

**MEMORANDUM**

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

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

**DATE:** October 12, 2017

**RE:** **CSI Review – Technical Revisions (OAC 4723-2-03, 4723-7-09, 4723-8-01 through 4723-8-05, 4723-8-07 through 4723-8-10, 4723-9-01 through 4723-9-12, 4723-23-01, and 4723-23-08)**

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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 twenty-one amended<sup>1</sup> and one new rule proposed by the Ohio Board of Nursing. The rule package was submitted to the CSI Office on September 15, 2017 and the public comment period was held open through October 2, 2017. Thirty-five comments were received during this time. Responses to the comments with updated rules were provided on October 3, 2017.

The rules cover the effective regulation of nursing education and practice in Ohio. Specifically, the rules address license requirements, fees, scope of practice, and rules regarding collaborating agreements with physicians. The Board contends that the public purpose of the regulation is to ensure the public health and safety of individuals who receive medical care from nurses in the

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<sup>1</sup> Ohio Administrative Code (OAC) 4723-9-08 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

state.

As part of the early stakeholder outreach process, the Board discussed the package at numerous public board meetings and held an interested party and stakeholder meeting in June. Participants in the meeting included multiple healthcare stakeholder associations including the Ohio Nurses Association and the Ohio Association of Advanced Practice Nurses (OAAPN). The rules were also reviewed by the Committee on Advanced Practice Registered Nursing prior to being approved by the Board. During the outreach process, the Board received concern from the OAAPN regarding language changes to OAC 4723-9-10 regarding advanced practice registered nurses (APRN) and liability for prescribing above the 30 morphine equivalent dose limit imposed by OAC 4731-11-13, a Medical Board rule. In response, the Board plans to amend the rule language to require compliance with Rule 4731-11-13 instead of the previous language which required notation of treating physician accountability in the collaborative agreement between the APRN and supervising physician. Due to the timing of the next Board meeting, CSI is approving this rule package contingent on proposed language changes by the Board of Nursing.

Thirty-five comments were received during the CSI comment period and all addressed the clarification noted during the early stakeholder outreach process regarding the morphine equivalent dose exception. The Board responded to each commenter and outlined the proposed language change pending Board approval. In addition, the Board noted to commenters that this rule package does not grant the Board of Nursing the authority to regulate physicians and only ensures compliance with OAC 4731-11-13 for APRNs and other nurses who require collaborative agreements with physicians so that they may prescribe medication for patients.

The rules impact all individuals licensed by ORC Chapter 4723, dialysis training programs, education and training programs, and certificate holders subject to the rules. The Board notes in the BIA that the adverse impacts exist because individuals are required to obtain a license and thereby meet various requirements. In addition, individuals must pay to obtain and renew their licenses and earn continuing education credit. All of the aforementioned tasks impose minimal cost burdens on the individuals. The Board further notes that changes made to these rules do not impose any additional adverse impact on those who wish to engage in the practice of nursing in Ohio. Lastly, the Board believes that the regulatory intent of these rules outweigh any impact on business because the rules are critical to establishing consistent standards for the education and practice of nursing and further the Board's commitment to public health and safety, particularly with regards to the opiate epidemic.

### **Recommendation**

For the reasons explained above, this office does not have any recommendations regarding this rule package contingent on the Board's amendment as described above.

### **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.