

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Five Year Rule Review: OAC Chapters 4723-1, 4723-3 and 4723-14

Rule Number(s): 4723-1-01 through 4723-1-11; 4723-3-01 and 4723-3-02; and 4723-14-01 and 4723-14-03 through 4723-14-18.

Date: September 15, 2017

Rule Types: Amended/No Change/5-Year Rule Review

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 no change rules following the five-year rule review for Ohio Administrative Code (OAC) Chapters 4723-1, Board Organization and Records; 4723-3, Definitions; 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 121.22 (OAC Chapter 4723-1)

ORC Chapter 1347. and Sections 1347.05 and 1347.15 (OAC Chapter 4723-1)

ORC Sections 4723.69 and 4723.88 (OAC Chapter 4723-3)

ORC Section 4723.69 and 4723.79 (OAC Chapter 4723-14)

ORC Section 4745.04 (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 schedule for the Board's five-year rule review. Within that review, compliance, education and practice issues initiated 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. HB 216, 131<sup>st</sup> GA, effective April 6, 2017, made comprehensive changes to the Nurse Practice Act (NPA) that require comprehensive language changes to certain Board rules. HB 290, 131<sup>st</sup> GA, effective April 6, 2017, permitted LPNs, RNs and APRNs to satisfy a portion of their continuing education (CE) requirements by providing health care services without compensation to indigent and uninsured persons. Licensees may meet up to one-third of the CE requirements

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in this manner (e.g., if 24 hours is required, 8 hours can be based on qualifying volunteer service). One credit hour may be awarded for each 60 minutes spent in volunteering.

**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, July and September 2017. 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 June 19, 2017. 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 invitation to the meeting was sent by e-mail on June 2, 2017 to approximately 40 persons representing various stakeholders to the Board.

The Advisory Group on Continuing Education met in June 2017 and reviewed the continuing education rules in OAC Chapter 4723-14. The Advisory Group on Nursing Education also met in June 2017 and reviewed the rules. This Group includes Board members who are administrators and educators in nursing programs and non-Board members who hold similar positions with nursing education programs and are members of various education program associations. Meetings are scheduled by e-mail and are open to the public.

The Advisory Committee on Advanced Practice Registered Nursing (ACAPRN) met in June 2017 and reviewed the rules in this five-year rule review package. The ACAPRN meetings are scheduled by e-mail and are open to the public.

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

Kim Parks, attorney from Bricker and Eckler was the only person who attended the interested party meeting for this rule package. She had a few informational questions and had no objections to any rules.

The Board's Advisory Group on Continuing Education met in June 2017 and recommended technical changes to two rules in OAC Chapter 4723-14. On August 2, 2017, Terry Pope, a member of the Advisory Group on Continuing Education, clarified that the Advisory Group recommends the same language be included in Rule 4723-14-12(A)(11) that the Group recommended in Rule 4723-14-15(A)(9) (previously reviewed by the Board in July 2017).

On June 8, 2017, Janet Winterstein, RN, Health Improvement Policy Specialist for the Ohio Department of Developmental Disabilities (DODD) wrote to the Board stating that she could not attend the interested party meeting, but had some technical language questions concerning the continuing education rules. Ms. Winterstein's intent was to clarify her understanding of language in the Board rules to help DODD since they have an education approver unit. The Board made the changes that were necessary to the satisfaction of the Advisory Group on Continuing Education and DODD.

The Ohio Association of Advanced Practice Nurses (OAAPN) wrote to the Board on June 30, 2017 with suggested language changes to and questions involving several rules in Chapter 4723-1. The Board made changes at the July 2017 Board meeting to reflect a "contact" list instead of a "mailing" list and to account for written or "electronic" requests for copies of rule notices and to address OAAPN's suggestion regarding providing for electronic communications.

Stakeholders and interested parties reviewed the five-year changes as recommended by the Board and provided little additional input beyond technical clarifications concerning the rules in OAC Chapters 4723-1 and 4723-3. Those changes may be summarized as follows:

**1. Chapter 4723-1 (Board Organization and Records)**

The primary change to this Chapter will be to update references to forms; this will be a yearly revision due to changes in form effective dates.

