on what the programs already have.

Three comments inquired about required testing scores. One of them suggested Ohio should only require a 75% passing score on the state-administered test (in line with the national average for the NATCEP) rather than the 80% that is currently required. ODH explained that federal regulation 42 CFR 483.154(e) requires states to set their own standards for passing the exam. Scores across the country range from 70-80%. ODH chose 80% because of surrounding states' standards and stakeholder feedback. ODH has stated that if it lowered this, then it would increase the requisite hours of training from the current federal minimum of 75, as do some states that allow lower passing scores on their tests. ODH proposes to increase a trainee's required average passing grade on all exams and quizzes in an approved training and competency evaluation program from 70% to 80% to mirror the state-administered test trainees have to pass.

Five comments were directed toward the NATCEP curriculum found in the appendix to rule OAC 3701-18-12. Some of the comments led to substantial rule changes, so as discussed above, ODH held a second comment period for the rule and its appendix. After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendation

For the reasons explained above, the CSI office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Health should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.