

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: BELTSS

Regulation/Package Title: Board Officers, Board Secretary, and Board Members; Pre-Examination Requirements, Licenses and Registrations; Timely Renewal; Health Services Executive License; Licensing Service Members; Temporary License; Suspension, Revocation, and Disciplinary Action; Continuing Education; Relicensure, Fees, Personal Information Systems

Rule Number(s): 4751-1-03, 4751-1-05, 4751-1-10, 4751.1-10.1, 4751-1-10.2, 4751-1-10.3, 4751-1-11, 4751-1-12, 4751-1-13, 4751-1-15, 4751-1-16, 4751-1-17

Date: August 15, 2019

Rule Type:

☒ New

☒ 5-Year Review

☒ Amended

☐ Rescinded

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

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in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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.

Rule Change 4751-1-03 Board Officers, board secretary and board members.

- Language changed to reflect current practice that monies payable to the Board are no longer handled by the secretary or the office.

Rule Change 4751-1-05 Pre-examination requirements, conditions precedent to application for admission for examination.

- Language changed to realign rule with 4751.201 after it was changed.

Rule Change 4751-1-10 Licenses and Registration.

- Language changed to reflect statutory changes that modified the 5 continuing education units per calendar quarter late renewal penalty to a \$50 per calendar quarter late renewal penalty.

Rule Change 4751-1-10.1 Timely Renewal.

- Language changed to state renewal form and invoice may be obtained by calling the office instead of being found online.
- Language added to describe timely renewals for the new health services executive license.
- Language added to reflect statutory changes that modified the 5 continuing education unit penalty to a monetary penalty for both the LNHA and the HSE licenses.

New Rule 4751-1-10.2 Health Services Executive License.

- Language created to define this new voluntary license category and how to obtain and maintain it.

Rule Change 4751-1-10.3 Licensing Service Members

- Rule changed to reflect that penalty fees may be waived in certain situations for service members and spouses.

Rule Change 4751-1-11 Temporary License.

- Changed eighteen years of age to twenty-one years of age to align rule with 4751.202 after it was changed.

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Rule Change 4751-1-12 Suspension, Revocation, and Disciplinary Action.

- Language added to reflect the new licensure category of Health Services Executive.
- Language changed from “shall revoke or suspend” to “may revoke or suspend or impose a civil penalty, fine, or other sanction authorized by the board” to increase flexibility when dealing with licensees and infractions of the disciplinary laws and rules.
- Language was added to reflect not keeping the examination content confidential and “substantial deviation” from the Board’s Code of Ethics as disciplinary infractions.

Rule Change 4751-1-13 Continuing Education.

- Rule changed to allow continuing education credit for those who precept (teach) Administrators-In-Training, provided that the preceptor completes the entire internship period with the Administrator-In-Training.

Rule Change 4751-1-15 Relicensure

- Correction made to remove the word “not” from 4751-1-15 (A) after it was erroneously placed in the rule.

Rule Change 4751-1-16 Fees.

- Fees added to reflect statutory changes and match other rules.

Rule Change 4751-1-17 Personal Information Systems

- Language added to clarify that emailed documents are provided at no charge to the requestor.

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

4751.03, 4751.04, 4751.043, 4751.044, 4751.14, 4751.99

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.

Yes: 42 CFR 431.707: “The agency or Board must develop, impose, and enforce standards that must be met by individuals in order to be licensed as a nursing home administrator. The standards must be designed to ensure that nursing home administrators are: of good character, otherwise suitable, and qualified to serve because of training or experience in institutional administration.”

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42 CFR 431.708: “The agency or Board must develop and apply appropriate procedures and techniques, including examinations and investigations, for determining if a person meets the licensing standards.”

42 CFR 431.709: “Except as provided in CFR 431.714 of this subpart, the agency or board must: issue licenses to persons who meet the agency’s or board’s standards, and revoke or suspend a license if the agency or board determines that the person holding the license substantially fails to meet the standards.”

42 CFR 431.710: “To fill a position of nursing home administrator that unexpectedly becomes vacant, the agency or board may issue one provisional license, for a single period not to exceed 6 months. The license may be issued to a person who does not meet all of the licensing requirements established under 42 CFR 431.707 but who: is of good character and otherwise suitable, and meets any other standards established for provisional licensure by the agency or board.”

42 CFR 431.711: “The agency or Board must establish and carry out procedures to ensure that licensed nursing home administrators comply with the standards in this subpart when they serve as nursing home administrators.”

42 CFR 431.712: “The agency or board must investigate and act on all complaints it receives of violations of standards.”

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

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)?

4751-1-03: The Board is required to develop such a rule by 4751.03 and 4751.04 and feels that it is important that the rules reflect current practice.