- Rule 1-03: Reference new forms/dates for 2017 (including forms re-named for APRN license, deletion of reference to COA/CTP forms).
- Rule 1-04: Fees now online – remove paragraph (C).
- Rule 1-05(B), (D): Changes were made as suggested by OAAPN, to reflect a "contact" list instead of a "mailing" list and to account for written or "electronic" requests for copies of rule notices.
- Rule 1-06: Paragraph (G) was added to address OAAPN's suggestion regarding providing for electronic communications.

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## **2. Chapter 4723-3 (Definitions)**

- Rule 3-01: Add definitions related to APRNs as referenced in HB 216.

## **3. Chapter 4723-14 (Continuing Education)**

- At its May 2017 Board meeting, the Board approved the following language with additional recommendations from the Advisory Group on Continuing Education:
- Rule 14-01, Advisory Group on Continuing Education recommendations:
  - (C): Added definition for “Asynchronous learning.”
  - (D): Added definition for “Blended learning.”
  - (H): Added definition for “Conflict of interest.”
  - (L): Added definition for “Marketing.”
  - (R): Delete “Sponsorship Support” definition.
  - (V): Add definition for “Synchronous learning.”
- Rule 14-03: Updated references to distinguish between LPN/RN continuing education and APRN continuing education, which is now required according to HB 216.
- Rule 14-03(L): Added language to implement HB 290 authorization for LPNs/RNs to use up to eight hours of health care services provided to indigent and uninsured persons as CE. See Section 4745.04, ORC.
- 14-04(D), Advisory Group on Continuing Education recommendation: The OBN approver will determine the number of contact hours; remove language related to not less than one half contact hour.
- 14-05: Updated cross-references.
- 14-05(C): Added language clarifying that as provided by HB 216, APRNs can apply CE obtained for national certification towards the CE required for renewal of both the RN and APRN licenses (Section 4723.24(C)(5), ORC). This language is added to both this rule and 4723-8-10 because it impacts both the RN and APRN CE requirements.
  - In addition, language was added to clarify, in response to inquiries made by interested parties, that CE obtained for APRN national certification, which may include opportunities such as self-directed learning, participation in clinical practice, research or mission trips, professional meetings, and precepting or teaching, may be count toward CE for APRN license renewal.
- Rule 14-12: Corrected typo and update cross-references.
- Rule 14-12(10), (11), and (12), Advisory Group on Continuing Education recommendation: Revised language related to commercial support, conflict of interest, positioning of exhibits.
- Rule 14-14(B): Added phrase “blended learning” as recommended by the Advisory Group.
- Rule 14-15(A)(7), (8), (9), (10), (11): The Advisory Group recommended making

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- similar revisions as proposed for Rule 14-12 and added language related to a joint provider process and mechanism to ensure the approved provider unit maintains control and responsibility for all aspects of compliance with Chapter 4723-14.
  - Paragraph (C)(7) is an update based on HB 216.
  - Rule 14-17(A)(5): The Advisory Group recommended making revisions similar to those proposed for Rule 14-12.
  - Rule 14-18: The Advisory Group recommended changing the title to insert the word “Voluntary.”
- At its July 2017 Board meeting, the Board approved the following additional recommendation from the Advisory Group on Continuing Education (including their recommendations based on comments provided by DODD):
  - 14-01 (C): Change word “pace” to “space.” In paragraph (H), add the word “education” before the word “activity.” Paragraph (U)(3) is added at the suggestion of OAAPN.
  - 14-03(L): At the May 2017 Board meeting, the Board reviewed and approved of draft language related to HB 290, which authorizes LPN/RN/APRN continuing education to include up to eight hours of credit for providing health care services as a volunteer to indigent and uninsured persons. The Advisory Group questioned whether these volunteer hours could occur in a foreign country. Section 2305.234, ORC, requires that “Until June 30, 2019, the [recipient of health care be] eligible for the Medicaid program or is a Medicaid recipient.” Thus, it does not appear that non-U.S. citizens would meet the definition of “indigent and uninsured.”
  - 14-05(B)(6): Added a cross-reference to 4723-14-03(L), for qualifying volunteer services. In 14-05 (C), the Advisory Group suggested adding after “include”: “these as specifically described in APRN national certification requirements.” However, because the only acceptable activities would be those specifically “approved by” or “provided by” a national certifying organization, adding this language would not seem necessary.
  - 14-12(A)(10): Added the word “education” before the word “activity.”
  - 14-15(A)(7), (A)(9): Upon review of comments by DODD, the Advisory Group recommended rewording these paragraphs. In (C)(7)(d), a reference to Rule 4723-8-11 concussion training is added for those CNP/CNSs who wish to obtain this education.
  - 14-17 (A)(5)(c), (g): Made similar changes as proposed for Rule 14-15.
- At the September 2017 Board meeting, the Board approved the same language in Rule 4723-14-12(A)(11) that the Advisory Group on Continuing Education recommended in Rule 4723-14-15(A)(9) (previously reviewed by the Board at its July 2017 meeting). Advisory Group member Terry Pope in August 2017 forwarded these recommendations to the Board for consideration.

