

**MEMORANDUM**

**TO:** Tom Dilling, Ohio Board of Nursing

**FROM:** Travis Butchello, Regulatory Policy Advocate

**DATE:** June 16, 2017

**RE:** **CSI Review – Opioid Prescribing Rules for Acute Pain (OAC 4723-9-09 and 4723-9-10)**

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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This rule package consists of one rescinded, and one amended <sup>1</sup>rule proposed by the Ohio Board of Nursing. The rule package was submitted to the CSI Office on May 11, 2017 and the public comment period was held open through May 31, 2017. Three comments were received during this time.

The rescinded rules pertain to opiate prescribing and are being combined into one rule Ohio Administrative Code (OAC) 4723-9-10 which outlines the new guidelines for the prescribing of opiates for acute pain by nursing professionals. Specifically, the rule limits the duration of an opiate prescription for acute pain to seven days for adults and five days for children and may be exceeded if a prescriber documents their detailed reasoning in the patient's medical record. The rule also limits the amount of morphine equivalent dosage (MED) allowed for an opiate

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<sup>1</sup> OAC 4723-9-10 is being amended to the extent that the Legislative Service Commission requires the Board to rescind the rule and replace it with a new rule of the same rule number.

prescription to 30 per day but this also may be exceeded if the prescriber deems it clinically necessary and their reasoning is documented in the patient's medical record. It is important to note that the new rule pertains only to acute pain, not chronic, and does not apply to cancer treatment, hospice care, palliative care, terminal conditions, inpatient prescriptions or treatment within an opioid detoxification or maintenance program. The Board states in the BIA that the purpose of the rules is to reduce the frequency of the amount of opioids prescribed for acute pain, while preserving the ability for providers to exercise their professional discretion and prescribe beyond the specified limits under certain circumstances.

The Board explained in the BIA that it discussed the draft rule at its public board meeting in April 2017 and sent copies of the draft rule to various interested parties for initial comment. During this time, the Board fielded comments from numerous nursing entities throughout the state. Generally, the entities agreed with the provisions of the rule but requested minor technical changes. The Board responded and chose to adopt the changes as requested.

Three comments were received during the CSI public comment period. The first commenter requested the Board remove definitions because they would cause confusion, delete the list of specific drug classifications, and delete other confusing or redundant terms. The Board responded and chose to adopt some of the changes while keeping certain provisions explaining that they were needed to maintain prescribing standards. University Hospitals submitted a comment expressing concerns regarding the 30 MED limit, inclusion of diagnosis codes, and justification requirement for excess doses. The Board responded that the 30 MED limit may be exceeded as long as it is deemed clinically necessary and well documented in the patients record, the 7 and 5 day limits may be exceeded for the same reason, and the inclusion of the diagnosis code is necessary for reporting and monitoring standards so that the Board can ensure that prescribers are complying with the rules. The reporting of the diagnosis code will also allow practitioners and regulators to understand why opiates are being prescribed and to recognize patterns in prescribing so that the Board is able to identify any noncompliance or abuse of the exceptions contained in the rule. Lastly, another commenter requested a term change which was adopted by the Board.

The rules impact the public, employers, licensed nursing professionals and other healthcare providers. The nature of the adverse impact exists in the form of requirements to acquire and maintain nursing licensure, and comply with minimal standards of care. The BIA maintains that there is no quantifiable adverse impact pertaining to the new proposed rule because it will likely increase the quality of treatment and decrease addiction treatment and result in cost savings to patients, employers, and insurers. However, CSI recognizes that there are time and costs associated with the new reporting requirements and reduced prescription amounts. The Board emphasizes that any adverse impact that results from these rules is justified by the regulatory intent because of the severity of Ohio's opioid epidemic and need for prescription reform.

**Recommendation**

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

**Conclusion**

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