4751-1-05: The Board believes that twenty-one years of age is a more appropriate age to potentially be charged with operating a nursing facility and caring for a vulnerable population. The Board is also required to comply with the Ohio Revised Code.

4751-1-10: The Board feels it is critical to have licensed Administrators working in Long-Term Care facilities and that practicing Administrators should not let their licenses lapse.

4751-1-10.1: The Board wants to encourage administrators to file renewals online instead of by paper due to the efficiencies involved. It is also important for licensees to know what constitutes a timely renewal.

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4751-1-10.2: The Board believes that it is important to educate LNHAs on the new voluntary license and how to obtain and maintain it.

4751-1-10.3: The Board feels it is important to assist veterans and their spouses when able.

4751-1-11: The Board believes that twenty-one years of age is a more appropriate age to potentially be charged with operating a nursing facility and caring for a vulnerable population.

4751-1-12: The Board believes these changes are necessary to protect the population served by licensed nursing home administrators and comply with changes to ORC 4751. in regards to the Health Services Executive License.

4751-1-13: The Board feels that it is important to encourage licensees to help teach the next generation of licensees and offering continuing education credits for doing so are a way of doing that.

4751-1-15: The Board needed to correct the error that was made, as it changes the intent of the rule.

4751-1-16: The Board must update its fee structure to comply with statutory changes.

4751-1-17: The Board is required by statute to have a personal information systems rule.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

There will be greater licensee understanding of the rules and fewer areas not addressed in the rules. There will be complete and accurate applications for the voluntary Health Services Executive License. There will be a greater number of licensees renewing online.

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 Ohio Council for Home Care and Hospice and Ginger Scheurger-Davison were notified via email per their request on July 29, 2019.

The Board posted draft copies of the rules on the Board's website from July 29, 2019-August 12, 2019 for an early stakeholder outreach period. All three of the primary provider associations (LeadingAge Ohio, The Ohio Health Care Association, and the Academy of Senior Health Sciences) placed a notice in their newsletters (emailed to all members) regarding the draft rules on the Board's website. Information was also posted on the Board's

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Facebook page, and an email blast was sent to all active licensed nursing home administrators.

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

The Board received feedback specific to the following rules:

4751-1-10: Respondent felt the fee should be \$25 per calendar quarter. The Board replied that the late fee amount is set in statute, so the Board has no flexibility in this. Additionally, the previous penalty was 5 additional CEs, which breaks down to a penalty of \$10 per credit hour, which the Board feels is reasonable.

4751-1-10.1: Respondent felt the fee should be \$25 per calendar quarter. The Board replied that the late fee amount is set in statute, so the Board has no flexibility in this. Additionally, the previous penalty was 5 additional CEs, which breaks down to a penalty of \$10 per credit hour, which the Board feels is reasonable.

Respondent also suggested changing “online” in (B)(6) to “self-study/distance learning/webinars”. The Board felt this added clarity and accepted the suggestion.

4751-1-10.2: Respondent commented that in letter (A), the terminology might not be necessary. The Board replied that the terminology mentioned is necessary in case NAB changes the conditions necessary to obtain an HSE. With this language, the Board would not be automatically forced to change the rule.

The respondent asked if certain terms should be capitalized. The Board responded that the ORC does not allow for the capitalization of certain terms, like the name of the Board. The Board also felt that its name should be spelled out here to distinguish its approval from NAB’s.

The respondent asked about whether individuals would use “LNHA”, “HSE”, or both. The Board responded that regarding the question about letter (D), LNHAs who have obtained the HSE are entitled to use both acronyms behind their name if desired, or they may just use one or the other.

The Board received another comment about whether the respondent could use the term “HSE” or “Health Services Executive” in Ohio without a license. The Board responded that its interpretation of 4751.10(E) was that individuals must have an Ohio HSE license to use the term “Health Services Executive” or the initials “HSE” after his or her name in Ohio.

4751-1-12: The respondent suggested adding “and/or the board may impose” to section A of the rule. The Board responded that this added clarity and was accepted.

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The respondent felt that the term “practice setting” should remain “nursing home”. The Board responded that “in the practice setting” should stay in the rule as many HSEs will practice in other settings like Assisted Living and/or Home and Community based services, and LNHAs are still under the jurisdiction of the Board, no matter the setting.

4751-1-16: Respondent felt the fee should be \$25 per calendar quarter. The Board replied that the late fee amount is set in statute, so the Board has no flexibility in this. Additionally, the previous penalty was 5 additional CEs, which breaks down to a penalty of \$10 per credit hour, which the Board feels is reasonable.

4751-1-17: The respondent felt that there might have been a word missing in the second paragraph of (C). The Board thanked her for pointing this out and corrected the error.

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?

N/A

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?

There were no alternative regulations considered as the rules are driven by statute and Federal regulations.