- **Impact of HB 216:**

- Rule 14-03: Added reference to APRN License CE requirements for renewal that addresses those APRNs licensed for less than a two year period (Section 4723.24(C)(2)(b), ORC), addressing the 12-hour advanced pharmacology course from an “accredited institution,” and mirroring the language allowing CE credit for courses taken for national certification (see 4723.24(C)(2)(c), (C)(5)).
- Added language specifying that CE obtained for purposes of national certification by a body approved by the Board according to Section 4723.46, ORC would count, even if “self-directed study, clinical practice or research, or professional meetings.”
- Throughout Chapter, corrected obsolete and update language on an as needed basis, e.g., Rule 14-15(C)(7)(c) (referring to certificate to prescribe).

- **Impact of HB 290 (131st GA):**

- Effective April 6, 2017, language was added to the law permitting PNs, RNs, and APRNs to satisfy a portion of their CE requirements by providing health care services without compensation to indigent and uninsured persons. Up to one-third of the CE requirements may be met in this manner (e.g., if 24 hours is required, 8 hours can be based on qualifying volunteer service). One credit hour may be awarded for each 60 minutes spent in volunteering.
- The Board discussed and considered what kind of documentation should be retained, or uploaded with the renewal application (document signed by supervisor describing services provided, to whom, where, and total time).

**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 and the ACAPRN, the Board relied on the expertise of educators and continuing education providers, program administrators, nurses, 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 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 that the regulated stakeholders must use to achieve compliance.*

In most instances, 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?**

Because the Board initiated the rule review process due to the five-year rule review requirement, 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 and the ACAPRN 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, Board Advisory Groups, and the ACAPRN 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. Licensees must also complete at least one hour of continuing education on Ohio law and rules as a required part of their licensure renewal.

**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, nursing students, continuing education providers, nursing education and training programs, health care employers and other entities.

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**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);**

Continuing education programs are required to be approved by Board approved providers. Individuals are required to have a license and meet various conditions for licensure, and to renew licenses, including the completion of continuing education.

With respect to fees and their requirements set forth in OAC Chapter 4723-1, all fee payments shall be made in the form specified by the board. Fees are not refundable once deposited except that payments in excess of the amounts required by Chapter 4723. of the Revised Code and rules adopted under that chapter shall be refunded. Regarding records of licensees and forms maintained by the Board, certain changes to those records such as the name of a licensee require written documentation to verify the legality of the name change, to replace documents or to otherwise change a record. The Board considers criminal record check information to be acceptable for up to one year from application.

**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 a cost inherent in engaging in the business of being a Board approved continuing education program. That cost is variable and determined by the extent or degree of the program’s management. Separate costs to obtain approval are not established by the Board. There is a minimal fee set by statute that is attached to applying to be an approver of continuing education programs. The verifying or providing entities establish charges associated with record changes.

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

Continuing education requirements are necessary to provide the education necessary to meet educational standards and ensure public safety. The regulatory intent justifies the impact on business because it is critical to the Board’s mission to ensure continued competency of licensees.

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### **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 education/training programs, 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 and ACAPRN 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.