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.*

No. The rules were developed in accordance with ORC guidelines and Federal regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The JCARR standard for invalidation has been an ongoing deterrent to duplication. Legal staff, the Board, and Board Committees (where appropriate) have reviewed rules to assure there is no duplication of an 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.

BELTSS will once again seek the assistance of the three primary provider associations (as described in question number 7) to help distribute the updated rules to its members and drive traffic to the website where the updated rules will be posted. The Board will also post

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information on the website, post information to its Facebook page, and send an email blast to all active licensed nursing home administrators.

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;

- Rule 4751-1-03 regulates the board itself.
- Rule 4751-1-05 regulates the roughly 100 applicants per year for the administrator-in-training program. They are the impacted community. It also regulates those applicants with criminal convictions, approximately 10 per year.
- Rule 4751-1-10 regulates the approximately 1904 licensed administrators in Ohio.
- Rule 4751-1-10.1 regulates the approximately 1904 licensed administrators in Ohio.
- Rule 4751-1-10.2 defines a new voluntary licensure category. The impacted community is those LNHAs who choose to obtain the new license, estimated at 50 people the first year.
- Rule 4751-1-10.3 could affect approximately 5 applicants per year.
- For Rule 4751-1-11, the potentially impacted community is applicants for a temporary license, approximately 5 per year.
- Rule 4751-1-12 has the potential to affect all 1904 licensees.
- Rule 4751-1-13 has the potential to affect up to 100 licensees per year.
- Rule 4751-1-15 has the potential to affect up to 20 licensees per year.
- Rule 4751-1-16 has the potential to affect all applicants for the voluntary HSE license, estimated at 50 people the first year, as well as any LNHA who renews late, estimated at 200 individuals per year.
- Rule 4751-1-17 has the potential to affect 1904 licensees and 100 AITs, as well as an estimated 5 consumers per year.

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

- Rule 4751-1-03 regulates the board itself and has no foreseeable adverse impact on its customers.
- Rule 4751-1-05 poses a potential adverse impact for applicants for the Administrator-in-training program of denying participation in the program to anyone under the age

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- of twenty-one. It also poses a potential adverse impact of an individual being disqualified from holding a license based on certain criminal convictions.
- Rule 4751-1-10 changes the potential adverse impact from additional continuing education credits that vary in cost to a flat monetary penalty per calendar quarter late.
 - Rule 4751-1-10.1 poses a potential adverse impact to roughly 1% of the licensees as it requires them to contact the office for a paper renewal form.
 - As rule 4751-1-10.2 deals with a brand new, national program, the Board anticipates a slow start and that approximately 50 LNHAs might seek the voluntary license in the first year it is offered. The adverse impact is approximately 15 minutes for paperwork, and a \$100 licensure fee.
 - Rule 4751-1-10.3 poses a potential adverse impact to applicants of approximately 10 minutes to complete the required paperwork to request a waiver.
 - Rule 4751-1-11 poses a potential impact of denying a temporary license to anyone under the age of twenty-one and a \$100 temporary license fee.
 - Rule 4751-1-12 poses a potential adverse impact of imposing various sanctions on a licensee found to have violated the Ohio Revised Code or the Ohio Administrative Code Chapter 4751.
 - Rule 4751-1-13 changes pose no potential adverse impact and are in fact a benefit to licensees by granting CE credit for precepting an AIT. It might take a licensee 5 minutes to submit the proof of completing the internship to the Board.
 - Rule 4751-1-15 changes pose no potential adverse impact. The adverse impact of the rule itself is the relicensure fees and the fees for taking the examinations, which are set and collected by the National Association of Long-Term Care Administrator Boards (NAB).
 - Rule 4751-1-16 poses a potential financial impact of \$100 for an HSE licensure application, \$50 for an annual renewal, and up to a \$100 late fee for late HSE renewals.
 - Rule 4751-1-17 poses a potential financial impact for copying and mailing requested information, not to exceed the cost of copying and mailing.

c. Quantify the expected adverse impact from the regulation.

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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.

Rule 4751-1-03 regulates the board itself and has no foreseeable adverse impact on its customers.

Rule 4751-1-05 requires approximately 5-10 minutes to read and understand the rule. These changes may affect approximately 1 administrator-in-training per year, or less. In recent history, the Board has not had any applicants who are under the age of 21.

The adverse impact of 4751-1-10 is the \$50 per calendar quarter late renewal fee instead of the variable cost 5 CE hour penalty.

The adverse impact of 4751-1-10.1 is approximately 3 minutes per licensee to call or email the office to obtain a paper application.

The adverse impact of 4751-1-10.2 is the time to complete the HSE application and obtain the background check (approximately 20 minutes), the \$100 licensure fee, and the \$25 per calendar quarter late renewal fee. This is a completely voluntary program, so those impacted must choose to be impacted.

Rule 4751-1-10.3 poses a potential adverse impact to applicants (estimated at 2 per year) of approximately 10 minutes to complete the required waiver request.

The adverse impact of Rule 4751-1-11 could potentially impact approximately 1 person per year or less, as the Board has not had anyone under 21 apply for a temporary license for many years, if ever.

The adverse impact of Rule 4751-1-12 could mean a sanction of a fine, continuing education, suspension, or revocation of the license to practice; probation, or a letter of reprimand.

There is no discernable adverse impact to the changes being proposed in Rule 4751-1-13. The changes are a benefit to the licensees. It might take a licensee 5 minutes to submit the proof of completing the internship to the Board.

The adverse effect of Rule 4751-1-15 is the relicensure fee of \$250 and the fees for taking the Ohio examination (\$190), and the Federal examinations (\$425). These fees are set and collected by the National Association of Long-Term Care Administrator Boards (NAB).

The adverse impact of Rule 4751-1-16 is \$100 for an initial HSE license, \$50 for an annual renewal, and up to a \$100 late fee for late renewals. The number of HSE applications estimated to be received in State Fiscal Year 2020 is 50. This is a completely voluntary program, so those impacted must choose to be impacted.

The adverse impact of Rule 4751-1-17 is the cost of copying and mailing requested information, not to exceed the cost of copying and mailing, however, emailed information is free of charge.

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

4751-1-03: The Board is required by 4751.03 and 4751.04 to have in place a rule defining the operations of the Board and establishing the duties of the Secretary.

4751-1-05: The Board is required by 4751.04 to have a procedure in place for administering the exam and for ensuring that administrators are qualified to serve as administrators. It is helpful to licensees to have terms clearly and accurately defined and to understand the standards they must meet to proceed with the program and become licensed.

4751-1-10: The Board needs to establish criteria for obtaining and maintaining the administrator license so that licensees understand what is expected of them.

4751-1-10.1: The Board believes that renewing online is the best, most efficient method for both the Board and the licensee. Online renewal is much less labor-intensive for the Board staff and saves time and money, which helps continue to support the Board functions. Licensees need to be aware of what constitutes a timely renewal and what can make their renewal late.

4751-1-10.2: The Board needs to establish criteria for obtaining and maintaining this voluntary license so that licensees understand what is expected of them.

4751-1-10.3: The Board feels it is beneficial to have a rule in place defining the benefits available to service members/surviving spouses.

4751-1-11: Applicants for temporary licensure must have sufficient experience to be able to operate a nursing facility even temporarily. The Board feels that twenty-one years of age is the minimum age applicants should be to possess adequate management/healthcare knowledge/experience.

4751-1-12: Part of the Board's mission is public protection from licensees who may break the laws and/or rules, and the Board needs to have the ability to do so when warranted. The Board believes it should have options other than to suspend or revoke a license for minor infractions.

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4751-1-13: Again, there is no discernable adverse impact to the changes being proposed in this Rule, other than perhaps 5 minutes to submit documentation to the Board.

4751-1-15: The Board feels that it is important to provide a method for those who let their license expire to get it back.

4751-1-16 required changes to be made to reflect statutory language changes made to Chapter 4751 of the Revised Code.

4751-1-17: The Board is required by statute to have a Personal Information System rule.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

For Rule 4751-1-03: this rule regulates the Board and not its constituents, so this is not applicable.

For Rule 4751-1-05: no, applicants must conform to the rule.

For Rule 4751-1-10: no, applicants must conform to the rule.

For Rule 4751-1-10.1: yes, licensees may still renew by paper.

For Rule 4751-1-10.2: no, applicants must conform to the rule, but it is a voluntary license, so no one is forced to apply for it.

For Rule 4751-1-10.3: no, applicants must conform to the rule if they wish to obtain the benefits available to service members/surviving spouses.

For Rule 4751-1-11: no, applicants must conform to the rule.

For Rule 4751-1-12, no, licensees must conform to the rule.

For Rule 4751-1-13: no, applicants must conform to the rule, but no one is forced to be a preceptor, it is voluntary.

For Rule 4751-1-15: no, applicants must conform to the rule.

For Rule 4751-1-16: no, applicants must conform to the rule.

For Rule 4751-1-17: the rule regulates the Board and its actions. The rule does provide means for licensees to contest information maintained within the Personal Information System.

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?

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The only paperwork violation fine is the late renewal fee for those who choose to renew after their scheduled renewal date. The Board will make every effort to educate licensees about the late renewal fees at the time they are licensed, and at the time of the rule change.

First time offenders of Rule 4751-1-12 will be handled on a case by case basis, examining both mitigating and aggravating circumstances, the severity of the violation, and the risk posed to the person(s) being served.

18. What resources are available to assist small businesses with compliance of the regulation?

The Board staff is available during normal business hours, by email and telephone to answer any questions that individuals may have.